

A Report by a Panel of the

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

for the U.S. Congress and the U.S. Judiciary

BUDGETING FOR THE U.S. JUDICIARY:

Preparing for the Future

June 2007

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Panel

C. William Fischer, *Chair**
Sally T. Hillsman*
Sven Erik Holmes
Philip G. Joyce*
Samuel T. Mok*
Nancy A. Potok*

**Academy Fellow*

Officers of the Academy

Valerie A. Lemmie, *Chair of the Board*
Jonathan D. Breul, *Vice Chair*
Jennifer L. Dorn, *President and Chief Executive Officer*
J. Christopher Mihm, *Secretary*
Franklin S. Reeder, *Treasurer*

Study Team

J. William Gadsby,* *Vice President for Academy Studies*
Frank DiGiammarino, *Program Area Director*
James F. Everitt, *Project Director*
Richard F. Keevey, *Senior Advisor*
Robert L. Giusti, *Senior Advisor*
F. Steven Redburn,* *Senior Advisor*
Gerald (Jake) Barkdoll, *Senior Analyst*
Elaine L. Orr, *Senior Analyst*
Christine E. Sterling, *Senior Research Analyst*
Laura M. Kiesler, *Research Associate*
Martha S. Ditmeyer, *Senior Administrative Specialist*

The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

National Academy of Public Administration
900 7th Street, N.W.
Suite 600
Washington, DC 20001-3888
www.napawash.org

First Published June 2007

Printed in the United States of America
ISBN 1-57744-153-2

Academy Project Number: 2091-000

* *Academy Fellow*

FOREWORD

Americans value the effective, equitable and efficient administration of justice as a cornerstone of our democratic society. Developing and managing the budget of the federal Judiciary in the context of long-term organizational objectives are critical to its continued success, particularly in light of growing caseloads and the difficult budget choices that Congress faces.

The Academy appreciates the opportunity to assist Congress and the federal Judiciary in examining its budget and priority-setting process, cost containment initiatives and reporting to Congress and the public. The Academy Panel overseeing this effort believes that the Judiciary's budget formulation and execution reflect sound stewardship of federal funds. At the same time, the Panel suggests improvements to provide both the Judiciary and Congress with better information as they consider tradeoffs in the budget process, and it urges the Judiciary to move expeditiously on these recommendations.

The Academy extends its appreciation to the members of the Project Panel for their excellent work and keen insights, and to the project team for its effective contributions. We also wish to thank the judges, executives, employees, and stakeholders who generously contributed their time and expertise in support of the project's important goals.

A handwritten signature in dark ink, reading "Jennifer Dorn". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

Jennifer L. Dorn
President and Chief Executive Officer

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ACRONYMS

Academy	National Academy of Public Administration
AO	Administrative Office of the U.S. Courts
ADR	Alternative Dispute Resolution
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act
BOC	Budget Object Class
CACM	Court Administration and Case Management
CAS	Central Accounting System
CBO	Congressional Budget Office
CJ	Congressional Justification
CM/ECF	Case Management/Electronic Case Files
COO	Chief Operating Officer
CR	Continuing Resolution
CTM	Momentum
CUE	Court Unit Executive
DC	District of Columbia
DOD	Department of Defense
DOJ	Department of Justice
ENE	Early Neutral Evaluation
EPA	Electronic Public Access
E&Y	Ernst & Young
FAR	Fair Annual Rental
FBF	Federal Buildings Fund
FJC	Federal Judicial Center
FTE	Full Time Equivalent
GAO	Government Accountability Office
GPRA	Government Performance and Results Act
GSA	General Services Administration
ID	Idaho District

IG	Inspector General
IT	Information Technology
JITF	Judiciary Information Technology Fund
MAP	Methods Analysis Program
MBO	Management Planning
MOU	Memorandum of Understanding
MOW	Western District of Missouri
NASA	National Aeronautics and Space Administration
OMB	Office of Management and Budget
OMPA	Office of Management Planning and Assessment
PACTS	Probation/Pretrial Services Automated Case Tracking System
PBS	Public Building Service
QC	Quality Control
RAQI	Rent Appraisal Quality Initiative
ROI	Return on Investment
R/U	Rentable/Usable
S&E	Salaries and Expenses
SME	Subject Matter Expert
STAR	System for Tracking and Administering Real Property
TEF	Temporary Emergency Fund
TI	Tenant Improvements
TXS	Southern District of Texas
WVN	Northern District of West Virginia

EXECUTIVE SUMMARY

Although the Judiciary is a separate branch of the federal government, legislative and executive branch actions directly impact the types and volume of cases that come to it. The interdependence of these three branches—executive, legislative, and judicial—is most visible in the appropriations process. The U.S. Office of Management and Budget does not review the Judiciary budget, but cases coming to the “third branch” may change if the president requests funding for more prosecutors, the focus of federal prosecutions shift, or Congress moves a crime from state to federal jurisdiction. When Congress sets the Judiciary’s appropriations level, it affects the administration of justice greatly. The Judiciary exerts the greatest influence on congressional decisions through its case for appropriations and the methods used to manage its financial resources.

Appropriators face the challenge of funding the Judiciary at adequate levels. This is challenging given a capped congressional budget process designed to fulfill the missions of the entire federal government and a given appropriation subcommittee’s purview.

THE ACADEMY STUDY

Following reorganization of the subcommittees of the House and Senate Committees on Appropriations in 2005, the Judiciary’s budget moved from the Senate Subcommittee on Commerce, Justice, State, and Related Agencies to the Subcommittee on Transportation, Treasury, HUD, Judiciary, and Related Agencies. Congress directed the Judiciary to contract with the National Academy of Public Administration (Academy) to examine the Judiciary’s budget process and its recent cost-containment initiatives. In discussions with the subcommittee staff, they also asked the Academy to study how the Judiciary’s priority-setting process is built into budget requests and how it reports the results of its activities to both Congress and the public. An Academy Panel was established to undertake this effort.

THE FEDERAL FISCAL AND MANAGEMENT ENVIRONMENT

Recently, the Judiciary has fared relatively well in receiving appropriations close to the level requested. A notable exception occurred with the Fiscal Year (FY) 2004 appropriation when it received a double, across-the-board reduction.

A November 2005 Academy Committee report, *Ensuring the Prosperity of America: Addressing the Fiscal Future*, concluded that state budget policies are out of balance. The Panel overseeing this study agrees with that observation. As the federal budget continues to run large deficits notwithstanding a growing economy, there is little reason to believe that underlying pressures on budgets will abate, given such factors as the aging U.S. population and the rapid increase in health care costs. This economic situation may lead to much higher tax burdens, unsustainable levels of public borrowing, or deep reductions in other important activities. This situation could impact and adversely affect the federal Judiciary’s budgets.

The Panel wants to use this opportunity to call attention to these conditions that are likely to influence the Judiciary's future. Indeed, it is appropriate that the Judiciary consider the broad federal fiscal environment as it moves to strengthen its planning and budgeting systems. The federal budget is a battle between the parts and the whole in which everything is, in fact, competitive.

DEVELOPING AND MANAGING THE JUDICIARY BUDGET

The Judiciary's annual budget obligations totaled \$6.3 billion in FY 2006. Among other items, these funds pay for 1,617 active Article III, bankruptcy, and magistrate judges; 464 senior judges (retired judges who maintain at least a partial caseload); 33,214 staff; and nearly 40 million square feet of space. This report deals primarily with the \$4.3 billion in obligations in the Salaries and Expenses (S&E) account, which provides funds for the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices.

This Panel believes that the Judiciary's budget formulation and execution reflect sound stewardship of federal funds. Judges and senior staff are intensely involved in developing spending requests and directly managing budgets; the nation's system of justice is well served by their involvement. Yet the Panel is concerned that setting priorities through Judicial Conference committees provides an insufficient locus for leadership debates in order to set comprehensive, long-term goals. This dispersed mechanism adds to the difficulty that the Judicial Conference faces in identifying the resources and authorities needed to reach its goals.

Planning is associated with Budget Committee decisions. However, the Judicial Conference's subject-matter committees, which submit budget requests, already have made individual decisions about their priorities by the time the Budget Committee receives those requests. Because the budget's overall size is fixed, each committee's decisions impact the discretionary resources available to other committees. Further, it is unclear whether the top priorities of each committee are consolidated into a collective and reflective list. That is, the top priority of one committee may be a second or third-level priority for the Judiciary as a whole.

Given staff reductions and operational constraints stemming from the FY 2004 reduction, the Chief Justice directed the Judicial Conference's Executive Committee to examine the Judiciary's long-term fiscal outlook. *Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond*, released in September 2004, focused on reducing rent costs and concluded that annual budget development had served the Judiciary well when Congress provided adequate increases. At the same time, the report indicated that developing budgets within an annual decision-making process was not conducive to making long-term changes and achieving the lower expenditures necessary in a time of increasingly constrained federal budgets. The Panel agrees with this point.

The Panel also agrees with Budget Committee and long-range planning meeting suggestions that compiling program-based budgets would enable the Budget Committee, Executive Committee, and Judicial Conference to consider the total needs of each program. Doing so not only would help individual committees understand the implications of their investment choices, it also would

help disclose the total cost implications associated with proposed options and decisions and would facilitate setting priorities. In other words, this approach would allow decision makers to better compare the relative costs and benefits of investments in various programs.

A range of factors—caseload, case complexity, and the number of defendants and convicted offenders under judicial supervision among them—influence the Judiciary’s budget development process. However, the lack of a regular process to integrate planning and budget processes makes it inevitable that budget deliberations focus on costs and cost-containment rather than systematically setting priorities, determining resource needs, and adjusting funding to achieve the Judiciary’s most important goals.

Therefore, the Panel recommends that the Judiciary, when developing and managing the Judiciary budget:

- **Work with appropriate executive branch agencies to determine the impact of their operations on the Judiciary. The goal is to ensure that the judicial and executive branches can explain clearly these impacts to congressional appropriators and outline changing resource needs based on emerging legislative or executive branch priorities. This process could include an annual meeting of senior officials from the Judiciary, U.S. Department of Justice, and U.S. Department of Homeland Security with the concurrence of the Chief Justice.**
- **Integrate the judicial planning and budget processes by having Budget Committee judges and staff work closely with the Executive Committee and related staff. The goal is to ensure that a long-term, comprehensive Judiciary plan guide budget development and that budget requests contain information on the current accomplishments of long-term plan objectives.**
- **Require subject-matter committees to prepare program-based budgets and submit them to the Budget Committee. The Budget Committee would retain its role of weighing tradeoffs, integrating committee requests, and preparing the final budget submission.**
- **Revise Judiciary budget training programs to ensure that judges on committees and senior staff learn to develop resource requests that are related to their program responsibilities rather than as components of, for example, a Judiciary-wide request for more staff.**

The Budget Committee must incorporate the Judiciary’s comprehensive priority-setting process into its budget guidance memorandum and review all committee budget proposals for their alignment with goals. Specific goals require accurate cost estimates to report on their achievement. The committee and division may need additional staff support.

The Judiciary’s Financial Plan divides the budget into four categories: mandatory, controllable, uncontrollable, and historically fully funded. Spending in the latter two categories is not subject

to a zero-based perspective in budget formulation. The Panel understands that the terms “controllable” and “uncontrollable” refer primarily to determining the allocation of enacted appropriations in a current budget execution year. However, these internal categories have created a sense of fiscal entitlement in some areas of spending; their use may imply that the Judiciary believes that portions of its budget cannot be reduced. By law, some cannot. Congress must fund judges’ salaries and the Judiciary must pay for court-ordered drug testing, mental health and drug treatment, and other items when included as a condition for an offender’s release. Refocused attention on these spending categories and the extent to which they are used would help the Judiciary develop alternative strategies to accomplish its mission.

Therefore, the Panel recommends that the Judiciary:

- **Reexamine all categories of mandatory, historically fully funded, uncontrollable, controllable court allotments, and controllable centrally managed funds to determine whether more spending will be allocated into the controllable categories. Consider different terms for the resulting budget groups.**

Cost-containment practices related to major construction projects is one area where the Judiciary has begun this process. The smaller the “judicial footprint” in terms of space requirements and the smaller the rent budget, the greater the flexibility within the S&E account.

WORK MEASUREMENT FORMULAS IN BUDGET FORMULATION

The Judiciary, more than many other federal entities, has a great deal of information on the volume of its work and the time it takes to perform its tasks. The data are especially useful in allocating funds as decision makers measure the magnitude of work in the many court units across the nation.

However, the Panel shares the Judiciary’s concern that the three-year span in updating its work measurement formulas may produce outdated estimates given rapid technological and other changes. Yet annual updates are problematic given the staff time required. To help with this challenge, the Judiciary has relied on the informed judgment of professional staff to adjust resource requests; such adjustments have tended to be across-the-board. Using this approach occasionally can be useful, but doing so regularly raises questions about the adequacy of budget estimates. Even if the formulas are current, the issue is complicated recognizing that the realities of available resources and tradeoffs inherent in the appropriations process influence the outcome. Thus, the Budget Committee tries to balance the Judiciary’s need for staff with what it believes is a credible request to Congress.

The Judiciary does not compare the level of resources actually used to accomplish its work with the level of resources it estimated would be required for a fiscal year. Throughout its research, Academy staff found that unpaid overtime is common in federal courts and that some clerk’s offices have reduced their hours due to workload and fiscal pressures. However, these are anecdotes until a system is established to reconcile resources needed, resources expended, and

work accomplished. From October 2003 to October 2004, the Judiciary eliminated 1,350 personnel through reduction-in-force, buy-outs, early-out retirement actions, and not filling 664 vacated positions. Yet Congress has not seen a measured impact. It may seem professional not to highlight backlogs, routine unpaid overtime, or attrition, but this approach creates frustration among court staff and may create an impression among appropriators that there is no adverse impact on justice. This is an unnecessary vulnerability for the Judiciary.

The Judiciary clearly needs to provide data both on the amount of completed work within a given level of resources and on uncompleted work, with a description of the consequences of the latter.

Therefore, the Panel recommends that the Judiciary revise its work measurement system through a three-step process:

- 1. Develop a structured feedback loop that compares the estimated work years to the actual work years. Document the amount of work done.**
- 2. Document a sample of work not done in the same period and estimate the impact/consequences of not performing the work. The latter may be qualitative, but should be based on systematic documentation and informed judgment by court personnel inside and outside the Judiciary, such as lawyers and their clients.**
- 3. Use actual staffing data from the prior year as the starting point for estimating the amount of work that may be done with a given level of resources and the work that will remain undone.**

Information generated by this process would give appropriators a better understanding of what is gained or lost with marginal changes in Judiciary appropriations. In times of scarce resources, Congress may not be able to provide funds, for example, to fully supervise felons on probation or process new bankruptcy cases within a given time period. However, this recommendation would lead to an enhanced understanding of the implications of reduced appropriations, such as fewer probation officer visits or delays in providing information to bankruptcy filers.

DEVELOPING A PLANNING PROCESS THAT SUPPORTS THE FEDERAL JUDICIARY'S PROGRAMS AND BUDGETS

Almost daily, the Judiciary conducts planning to allocate resources fairly and reasonably to operational priorities. Chief judges of courts, court unit executives throughout the nation, and managers in the Administrative Office of the U.S. Courts (AO) look ahead to manage cases, develop new systems, and operate such functions as human resources and information technology.

The semiannual, long-range planning meetings among committee chairs of the Judicial Conference appear to be most closely related to enterprise-wide planning. Based on the Panel's analysis of four years of meeting summaries, it appears these meetings address some tactical

planning process criteria that the Panel discusses in Chapter Three. The number and diversity of judicial personnel involved in these meetings provide a mechanism for communication and collaboration. However, the large number of attendees and the meeting brevity are likely a barrier to effective participation as they do not allow an opportunity to fully address many issues or define the range of different opinions.

The Panel has several observations about the Judiciary's planning efforts:

- The three sets of participants—judicial officers, court support staff, and the AO—do considerable planning, particularly in support of budgeting. Yet they have approached it through various and largely unrelated techniques and activities.
- Although each management process independently addresses many of the Academy Panel's planning criteria, no mechanism exists to coordinate planning activities across the organization.
- Reliance on setting overall organizational policies in committees requires exceptional attention to cross-committee communication and coordination, similar to those required to support and sustain a matrix organization. No mechanism exists to accomplish this.
- Other than space/facilities and Information Technology (IT), planning activities tend to focus on operational topics and short-term perspectives.
- The semiannual planning meetings of Judicial Conference committee chairs provide a potential mechanism to address longer-term issues, although it would be necessary to substantially alter the expectations and conduct of these sessions to accomplish this.

A comprehensive, long-term planning process provides a way to identify enterprise-wide goals and direction toward fulfilling them. In this report, the Panel provides suggestions about steps that the Judiciary could take to develop a more comprehensive planning process. However, its recommendations are deliberately not specific because the Judiciary must develop a process that suits its needs and professional culture.

The Panel recommends that the Judiciary:

- **Reexamine the organization's 1995 expression of its mission, vision, and core values in order to revise or reaffirm them, and do so in a way that provides an opportunity to create a more informed and dedicated group of judges and employees.**
- **Establish an enterprise-wide priority-setting process that supports the organization's mission, vision, and core values and encompasses more than budget issues to help shape budget development.**
- **Ensure that adequate organizational capacity exists to establish the organization's planning needs and design and facilitate the planning process.**

An ongoing priority-setting process and organizational structure authorized by and accountable to the Judicial Conference will make priorities easier to distinguish when making long and short-term budgetary decisions. Given the Judiciary's culture of distributed power and committee-based operations, the Panel assumes that planning-related activities will remain spread throughout the organizational structure. If this is the case, the Panel envisions the Judiciary unit with planning capacity having a coordinating and information sharing role, with oversight by those whom the Chief Justice designates.

The Federal Judicial Center's research activities traditionally have provided a mechanism for judges and staff to explore alternatives and new ideas before applying them on a widespread basis. The Judiciary is fortunate to have this resource; it may want to explore ways the Center's staff or consultants can provide advice and analysis to its priority-setting planning process. The Center's training capabilities certainly will help institutionalize what the Judiciary develops.

ADVISING CONGRESS AND THE PUBLIC ON ACCOMPLISHMENTS

Providing information on an organization's accomplishments is the other component that relates to effective budget presentation and management. The Judiciary publishes many statistical reports, most available online, that show outputs in many forms, including cases filed or terminated by type of court, people under supervision, and offenders receiving substance abuse treatment. The AO director's annual report provides an overview of many activities and describes the results of improvement projects, such as electronic case management, enhanced interpreter services, and juror utilization. Yet as a periodically updated long-term plan or annual operating plans are not available, neither is an integrated report or series of reports on the extent to which goals and objectives are achieved.

A step in this direction is underway in probation and pretrial services, coordinated by that AO directorate. Working with district offices, the directorate has launched a multi-year research effort to develop information on the results of the supervision process, including rearrest and recidivism data.

It is difficult for outside stakeholders to determine how the Judiciary decides which course of action is desirable without clearly established performance targets and priorities to guide them. Congressional committees—oversight and appropriations—are accustomed to the executive branch process of developing a strategic plan, annual performance plans, and annual performance reports. They can see results, comment on achievements, and decide how to document or measure them. The Judiciary has various planning activities underway, and its judges and staff advisory groups regularly assess operations to develop better ways of doing judicial and administrative business. However, relatively few administrative efforts are visible beyond the Judiciary which could lead outside stakeholders to view the Judiciary as proceeding with “business as usual” in most areas.

The Judiciary needs a systematic effort to identify and develop useful information about administrative outcomes that may inform and justify its annual budget request and provide

assessments and documentation about how effectively it uses its resources. This will take a substantial effort, but the Judiciary is not starting from scratch. Its work measurement system offers a wealth of information on how work is done, and it has extensive output data on its work. In addition, Federal Judicial Center research can contribute in terms of what data to measure and how to systematically document results.

‘Effective justice’ has many aspects, some of which are highly nuanced. Assessing judicial outcomes tempts political and other non-judicial interference in the essential and prized independence of the Judiciary. Consequently, the Panel would expect the Judicial Conference to decide that performance measures should address primarily administrative areas, such as court unit management systems or citizen access to information.

The essential point is that the Judiciary must produce and make available credible information on performance regularly. Absent a mechanism for stating goals and objectives and systematically documenting their achievement, the Judiciary is placed in the difficult position of not being able to justify its needs for a specified level of resources.

Therefore, the Panel recommends that the Judiciary:

- **Continue developing measures for the Probation and Pretrial Services operations.**
- **Select a second area to develop measures and systematic documentation for some court operations. One possible operation is Bankruptcy, where staff actions affect case processing to a greater extent.**
- **Tie data on workload accomplishment, as already documented in several annual publications, to the goals presented in the Judiciary’s planning process.**
- **For one or more selected areas, develop indicators of results or outcomes—rather than outputs—similar to those in the District Court Planning Profile. Tie these to the goals and objectives of that area or areas in a model performance report.**

Reporting on results will better demonstrate the value of resources that the Judiciary expends and will place it in a better position to justify its budget requests. Over time, there will be a much more robust base of information about the results that units and programs produce and the effects of resource decisions and reforms on the Judiciary and those who need its services.

GETTING VALUE FOR MONEY SPENT ON RENT

The appropriations subcommittee asked the Academy Panel to provide its perspective on the increasing cost of rent, a particular area of concern that the Judiciary and General Services Administration (GSA) raised. The Judiciary’s space inventory consists of courtrooms and

chambers; libraries; clerks and probation/pre-trial service offices; attorney lounges; public spaces; and such specialized spaces as corridors for security needs. By statute, the Judiciary must hold court in 459 locations.

Since 2002, the average annual appropriation for the federal courts has increased 4.7 percent and GSA average annual rent charges have increased 6.2 percent. During this period, the Judiciary's use of space increased by about 3,651,000 square feet, about 15 percent. The Judiciary expects to pay almost \$1 billion in rent to GSA in FY 2007. It recognizes that a portion of the increase is due to the increase in space. However, the rent increase greatly constrains the Judiciary's spending budget. After fully funding rent payments consuming almost 22 percent of its S&E budget in FY 2004 and other mandatory expense categories, the Judiciary had to severely reduce the allocation of funds to district and appellate courts. This action led to reductions in non-chambers court staff. Clearly, the impact would have been mitigated had the Judiciary only absorbed a single across-the-board cut in its 2004 appropriations, not the double, across-the-board cut. Although the focus on reducing rent costs led to a more contentious relationship with GSA, new leadership at the AO and GSA has led to recently improved relations.

The Panel agrees that the increased cost of space has a powerful impact on the Judiciary's budget. As early as 1996, the Judiciary recognized that if it did not curtail the growth of space costs it would have to make painful tradeoffs between the cost of space and funds for staff. However, it should not have to accept specific rent bills based on unsound appraisals or problematic estimates that can be documented. Further, the Judiciary should not be responsible for tracking down errors in GSA rental charges or expending staff resources to measure square footage or document other aspects of rent calculations that appear inappropriate or inaccurate.

The Panel senses that the relationship between the Judiciary and GSA is improving. New leaders in both organizations have met and appear committed to achieving a workable solution. However, the issues are not simple or subject to short-term resolution. Therefore, **the Panel recommends that the Judiciary develop a memorandum of understanding (MOU) with GSA to establish a process that is:**

- **collaborative, fact-based, transparent, and non-adversarial and that includes agreed-upon time limits on the analysis and resolution of specific issues**
- **impartial in the methods identified to address and resolve problems and issues regarding facilities design, rent determination, service delivery, and space utilization**

The MOU process should be used in lieu of creating statutory independent real property management authority for the Judiciary, unless or until the collaborative process proves infeasible. If that proves to be the case, the Judiciary would be able to seek real property authority. The Panel believes that judges' time is better spent on judicial administration than space management, but it also recognizes that space and facilities management is central to successful judicial administration. The Judicial Conference can revisit this issue if needed.

MOVING FORWARD

The Panel believes that the Judiciary should move forward on all of its recommendations expeditiously. When the Judiciary developed its budget decentralization process in the late 1980s and early 1990s, it created and monitored a pilot program for three years. At the conclusion, it instituted the highly effective program through which individual courts manage their designated budgets—something many executive branch agencies have been unable to accomplish. Through similar pilots and phased implementation processes, the Judiciary more recently has embraced such significant system-wide administrative improvements as the Case Management/Electronic Case Files System and a uniform accounting system. It also has a track record of developing effective new management systems. With the leadership of the Judicial Conference, it can develop a planning and accomplishment reporting system linked to the budget process; devise better ways to balance the needs of its growing workload, which requires more judges and staff and the facilities required to house them; and continue to deliver justice to the public. To the extent that a more robust and integrated system can be put in place, the Judiciary will substantially enhance its ability to justify needed increases to fulfill its primary mission and reduce its vulnerability to arbitrary reductions of resources in the future.

CHAPTER ONE

INTRODUCTION

The U.S. Constitution created three independent, yet interdependent, branches of government. Article III calls for a Supreme Court and other federal courts that Congress deems necessary. Congress created the district courts, bankruptcy courts, and courts of appeals. Congress also sets the number of judges in each federal court, including the Supreme Court, and determines the types of cases the courts will hear, subject to the constitutional limitations on federal jurisdiction.

In addition, the Constitution gives Congress the power of the purse. As such, Congress sets appropriations levels for all three branches of government, which are enacted into law with the president's signature. The U.S. Office of Management and Budget (OMB) prepares the annual *Budget of the United States*, the president's budget submission to Congress, which includes estimates for the legislative and judicial branches. By statute, and in accordance with the separation of powers, OMB must submit those estimates to Congress without change.

The 2005 reorganization of the subcommittees of the House and Senate Committees on Appropriations transferred the Judiciary's budget from the Subcommittee on Commerce, Justice, and State to the Subcommittee on Transportation, Treasury, HUD, Judiciary, and Related Agencies.¹ The Senate Appropriations Committee, later supported by the Judicial Conference committee, directed the Judiciary to contract with the National Academy of Public Administration (Academy) to study the Judiciary's budget process and recent cost-containment initiatives. An Academy Panel was established to undertake this effort.

Understanding the complex and decentralized structure of the federal judicial system is essential to understanding how the Judiciary governs and administers its branch of government. This chapter provides important context for the Academy Panel's analysis and recommendations.

STRUCTURE OF THE JUDICIARY

As a separate branch of government with a unique purpose, the federal Judiciary operates within a broad context of constitutional, statutory, and case law; judicial systems and law enforcement agencies, including states' court systems; tribal judicial systems; international courts; other nations' judicial systems; and the U.S. Department of Justice, including the Federal Bureau of Investigation and U.S. Marshals Service.

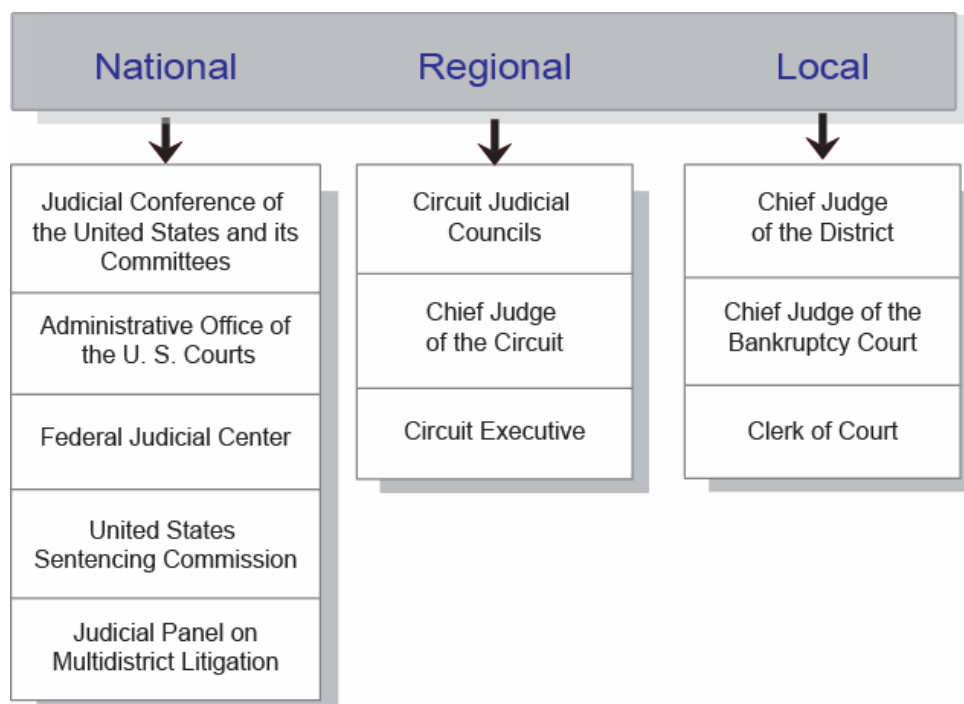
Figure 1-1 depicts the structure of the federal judicial branch. The Chief Justice of the United States heads the federal Judiciary and the Judicial Conference, the principal policy making body for federal judicial policy and court administration. The federal courts are organized into 13 courts of appeals, twelve of which have jurisdiction over cases within a regional area or

¹ With the 2007 committee reorganization, the Judiciary's budget transferred to the Subcommittee on Financial Services within the House and Senate Committees on Appropriations.

“circuit.” These twelve review cases from the United States district courts and the United States Tax Court, as well as orders and decisions from numerous federal administrative agencies.

The United States Court of Appeals for the Federal Circuit has exclusive national jurisdiction over a large number of diverse subject areas, including international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, and veterans’ benefits. Appeals to the court come from all 94 federal district courts, the United States Court of Federal Claims, the United States Court of International Trade, and the United States Court of Appeals for Veterans’ Claims.

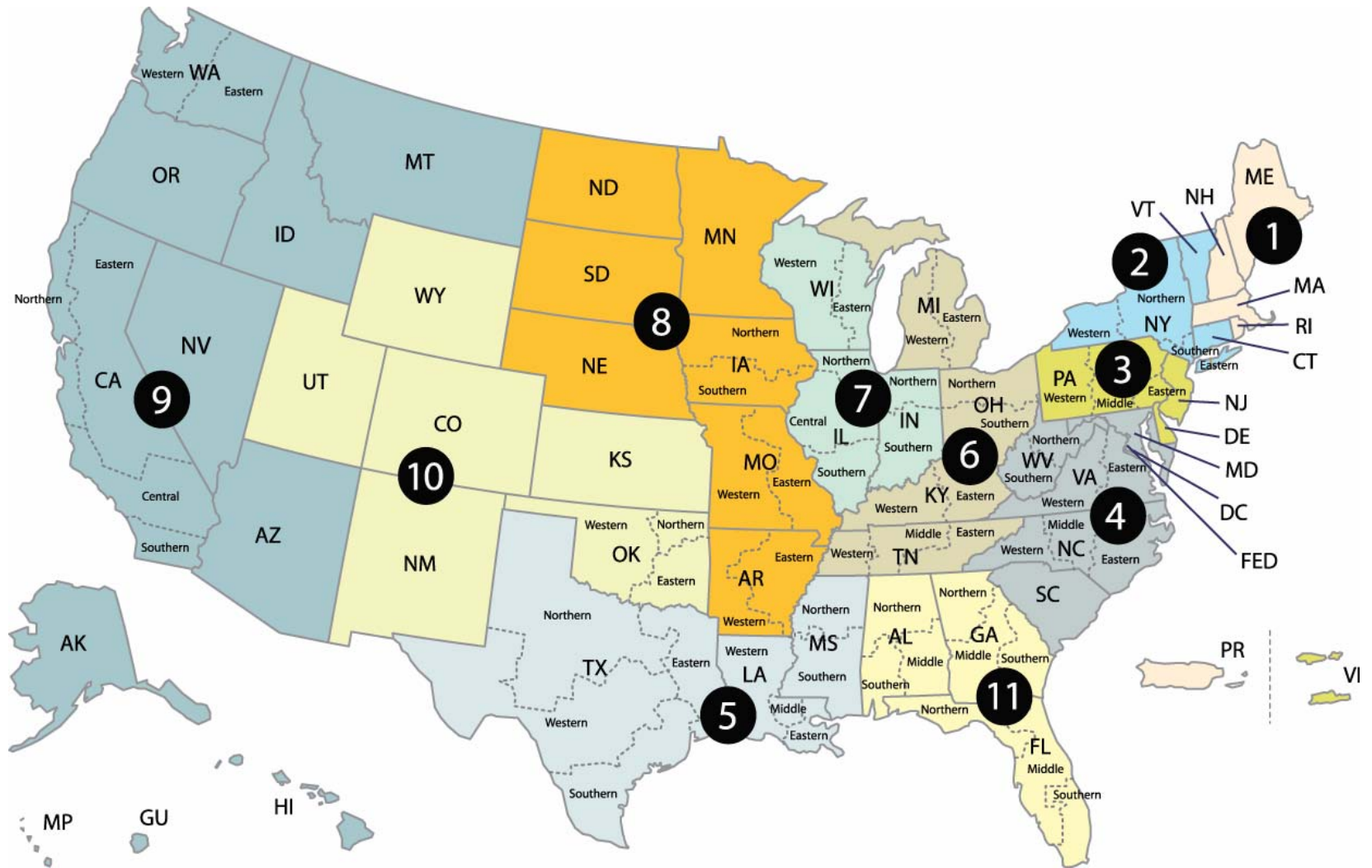
**Figure 1-1
Structure of the Federal Judicial Branch**



Circuits can cover relatively small geographic areas, such as the First Circuit which has four New England states and Puerto Rico, or hundreds of thousands of square miles, such as the Ninth Circuit which encompasses nine western states and two U.S. territories. Within the circuits are the 94 district judicial courts in the 50 states, District of Columbia, Commonwealth of Puerto Rico, and territories of Guam, the U.S. Virgin Islands, and Northern Mariana Islands. These are the courts of general jurisdiction in the federal system; most federal cases initially are tried and decided there. Each district includes a United States bankruptcy court as a unit of the district court. There is at least one district in each state, the District of Columbia and Puerto Rico.

Judicial district descriptions are in terms of the state and the region within the state. For example, Idaho has only one district, so it is written as ID. Texas has several districts, so the southern district of Texas would be written as TX-S. Figure 1-2 is a map of the 94 judicial districts and the federal judicial circuits.

Figure 1-2
Map of the Judicial Districts and Federal Circuits
 (Geographic Boundaries of United States Courts of Appeals and United States District Courts)



The judicial branch is organized very differently from an executive branch department. There are no regional offices or state and local programs to administer. Judges are independent in terms of their judicial rulings and accountable for operations of their own chambers, caseloads, and courts. As part of the larger judicial branch structure, judges are guided by the decisions of the Judicial Conference, and assisted by staff within their courts and at the Administrative Office of the U.S. Courts (AO).

The AO is not a “headquarters” organization akin to what cabinet agencies have. It serves as the central support entity for the judicial branch with management oversight of the court security program, probation and pretrial services program, and defender services program. It supports the Judicial Conference in determining Judiciary policies; develops new methods, systems, and programs to conduct the federal court business; assists courts in implementing better practices; develops and supports application of technology; collects and analyzes statistics to help plan and make decisions about resource needs; provides financial management services to the Judiciary, including budget formulation, execution, and accounting; provides personnel and payroll support for more than 30,000 Judiciary employees; and conducts audits and reviews of court operations.

GOVERNANCE WITHIN THE JUDICIARY

In addition to their roles as jurists, federal judges manage their chambers and courtrooms and contribute to the Judiciary’s overall management. Although individual courts and judges have much discretion in the conduct of their business, they operate within certain limits. These limits include Judicial Conference policy, supervision by circuit judicial councils, and resources that are less plentiful than judges and managers would like. The last is the most fundamental limit in this time of budgetary restraint.

Role of the Judicial Conference of the United States

Congress created the Conference of Senior Circuit Judges in 1922, and changed the name to the Judicial Conference of the United States in 1948.² The Chief Justice presides over the Conference, whose membership is composed of the chief judge of each regional judicial circuit, chief judges of the Federal Circuit and the Court of International Trade, and a district judge from each regional judicial circuit. District judge members serve for a term of not less than three years, nor more than five successive years as established by majority vote of all courts of appeals and district court judges of circuits; circuit judge members serve during their terms as chief judge. District judges were formally added to the conference in 1957.

The Conference’s role is to:

- Make a comprehensive survey of the conditions of business in the courts of the United States.

² Section 331 of Title 28, U.S. Code.

- Prepare plans for the assignment of judges to or from courts of appeals or district courts, as necessary.
- Submit suggestions to the various courts in the interest of promoting uniformity of management procedures and the expeditious conduct of court business.
- Exercise authority provided in 28 U.S.C. Section 354(b) and 357(a) for the review of circuit council conduct and disability orders filed under that section.
- Carry on a continuous study of the operation and effect of the general rules of practice and procedure in use within the federal courts, as prescribed by the Supreme Court pursuant to law.

In addition, the Judicial Conference supervises the AO director. Specific statutes further authorize it to act in a variety of areas dealing with courts administration. The Conference meets in Washington, DC twice per year, in March and September. A seven-member Executive Committee, which acts on the Conference's behalf between sessions on matters requiring immediate action, reviews the jurisdiction of conference committees and establishes and publishes procedures for assembling conference and committee agendas.

The Judicial Conference makes decisions as a single entity but organizes its work under a series of committees. The Chief Justice appoints committee members who usually serve for three-year terms and may be appointed for one additional term. However, the Chief Justice has discretion in this area and some committee members do not have fixed terms. For example, members of the Committee on the Judicial Branch do not have a fixed term and members of the Budget Committee may serve longer terms to take advantage of their expertise and relationships with members of Congress who serve on the Judiciary's appropriation subcommittees. The Judicial Conference committees³ are:

- | | |
|--|--|
| • Executive Committee | • Information Technology |
| • Administrative Office | • Intercircuit Assignments |
| • Bankruptcy System | • International Judicial Relations |
| • Budget | • Judicial Branch |
| • Codes of Conduct | • Judicial Conduct and Disability |
| • Court Administration and Case Management | • Judicial Resources |
| • Criminal Law | • Judicial Security |
| • Defender Services | • Magistrate Judges System |
| • Federal-State Jurisdiction | • Rules (including five advisory committees) |
| • Financial Disclosure | • Space and Facilities |

³ Detailed information on the jurisdictions of all of the individual committees is at http://www.uscourts.gov/judconf_jurisdictions.htm.

Five committees address those issues that relate most directly to the Academy Panel’s work. The committees’ roles are partially described here.

1. *The Executive Committee* reviews long-range planning and approves the annual financial plans.
2. *The Budget Committee* consults with committee chairs to formulate and present to the Judicial Conference for approval a budget request to Congress for the courts of appeals, district courts, bankruptcy courts, and other judicial services. The Budget Committee chair, with the AO director and others as appropriate, may testify on the Judiciary appropriation. The Budget Committee’s Economy Subcommittee has oversight of the Judiciary’s cost-containment efforts.
3. *The Judicial Resources Committee* considers all issues of human resources administration—including recruiting, training, and classification—as well as the need for additional Article III judges and support staff. It also oversees the operation of statistical systems and development of methodologies for human resources needs assessment and allocation.
4. *The Space and Facilities Committee* reviews, monitors, and proposes to the Judicial Conference policies regarding the Judiciary’s space and facilities requirements. The Committee oversees long-range planning for court facilities, including those for additional judgeships. The Committee also reviews design, construction, and maintenance services for court facilities provided by the General Services Administration (GSA) and deals with that organization on rent cost and related issues.
5. *The Court Administration and Case Management (CACM) Committee* studies and makes recommendations on matters affecting case management; the operation of appellate, district, and bankruptcy clerk’s offices; jury administration; and other court operational matters. The committee’s purview includes policies related to sharing courtrooms.

Committees study issues under their jurisdiction and make recommendations for the Judiciary Conference to consider. The process is a very collegial one. Not all judges serve on committees, but many spend a great deal of time on committee work notwithstanding a full caseload. The Judiciary Conference and its committees rely on the expertise of staff within the AO to base decisions and as resources to implement them. What makes the Judiciary unique is that all of its key decision makers are familiar with the mission and the work of all other units in the organization. There are differences in how the law is interpreted among circuits, but there is a common basis to discuss management and operating practices. At the same time, there is no strong central authority—with a comprehensive overview—that is empowered to review long-term problems and decide Judiciary-wide priorities, strategic plans, budget, or management processes and procedures.

Role of Circuit Judicial Councils

Within each regional circuit, a circuit judicial council oversees the administration of the courts within its geographic area. Congress created the councils in 1939 to serve as regional authorities of the federal judicial system and monitor the operations of individual courts of appeals and district courts. Each judicial council consists of the chief judge of the court of appeals, who serves as the chair, and an equal number of active or senior appeals court and district court judges from that circuit. The councils have a committee structure similar to that of the Judicial Conference.

The Judicial Conference requires the judicial council to meet at least two times annually and recommends at least four times. Unlike the Judicial Conference (which has no general order making authority), each council has authority to issue orders promoting accountability and the “effective and expeditious administration of justice within its circuit.” Aside from their fundamental responsibility to ensure that individual courts operate effectively, they are responsible for reviewing local court rules, including verifying consistency with federal rules of procedure; approving district court plans on such topics as equal employment opportunity and jury selection; and reviewing complaints of judicial misconduct. Each council examines the caseload throughout the circuit to determine if increases—or, in rare cases, decreases—in the number of judges or types of cases would require reallocation of work.

Each judicial council appoints a circuit executive, who works closely with the chief judge of the court of appeals to coordinate a range of administrative matters in the circuit. Although the council addresses matters of jurisprudence in the circuit, it also handles most aspects of general administration. These include evaluating district court requests for facility expansion or new courthouses, and determining if an upgrade to court security is necessary.

Discretion in Many Aspects of Court Operations

Many matters of court operations are at the discretion of the chief judge, with input and advice from other judges on the court and the clerk of court, if appropriate. In addition to supervising his or her own law clerks and immediate staff, the chief judge oversees operations of the units within the courts and essentially supervises senior staff. If the Judiciary decides to implement a new IT system or build a new courthouse, court support staff may handle details but the chief judge always will make the major decisions. He or she is usually the “face of the court” to the bar and public.

A district court generally has a local rules attorney to oversee maintenance of local conventions of practice and procedure, which are divided into such sections as civil, criminal, bankruptcy, or *habeas corpus*. Given its extensive coastline, admiralty (maritime) rules are more important in Alaska than Ohio, so local rules play an important role in informing the local bar and litigants on how to interact with a court. For example, the Alternative Dispute Resolution Act of 1998 requires district courts to provide a method of Alternative Dispute Resolution.⁴ Each district court determines if it will use mediation (the most favored option), settlement conferences, Early

⁴The July 2006 *Third Branch* noted that in a 2005 preliminary summary the Federal Judicial Center conducted in 49 district courts, 15,555 cases were referred to mediation out of a total 24,835 cases that went through ADR.

Neutral Evaluation (ENE)⁵ or another method. In the Western District of Washington, mediation was first introduced in the 1980s at the suggestion of the local bar association; it is mandatory when the court struggles with an increased caseload. Under its Civil Local Rule 16, each attorney and client must certify that he or she has read a handbook, *Dispute Resolution Procedures in the Northern District of California*, and considered the options. In 2005, 44 districts operated mediation and arbitration programs involving more than 15,000 civil cases.

UNITS WITHIN THE DISTRICT COURTS

Districts have several entities within them—district courts, bankruptcy courts, probation offices, and pretrial services offices (in the majority of districts within the probation office)—though not every district has all of them. Similarly, some courts have a district court executive office, but these are few in number.

Ninety district clerk offices handle only district court business and four clerk offices (DC, ID, MO-W, and TX-S) handle district and bankruptcy business. All other bankruptcy courts have separate bankruptcy clerk offices.

The clerk of the court is the court's primary administrative officer. The clerk, who reports directly to the court through its chief judge, manages a court's non-judicial functions in accordance with policies set by the court. Among the clerk's many functions are:

- Maintain the court's records and dockets.
- Pay all fees, fines, costs, and other monies collected into the U.S. Treasury.
- Administer the court's jury system.
- Provide interpreters and court reporters.
- Send official court notices and summons.
- Provide courtroom support services.

In addition, the clerk is the court's chief operating officer, handling such administrative matters as personnel, budget development, information technology (IT), and procurement.

The court unit executive (CUE) is the administrative head of each office within a court. The AO has established a Judiciary-wide advisory committee structure through which CUEs and others advise the AO director on matters within their purview, such as space and facilities, IT, security, and emergency preparedness. Most chief judges have each CUE report directly to them.

⁵ ENE provides parties in dispute with an early and frank evaluation by an objective observer or "evaluator" of the merits of a case. It is a confidential, voluntary process.

Judge Julia Gibbons (6th Circuit), chair of the Judicial Conference Committee on the Budget, described the interaction of judges and Judiciary staff this way:

The leadership structure of the Judiciary is quite complex...we are led centrally by judges, primarily Article III judges, with the Chief Justice at the top of the organizational chart and the Judicial Conference as our policy making body. But we are also so decentralized that the primary source of leadership is found within the individual court unit. While judges, particularly chief judges, have a key leadership role there, they tend to focus on their dockets. Often the task of initiating action on matters large and small falls to management professionals, from clerks of court, to chief probation and pretrial services officers, to circuit executives, and to other management personnel in all those offices.

The Administrative Office fits into this leadership structure at many junctures. The Director has a statutory role in the Judicial Conference, and AO employees staff Conference committees, serve as information resources for courts and individual judges, make sure we all are paid on time, handle court allotments, and conduct audits, among other things. When you look at the whole picture, you wonder how it all works. Yet from my perspective, it does work—at least most of the time. And it does so by providing a framework for dealing with many of the inherent tensions in the system and for providing the right mixture of direction and support.⁶

NUMBER AND TYPE OF JUDGESHIPS

As of November 30, 2006, there were:

- 167 active court of appeals judgeships and 102 appellate judges took senior status
- 678 active district court judgeships and 362 district judges took senior status
- 352 authorized bankruptcy judgeships and 25 recalled judges
- 16 claims court judgeships
- 503 full-time authorized magistrate judgeships and 80 authorized part-time and recalled judges

⁶ Interview with Julia Gibbons, 6th Circuit, in the September 2006 edition of *The Third Branch*, available online at www.uscourts.gov.

Senior judges are retired district or appeals court judges who provide volunteer service to the courts.⁷ Senior judges typically handle about 15 percent of the annual workload for the federal courts. Active and senior judges also may serve as visiting judges if workloads increase more than usual in a district or if there are vacant judgeships.

Article III judges—Supreme Court justices and district and appeals court judges—are appointed for life and retire with full salary. Bankruptcy judges are appointed for 14-year terms.

Within district courts are magistrate judges who are appointed by a majority vote of a court's active district judges and have varied duties. They exercise jurisdiction over matters assigned by statute, as well as those delegated by the district judges. They can hear misdemeanor criminal cases and all civil cases, if the parties agree. In addition, they may hear motions on criminal felony cases that the district judge ultimately will try. As district judges have balanced heavier or more demanding caseloads, magistrate judges handled 83 percent more evidentiary hearings in FY 2005 than 2004, a total of 972 hearings.⁸

The Judicial Conference determines the number of magistrate judge positions based on recommendations of the respective district courts, judicial councils of the circuits, and the AO director. A full-time magistrate judge serves a term of eight years.

Public Law 107-273, which took effect in July 2003, established 15 new district court judgeships. However, no new judgeships have been authorized for the courts of appeals since 1990, though appeals filings have increased 68 percent since that time. The Judicial Conference, through its Judicial Resources Committee, surveys judgeship needs every other year. The number of weighted filings per judgeship⁹ in a district is the key factor in determining when an additional judgeship is requested. Other factors may include geography, number of senior judges, and mix of cases. The Judicial Conference presents its judgeship recommendations to Congress.

In November 2005 congressional testimony before the Senate Subcommittee on Administrative Oversight and the Courts, the Judiciary reported the need for 12 additional court of appeals judgeships (nine permanent, three temporary) and 56 additional district court judgeships (44 permanent and 12 temporary). As of late 2006, these requests had not yet been acted upon.

⁷ A senior judge must do at least 25 percent of the work of an active service judge to keep staff and office space, but some judges continue carrying a full caseload after taking senior status. The 'Rule of 80' is the commonly used shorthand for the age and service requirement for a judge to assume senior status. Beginning at age 65, a judge may retire at his or her current salary or take senior status after performing 15 years of active service as an Article III judge (65+15 = 80). A sliding scale of increasing age and decreasing service results in eligibility for retirement compensation at age 70 with a minimum of 10 years of service (70+10=80).

⁸ *Judicial Business*, 2005 Annual Report of the Director, Administrative Office of the U.S. Courts, 2005.

⁹ Weighted filings statistics (in use since 1946) account for the different amounts of time district judges require to resolve various types of civil and criminal actions. In 2004, the Judicial Resources Committee approved a new civil and criminal case weighting system, which the FJC developed. The average civil case or criminal receives a weight of approximately 1.0. More time consuming cases have higher weights—a death penalty habeas corpus cases is assigned a weight of 12.9. Cases demanding little judge time get lower weights—a defaulted student loan case has a weight of 0.10.

CHANGES IN CASELOADS, BUDGET, AND COURT SUPPORT STAFF

Table 1-1 gives an overview of the Judiciary's enacted budget from FY 1997-2005 and the variation in caseload type during this period. It shows overall growth, with the budget growing at more than twice the rate of caseload and criminal cases showing the largest caseload increase. Chapter Two discusses the budget growth by spending category.

Caseload volume varies as does the proportion of different types of cases. For example, in 2005, 32 percent of the First Circuit's cases were criminal compared to 15 percent of the Ninth Circuit's cases. Judiciary spending increases relate to many factors beyond the caseload, such as inflation or executive and legislative branch decisions. A 2005 change in bankruptcy law¹⁰ led to an immediate surge of cases followed by a drop in bankruptcy filings and parallel rise and fall of associated fee collections. Increases in criminal caseloads along the southwest border have been driven partly by increased federal spending on border enforcement. Filings for sex offenses have quadrupled since 1996 when Congress enacted legislation to allow federal prosecution of such cases. These external influences on the Judiciary's resource needs are a challenge in budget formulation, as well as to the administration of the individual courts most affected.

¹⁰ Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005. The impact of changes this law made is still evolving.

Table 1-1
Judiciary Growth in Caseload, other Workload Indicators, and
Budget and Court Support Staff
FY 1997-2005
(Budget dollars in 000)

	1997	1998	1999	2000	2001	2002	2003	2004	2005
Enacted Budget	\$2,566,000	\$2,687,000	\$2,822,000	\$2,968,000	\$3,362,000	\$3,600,000	\$3,777,000	\$3,955,000	\$4,125,000
All cases	1,914,231	2,047,922	2,017,889	1,926,927	2,035,851	2,177,528	2,336,595	2,333,071	2,362,197
Appeals	52,271	53,328	54,816	54,642	56,812	56,952	60,626	61,526	67,999
District-civil	265,151	261,262	251,511	263,049	253,354	268,071	254,499	258,117	282,758
District-criminal	49,376	55,584	59,345	62,523	63,344	64,744	70,890	71,098	69,876
Defendants	69,052	76,750	79,942	84,147	83,973	85,622	93,264	93,377	92,356
Bankruptcy	1,316,999	1,429,451	1,391,964	1,276,922	1,386,606	1,505,306	1,650,279	1,635,725	1,637,254
Probation: people under supv	91,423	92,990	97,281	99,577	103,677	107,844	110,343	113,362	113,008
Pretrial: Cases activated	69,959	78,557	83,030	86,067	88,085	88,989	96,694	99,866	98,946
S&E Court Support FTE Funded	19,760	20,147	20,535	21,605	21,422	21,940	21,177	20,798	20,800
FTE Utilized	19,296	19,968	20,149	20,782	21,649	21,823	21,311	20,385	20,434
Percent FTE utilized	98%	99%	98%	96%	101%	99%	101%	98%	98%

SOURCE: p. 5.17 of the FY 2007 Congressional Budget Justification

As caseloads grow, so too do the number of judges, staff, and space needed to house them. For many years, the Judiciary had what it considered to be reasonable growth in its appropriation, as Congress approved funds to correspond to the growing judicial caseload. In FY 1995, the Judiciary received a 10.3 percent increase over its FY 1994 appropriation. The increase was 5.6 percent in FY 2000 and 4.2 percent in FY 2003.

Table 1-1 also shows workload indicators other than judicial caseloads. The numbers of individuals under supervision through probation and pretrial cases activated have grown, as well. Court support staff levels rose through FY 2002 and declined since that time.

The amount of square feet the Judiciary occupied doubled from FY 1995 and 2005 while staff levels grew 23 percent. Most Judiciary space is devoted to public function space rather than workstations and offices, and the need for public space increases as Congress creates more judgeships or more judges take senior status and active judges replace them.¹¹ Table 1-2 shows increases in judges and staff between 1995 and 2005.

¹¹ Public function space includes courtrooms, jury deliberation rooms, and jury assembly rooms. With heightened security, new courthouse space also includes separate horizontal and vertical circulation space for the public, prisoners, and judicial officers.

**Table 1-2
Judge and Staff Full-Time Equivalents, Actuals
Salaries and Expenses Account
FY 1995-2005**

	FY 1995 Actual	FY 2000 Actual	FY 2005 Actual
Circuit Judges	233	254	268
District Judges	924	985	1,052
Claims Judges	16	16	15
Magistrate Judges	400	453	512
Bankruptcy Judges	320	312	320
Subtotal, Judges	1,893	2,020	2,167
Subtotal, Judges Staff	5,115	5,143	5,730
Appellate Court Staff	1,386	1,574	1,686
District Court Staff	5,718	6,467	6,663
Bankruptcy Court Staff	4,479	5,195	4,770
Probation/Pretrial Staff	6,244	7,300	7,614
Subtotal, Court Staff	17,827	20,536	20,733
Total, Salaries and Expenses	24,835	27,699	28,630

SOURCE: Judiciary Congressional Budget Submissions. Judge FTE include senior and retired Article III judges as well as part-time and recalled magistrate judges and recalled bankruptcy judges.

New courthouses opened in response to the increased number of judges, as well as security and operational concerns. Rent payments increased from \$128 million in FY 1985 to \$459.2 million in FY 1995 to \$891.5 in FY 2005; they grew to comprise 22 percent of Judiciary's Salaries and Expenses (S&E) budget by FY 2004. This meant that funds for personnel and operating costs decreased; this was especially true in FY 2004 with the double, across-the-board appropriations reduction of \$39 million.¹² Between October 2003 and October 2004, the Judiciary eliminated 1,350 personnel through reduction-in-force, buy-outs, early-out retirement actions, and not filling 664 vacated positions. Instead, it adopted cost-containment initiatives, which are discussed in Chapter Two.

THE ONLY CONSTANT IS CHANGE

The Judiciary adapts to changes in the types and volume of cases, and in the technological advances that all organizations encounter or create. It has adjusted its work methods and the ways it functions with the legal community to implement case management/electronic case files

¹² FY 2005 data are not as informative as FY 2004 because in FY 2005 the Judiciary received a credit from GSA because it overcharged for space at the courthouse in Manhattan.

(CM/ECF). The system provides courts with enhanced and updated docket management procedures and the ability to maintain case documents electronically. Each court is given the option to permit case documents—pleadings, motions, petitions—to be filed over the Internet. CM/ECF implementation in the bankruptcy courts has been underway since early 2001. District court implementation began in 2002. Appellate court implementation began in late 2006.

Heightened awareness of the potential for terrorist attacks and the murder of a federal judge's family members have meant that the Judiciary places even greater emphasis on security in courts and even at judges' homes, if requested. This essential service entails more staff time and budget resources; Congress has been very supportive of these efforts. In FY 2006, federal courts held proceedings in 117 languages—a far larger number than 20 years ago—which requires a mix of staff and contract interpreters.

Legislative change and executive branch policies also have an ongoing impact. When Congress enacts new drug laws or focuses enforcement efforts on white collar crime, these actions affect the flow of cases into the courts. The Department of Justice may decide to prosecute some crimes more vigorously than before. For example, increased prosecution of immigration cases has increased the number of cases along the nation's southwest border.

SCOPE AND METHODOLOGY

Conference language in the FY 2006 Transportation, Treasury, HUD, Judiciary, and Related Agencies appropriations instructed the Judiciary to have the Academy conduct a “review of the financial management procedures of the federal Judiciary.” Language in the Senate Appropriations Report provides the congressional perspective:

Over the past several years, the federal Judiciary has experienced a variety of resource and management issues including rising rent costs, rising court caseloads in some districts of the country, as well as other challenges that have resulted in budget shortfalls. These shortfalls have forced the Judiciary to seek supplemental appropriations as well as to implement cost-containment and cost reduction actions across the country. The Committee believes that an independent review of the overall budget formulation and execution processes, the work measurement formula and the organizational, programmatic, and management structures is appropriate. The Committee believes that such a review would benefit both the federal Judiciary and the Congress because it would provide insight as to what improvements and changes to the financial and management processes could be made to lessen budgetary problems in the future.¹³

Subsequent discussions with Senate Appropriations Subcommittee staff led the Academy Panel to focus on its review on key aspects of Judiciary operations:

¹³ Senate Report 109-109, Transportation, Treasury, the Judiciary, Housing and Urban Development, and Related Agencies Appropriations Bill, 2006.

- trends in workload and expenditures
- relationship of budget and long-range planning processes
- budget formulation process
- definition of portions of the budget that are controllable versus uncontrollable
- budget allocation process
- comparison of the Judiciary budget process to executive agencies and state judicial branches
- the proportion of the Judiciary budget used for rent, the Judiciary's participation in the Federal Building Fund, and its relationship with GSA
- cost-containment initiatives
- performance measures applications and potential

Academy Fellows and specialists expert in the federal budget process, federal government management, and state court systems comprised the Panel that directed this study and guided staff that conducted the research (Appendix A provides biographies of the Panel members and staff). The Panel held five meetings to develop the project work plan, review the Judiciary's budget process and cost-containment efforts, and develop recommendations. The Panel and staff provided periodic status reports on the study's progress to the Judiciary and congressional staff.

Project staff developed and organized the information and analysis provided in this report. The Panel used it to develop findings, conclusions, and recommendations.

The approach to this study entailed the following:

- interviews with the following:
 - chief financial officer and budget staff to understand Judiciary budget formulation, financial plan development, financial plan execution, and cost-containment processes
 - AO staff to understand the Judiciary's work measurement, planning, real property authority, accomplishment reporting, and Methods Analysis Program (MAP—Best Practices) activities
 - judges who served on committees involved in the budget development process— Judge Julia Gibbons, chair of the Budget Committee; Judge Jane Roth, chair of the Space and Facilities Committee; and Judge Robert Broomfield, chair of the

Budget Committee's Economy Subcommittee—to gain their perspectives on the Judiciary budget process

- other judges, including Judge John Tunheim, chair of the Court Administration and Case Management Committee; Judge Paul Cassell, chair of the Criminal Law Committee; and Judge Royal Furgeson, chair of the Judicial Resources Committee
 - circuit executives and clerks of the court to understand their involvement and perspectives on budget decentralization
 - Federal Judicial Center staff to gather information about the ongoing courtroom space study and their involvement in the Judiciary planning activities
 - Appropriations Subcommittee staff to understand their concerns and issues with the Judiciary budget
 - GSA, GAO, OMB staff involved in the rent and courtroom space issues involving the Judiciary
- discussions with the Advisory Groups for appellate, district, and bankruptcy courts and probation chiefs about the potential use of performance measures
 - review of past and current studies related to the Judiciary budget process, planning activities and space management
 - analysis of trends in Judiciary caseload, budget proposals and approvals, space acquisition, planning, accomplishment reporting, reports, and work measurement formula results
 - visits to the National Center for State Courts in Williamsburg, Virginia and teleconferences with various states to discuss their efforts to measure performance and link budgets to performance
 - visits to the U.S. Bankruptcy Court for the District of Maryland and the U.S. District Court for the District of Columbia

The Academy provided a draft of this report to the AO for agency final review and comment. The report was reviewed by the AO staff and shared with the Advisory Groups that are comprised of judges and court staff. The AO director provided comments on the report and the Academy Panel incorporated the technical changes throughout the report.

Appendix B lists those who were contacted during the study. Appendix C provides a partial bibliography.

Road Map to the Report

Chapter Two examines the Judiciary's processes to develop its budget estimates and allocate resources when appropriations are received. It also discusses the Judiciary's work measurement system and recent cost-containment initiatives. Chapter Three considers the Judiciary's planning mechanisms and addresses the need for a more systematic mechanism to set priorities on an organization-wide basis. Chapter Four reviews the Judiciary's prior consideration of using more formal performance measurement and describes how it reports on achievements through various documents. It then discusses an effort underway to measure performance in Probation and Pretrial Services and some indicators measured in bankruptcy courts. The chapter concludes with recommendations for this area.

Chapter Five examines the growing and somewhat contentious area of Judiciary space costs and ways to reduce them through enhanced cooperation with GSA. Chapter Six discusses the Judiciary's success in developing other management systems and considers ways to apply those lessons to integrating strategic planning with the budget process and reporting more fully on results achieved. It also discusses the advantage of having senior staff manage this integrated process under Judicial Conference oversight and guidance.

CHAPTER TWO DEVELOPING THE JUDICIARY BUDGET

The Judiciary's budget processes are well developed and well documented. They have served the Judiciary well for an extended period. Because Appropriations Subcommittee staff were primarily concerned with the Judiciary's recent budget requests, especially operational funding requirements, the Academy Panel focused on the budget formulation process. The Judiciary's budget execution process is almost identical to any executive agency, except for its decentralization to court units.

This chapter provides background on the Judiciary's budget structure and recent funding levels, including information about supplemental funding requests and congressional concerns. It then describes the budget formulation process, use of cost-containment measures and a proposal for program-based planning and budgeting. Gaps in the current process and problems resulting from them are addressed, as well. The chapter concludes by discussing the use of work measurement formulas, describing the budget execution process, and identifying five categories used for classifying funds within the financial plans.

BACKGROUND ON THE JUDICIARY BUDGET

The federal Judiciary's budget is smaller than that of any executive branch department and only slightly larger than the National Science Foundation's. Its appropriation amounts to about 0.2 percent of the federal budget. The budget is relatively straightforward as it supports a closely related set of activities. Despite the organization of Judiciary operations into 94 districts and 12 circuits, the activities are performed in a consistent manner, within an integrated, nationwide administrative structure governed by Judicial Conference policies.

Congress appropriates funds to the Judiciary in 12 separate accounts, which totaled \$6.3 billion in obligations in FY 2006. Figure 2-1 displays the distribution of the Judiciary's budget among its various components for that year. The three largest accounts are Salaries and Expenses (77 percent), Defender Services (11.6 percent), and Court Security (5.9 percent).

**Figure 2-1
Judiciary Budget, FY 2006
Total: \$6,277,444,000**

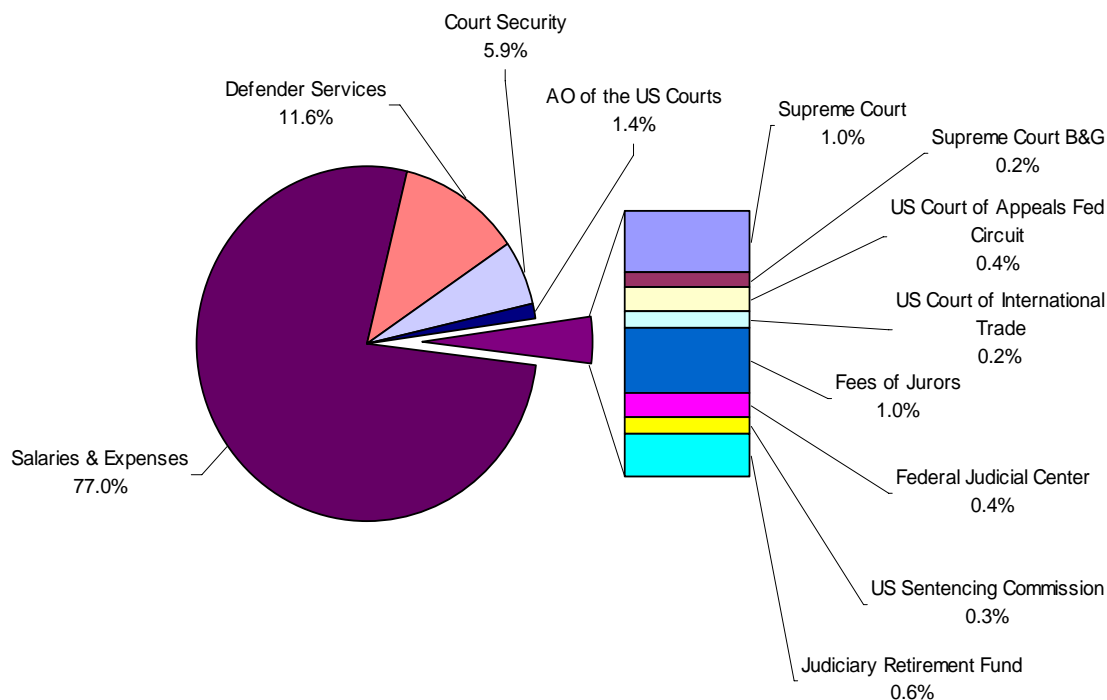
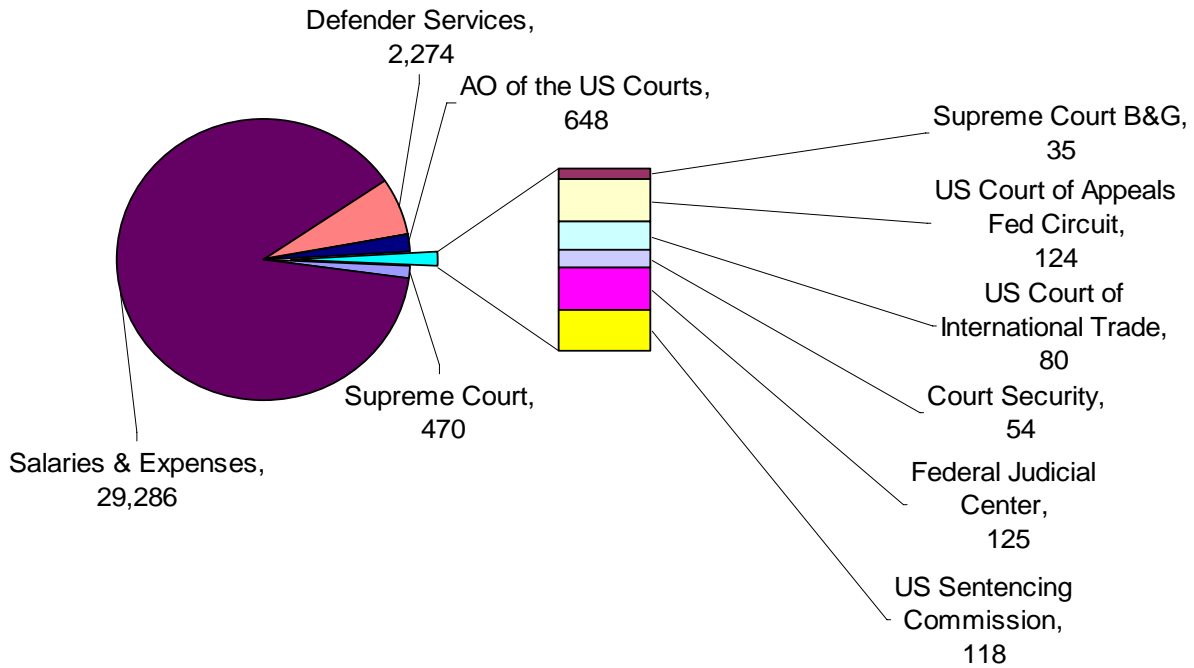


Figure 2-2 shows the distribution of staff in all Judiciary accounts for FY 2006. Congress appropriated funds for 33,214 full-time-equivalent (FTE) positions, with the largest accounts being Salaries and Expenses (29,286), Defender Services (2,275), and the AO (648). Figure 2-1 showed that Court Security had a larger proportion of the dollars in the budget than the AO (5.9 percent versus 1.4 percent), but a larger proportion of court security funds go to non-staff expenditures, such as contract security officers and hardware for security systems.

**Figure 2-2
Judiciary Staff Distribution for FY 2006
FTE: 33,214**



SALARIES AND EXPENSES ACCOUNT

The Salaries and Expenses (S&E) account provides funds for the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. It represents the largest component of Judiciary resources, accounting for 77 percent of all funds appropriated to the Judiciary in FY 2006 and providing funding for 88 percent of Judiciary-wide staffing.

The S&E account constitutes the primary focus of the Academy’s study. The remainder of this chapter refers to expenditures made from this account.

Historically, Congress has provided adequate resources to support Judiciary requirements. In the current decade, increasing national budget pressures, growth in the “uncontrollable” segment of Judiciary requirements, declining fee balances, and disapproval of supplemental requests have put increased pressure on the Judiciary S&E budget. Table 2-1 shows the amounts requested and appropriated for this account, including supplemental appropriations, from FY 1997 through FY 2006. In 2004, the Judicial Conference addressed the potential long-term impact of increased budget pressures by approving a long-term, cost-containment strategy.

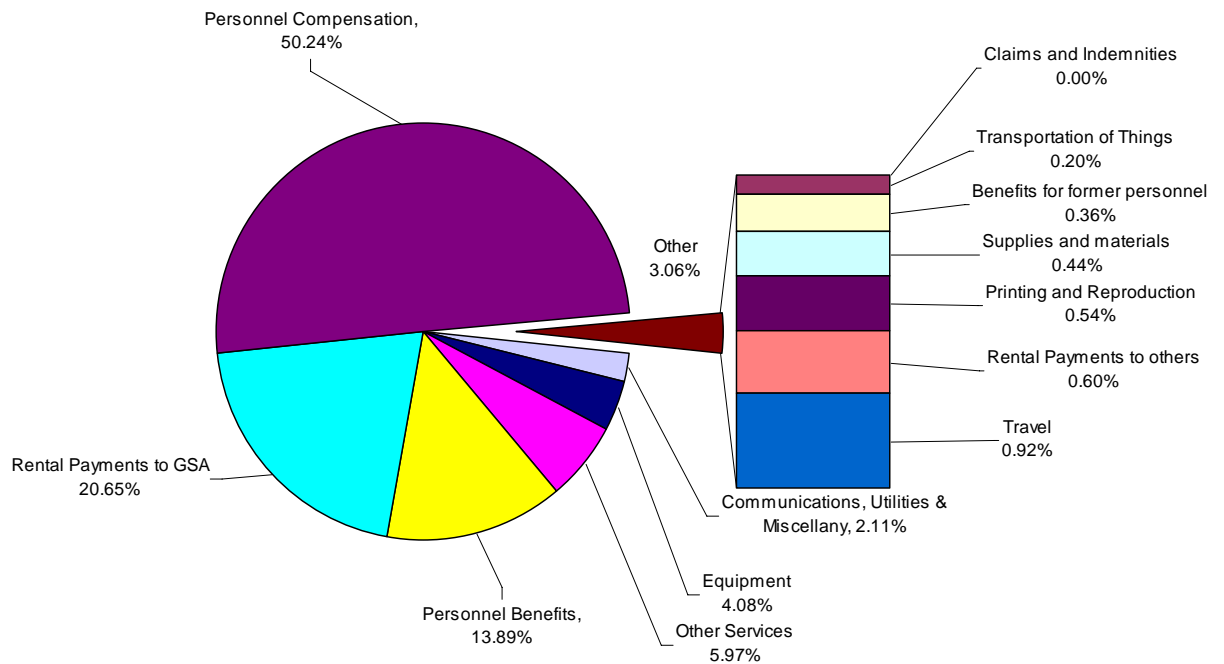
Table 2-1
Salaries and Expenses Account
Judiciary Budget Authority Totals by Fiscal Year: Original Request vs. Enacted
(\$ in millions)

FY>	1997	1998	1999	2000	2001
Budget Request	\$2,747	\$2,842	\$2,949	\$3,220	\$3,499
Budget Enacted	\$2,566	\$2,687	\$2,822	\$2,968	\$3,362
Percent Acquired	93.4%	94.5%	95.7%	92.2%	96.1%

FY>	2002	2003	2004	2005	2006
Budget Request	\$3,738	\$4,014	\$4,188	\$4,320	\$4,461
Budget Enacted	\$3,600	\$3,777	\$3,955	\$4,125	\$4,308
Percent Acquired	96.3%	94.1%	94.4%	95.6%	96.6%

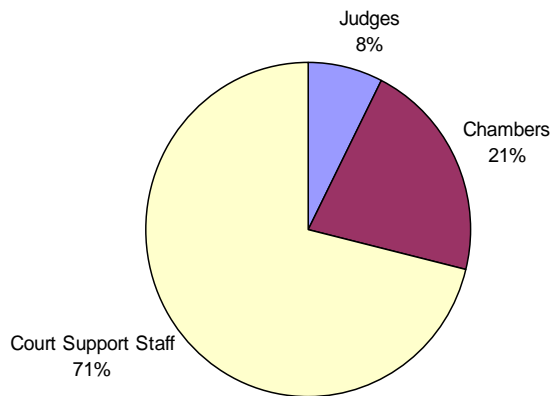
As shown in Figure 2-3, 64 percent of the S&E budget is personnel and benefits and almost 21 percent is for rent.

Figure 2-3
FY 2006 Salaries and Expenses Distribution by Budget Object Class



Of the more than 29,000 FTEs in the Judiciary’s S&E account, more than seven out of 10 are expended in court support operations; judges, and chambers account for the remainder (see Figure 2-4). Chambers staff, who include law clerks and administrative assistants to judges, work most directly with the judges on judicial responsibilities as opposed to court administration and management.

Figure 2-4
FY 2006 Salaries and Expenses
Distribution of 29,000 FTE, by Category



In developing its annual budget request to Congress, the Judiciary follows roughly the same timetable as executive branch agencies do (Appendix D compares judicial and executive branch processes.). Upon receiving the Judiciary’s request in October, however, OMB transmits it to Congress without change. It is included as a component of the *Budget of the United States*—the President’s Budget—when that document is transmitted to Congress in February.¹⁴

Approximately 8 percent of the Judiciary’s annual S&E appropriation is for Article III judge and bankruptcy judge compensation and benefits; it is classified as a mandatory expense. The U.S. Constitution also provides certain protections for Article III judges, such as a prohibition against diminishing compensation for their service.¹⁵ Congress also must approve changes to judges’ salaries, including annual adjustments to their base salaries arising from Employment Cost Index changes. Furthermore, statutory and appropriations language grants the Judiciary authority to establish, collect, and retain certain offsetting fees. The annual appropriations acts grant limited authority to transfer funds between certain Judiciary accounts and to reprogram funds within accounts, as is the case with most government agencies.

¹⁴ The President is required by 31 U.S.C. 1105(a)(32)(b) to submit the Judiciary’s budget request without modification to Congress.

¹⁵ Article III, Section 1 notes that “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their Continuance in Office.”

Congress established the Judiciary Information Technology Fund (JITF) to assist the Judiciary in administering its information technology program. The JITF was authorized “without fiscal year limitation,” which allows the Judiciary to carry forward funds for projects that incur obligations over multiple years. When it established the fund, Congress required that the Judiciary develop and annually update a *Long-Range Plan for Information Technology in the Federal Judiciary* (Chapter Three discusses the plan in greater detail.). The fund enables the Judiciary to manage the information technology program over a multi-year planning cycle. Each year, deposits are made to this fund from the S&E account as approved in the financial plan.

Recent Requests for Supplemental Funding

Like other government entities, the Judiciary may request supplemental appropriations to address unanticipated or emergency needs. OMB does not review these requests prior to the President transmitting them to Congress. As shown in Table 2-2, most requests for additional funding from FY 2002 to 2006 were in the S&E account. The five initial requests totaled \$506.1 million, of which \$458.8 million was in S&E. The Judiciary later reduced these requests to \$469.5 million and \$422.2 million, respectively. In response, Congress provided \$33.3 million in additional funds for the S&E account.

However, omitting the government-wide 9/11 and Hurricane Katrina and Rita supplemental requests, the total dropped to \$189.6 million and \$153.2 million. These requests represent three major categories: new Article III judges (June 2003), funding to maintain staffing levels (December 2003), and funding for *Booker/Fanfan* Supreme Court cases and Class Action Fairness legislation (February 2005).¹⁶

The request for Article III judges eventually was fully funded. In the case of the *Booker/Fanfan*-related cases, congressional staff encouraged the Judiciary to prepare a supplemental request for resources to process the potential increased workload, but the Judiciary had not yet determined that the increase would be substantial. The Supreme Court’s decisions in *Blakely*¹⁷ and *Booker* ultimately had significant workload implications for federal court staff, particularly in the first couple of years after the decisions were rendered. The increased workload was absorbed without additional funding. The \$55.6 million FY 2004 request for court staff and defender services was not approved; to operate within available funds, the Judiciary eliminated 1,350 personnel through reduction-in-force, buy-outs, early-out retirement actions, and not filling 664 vacated positions.

¹⁶ On January 12, 2005, the Supreme Court ruled in the consolidated cases of *U.S. v. Booker* and *U.S. v. Fanfan* that the sentencing guidelines cannot be mandatory. This action was predicated on the anticipation that there would be many additional proceedings testing the application of these opinions at both the district and appellate level. The Class Action Fairness Act of 2005 required most class action lawsuits to be heard in a federal district court rather than a state court.

¹⁷ On June 24, 2004, the Supreme Court ruled in the case of *Blakely v. Washington* such that constitutionality of federal sentencing guidelines was thrown into doubt. The subsequent ruling in *Booker/Fanfan* provided more clarity.

**Table 2-2
Judiciary Supplemental Requests
FY 2002-2006**

FY		Amount Requested		Rec'd
		Total	S&E	S&E
2002	9/11 Security Supplemental (April 2002)	\$250.9M	\$240.0M	\$3.1M
	Note: Prior to this supplemental being requested, P.L. 107-38 (January 2002) provided supplemental funds of \$5 million for S&E, \$57.2 million for Court Security, and \$2.9 million for the Administrative Office. This request was submitted to provide for protective window film and other security measures for federal courthouses. The \$250.9 million supplemental request included \$10 million for the Supreme Court, \$240 million for S&E and \$0.9 million for the Federal Circuit. Supplemental funds received under P.L. 107-206 (August 2002) funded \$10 million for the Supreme Court, \$3.1 million for S&E, and nothing for the Federal Circuit.			
2003	Article III Judgeships and Shortfall in Defender Services and Fees of Jurors Accounts (June 2003)	\$32.2M	\$12.2M	\$12.2M
	This supplemental request was submitted to provide funding for the non-recurring start-up costs associated with the 15 additional judgeships authorized under P.L. 107-273 and to cover projected FY 2003 shortfalls in the Defender Services and Fees of Jurors account. Of the \$32.2 million requested, \$12.2 million was for S&E, \$17.2 million for Defender Services, and \$2.8 million for Fees of Jurors. P.L. 108-83 (September 2003) fully funded the request.			
2004	Funding Shortfalls for Court Staff and Defender Services Account (December 2003)	\$55.6M	\$39.2M	\$0
	This supplemental request was submitted in order to avoid RIFs/layoffs for court staff in the S&E account, and for a projected FY 2004 shortfall in the Defender Services account. Of the \$55.6 million requested, \$39.2 million was for S&E and \$16.4 million was for Defender Services. P.L. 108-287 (August 2004) provided \$26 million for the Defender Services account (the expected shortfall had grown since the \$16.4M requested), and no funds were provided for the S&E account.			
2005	Booker/Fanfan Decisions and Class Action Fairness Act of 2005 (February 2005)	\$101.8M	\$101.8M	\$0
	This supplemental was requested to provide (1) \$91.3 million for increased workload associated with the Supreme Court's recent opinions in <i>United States v. Booker</i> and <i>United States v. Fanfan</i> , which made U.S. Sentencing Guidelines advisory and certain sentence enhancement to the guidelines unconstitutional, and (2) \$10.5 million for increased workload associated with the enactment of the Class Action Fairness Act of 2005, which require most class action lawsuits to be heard in a federal district court rather than a state court. All \$101.8 million requested was for the S&E account. No supplemental funding was received.			
2005	Hurricanes Katrina and Rita (Original Request - September 2005)	\$65.6M	\$65.6M	\$0
	The Judiciary requested \$65.6 million in emergency supplemental funds to address federal court needs along the Gulf Coast resulting from Hurricanes Katrina and Rita. All \$65.6 million was requested in the S&E account. See below for revised supplemental request.			
2006	Hurricanes Katrina and Rita (Revised Request - December 2005)	\$29.0M	\$18.4M	\$18.0M
	The Judiciary revised its supplemental request for Hurricanes Katrina and Rita downward from \$65.6 million (above) to \$29 million. P.L. 109-148 (December 2005) provided \$18 million to S&E for hurricane needs and directed the Judiciary to fund in the FY 2006 financial plan \$10.6 million of requirements included in the revised supplemental but which funds were not provided for.			

Apart from emergencies, new statutes may dramatically affect the Judiciary's workload and spending needs by altering its responsibilities and work. Between 2004 and 2006, a change in bankruptcy law produced a surge followed by a drop in the number of bankruptcy filings and a

parallel rise and fall in workload and associated fee collections.¹⁸ These external influences are a challenge for the Judiciary's budget formulation and the administration of individual courts most affected.

The Judiciary reviews executive branch data as it develops its workload projections; these include changes in the numbers of U.S. attorneys and prisoners anticipated to be released into court supervision programs. Individual executive branch agencies make similar projections. For example, the Bureau of Prisons studies changes in federal criminal and civil law or sentencing guidelines to project inmate populations. In addition, the Judicial Conference's Executive Committee meets with the U.S. attorney general twice annually. The Judiciary creates the agenda for these meetings, which tend to focus on crosscutting issues and security. However, there is no formal inter-branch process to examine the impact of one branch's decisions on the workload of the others. The congressional oversight and appropriations committee structure does not promote cross-boundary communication given that agencies with judicial, law enforcement, and corrections roles have different oversight and appropriations subcommittees. These agencies struggle to fulfill their missions in light of decreasing budgets and increasing terrorist threats.

Congressional Concerns

Language in the Senate's August 2006 markup of the Judiciary's FY 2007 appropriation urged the Judiciary to reexamine its work measurement formulas to ensure that adequate resources are available for the Southwest border courts, particularly probation and pretrial activities. It did not note whether additional resources would be considered if a report—to be delivered no later than 120 days after the enactment of the FY 2007 appropriation—showed that more additional resources were needed. The markup report encouraged the Judiciary to monitor the impact of courthouse construction on future rent and ensure that future construction projects are subjected to the highest standards of cost efficiencies. The report expressed concern that the AO used carryover funds not to offset projected decreases in fee collections and other projected needs but instead to augment existing programs. It indicated that that this focus had resulted in an increase in uncontrollable costs, unnecessary funding requests, and greater baseline needs.¹⁹

The Federal Fiscal and Management Environment

Recently, the Judiciary has done relatively well in receiving appropriations close to the level requested. The substantial exception occurred with its FY 2004 appropriation when it received a double across-the-board reduction.

The Panel notes and agrees with observations made in a November 2005 Academy report, *Ensuring the Prosperity of America: Addressing the Fiscal Future*, which concludes that budget policies are out of balance. The federal budget continues to run large deficits despite a growing

¹⁸ According to the September 18, 2006 report of the Judicial Conference Committee Chairs' Long-Range Planning Meeting, ninety-five percent of all fee collections come from bankruptcy filing fees. The FY 2006 financial plan assumed \$207.7 million in bankruptcy filing fees, but collections were approximately \$168 million. The Judiciary has estimated that FY 2007 fees will decline by \$85.5 million and rise to \$91.5 million in FY 2008.

¹⁹ Language taken from the Senate FY 2007 budget mark dated August 2006.

economy. There is little reason to believe that underlying pressures will abate, given such factors as the aging U.S. population and the rapid increase in health care costs. This situation is anticipated to lead to much higher tax burdens, unsustainable levels of public borrowing, or deep reductions in other important activities, including federal Judiciary activities.

The Panel calls attention to these conditions which will influence the future. The Judiciary must consider the broad federal fiscal environment as it moves to strengthen its planning and budgeting systems. The federal budget is a battle between the parts and the whole in which everything is competitive.

BUDGET FORMULATION METHODS

The Judicial Conference's Budget Committee oversees the budget formulation process, to which individual committees provide extensive input. Through the work of its Economy Subcommittee, the Budget Committee reviews and integrates the requests of the nine Judicial Conference subject-matter committees that have budget formulation responsibilities for specific activities or functions. AO staff who support the Budget Committee develop supporting documentation and provide counsel.

The report of the July 2006 Budget Committee meeting²⁰ provides a sense of the degree to which the committee weighs requests from the subject-matter committees, including how they affect each other. For example, the committee considered how many judges are eligible to take senior status over the next decade—more than four hundred—and how the current and future need for chambers and courtrooms affects overall space needs. It also examined actions associated with the cost-containment initiative and ways that the Economy Subcommittee could further work with subject-matter committees to reduce spending.

The Budget Committee report noted the importance of balancing the need for additional court staffing with the need to maintain the Judiciary's credibility with Congress. AO staff indicated that this perspective is part of a continual "budget reality check" that the Judiciary makes as it evaluates appropriations requests.

Upon completing its work, the Budget Committee sends a proposed budget to the full Judicial Conference, which generally approves it without change.²¹ Figure 2-5 traces the dates for major steps in the budget development process, using FY 2007 as an example.

In December 2004 and January 2005, the nine subject-matter committees with budget formulation responsibilities met individually to discuss areas under their consideration. The budget was not the focus of the meetings, but the AO Budget Division had prepared the long-range, Judiciary-wide cost estimate, and such accompanying assumptions as workload, judgeship

²⁰ The report Academy staff reviewed was from the July 18-21, 2006 Budget Committee meeting, which became agenda item E-4 at the September 2006 committee meeting.

²¹ The Judicial Conference does not approve budgets for the Supreme Court, Court of International Trade, the Court of Appeals for the Federal Circuit, the Federal Judicial Center and the Sentencing Commission. Those are approved by the respective organizations.

levels, and space acquisition. The information was designed to inform subject-matter committee discussions. A member of the Budget Committee or staff from the Chief Financial Officer's (CFO) office may be invited to participate in these committee sessions.

The creation of the Judiciary's FY 2007 budget formally began in March 2005 when the Budget Committee chair issued a budget guidance memorandum to each Judicial Conference committee with budget formulation responsibility. This memorandum provided a cap on growth over the 2006 proposed budget and encouraged cost-containment efforts in the 2007 subject-matter committee budget proposals. The memorandum also addressed the status of the FY 2005 *Booker/Fanfán* supplemental request—a request for funding through the end of FY 2006—and the then-pending bankruptcy reform legislation. In April 2005, the CFO issued technical instructions to the AO offices that support each committee.

From April to June 2005, the individual committees worked on their FY 2007 budget proposals. The Economy Subcommittee held teleconferences with the chairs of each subject-matter committee with budget formulation responsibility to discuss their proposals and provide counsel and direction. In July, the Budget Committee also met with these chairs to assist in developing the final proposal. After reaching decisions for each committee proposal, the Budget Committee produced a consolidated proposed budget for Judicial Conference review and approval in September 2005, a full year before FY 2007.²²

²² Most federal appropriations are rarely enacted by the start of the fiscal year, which means the Judiciary and other agencies operate under a continuing resolution for several months. The FY 2007 appropriation was not approved when the 109th Congress ended in December 2006.

Figure 2-5
FY 2007 Budget Formulation/Financial Plan Development/Execution Processes
 March 2005-September 2007 (30 Months)

	March-April 2005	April-June 2005	May-June 2005	July 2005	September 2005
	Strategic Plan Direction	Budget Committee & CFO Guidance	Individual Committee Budget Development, Workload & Other Formulas	Budget Committee Review	Judicial Conference Consideration
Objectives:	To provide Budget Instructions for the Judiciary	To develop Budget Proposal for each Committee	To provide counsel to the Budget Committee	To develop a recommended budget	To gain Approval from the Judiciary Conference
Activities:	<ul style="list-style-type: none"> Discuss budget climate with appropriators Determine objectives for guidance memo 	<ul style="list-style-type: none"> Apply appropriate formulas (staffing/non-staffing) to estimated caseload Teleconference with Economy subcommittee 	<ul style="list-style-type: none"> Teleconference with spending committees Develop budget highlights for discussion with Budget Committee 	<ul style="list-style-type: none"> Budget committee meeting Debate and decide on what will be recommended 	<ul style="list-style-type: none"> Review and decide on what will be in the recommended budget
Results:	Budget Committee & CFO guidance memos issued	Proposal to Budget Committee	Advice to Budget Committee	Recommendation to Judicial Conference	Judiciary Conference Approval
	October 2005	February-September 2006	October 2006	October 2006	October 2006-September 2007
	Submission to OMB without Review	Congressional Consideration	Allocation of Resources Based on formulas [interim and final]	Financial Plans Submitted to House & Senate	Obligation Controls
Objectives:	To complete the OMB budget transmittal	To garner Congressional Approval of Budget	To allocate the appropriated funds	To submit the Judiciary Financial Plans	To ensure proper use of funds while staying within appropriation limits and language and maximizing use of available funds
Activities:	<ul style="list-style-type: none"> Budget converted to Proper OMB format by CFO staff Transmittal memo from AO Director 	<ul style="list-style-type: none"> Technical re-estimates provided by CFO after OMB submission (e.g. pay raise, judgeships) AO Director & Budget Committee Chair testify Technical Updates provided by AO to Congress (e.g. workload) 	<ul style="list-style-type: none"> Allocate Decentralized funds in consultation with Advisory Groups and decisions made; using work measurement formula pro-rations and reducing to stay within availability Submit to Executive committee for approval 	<ul style="list-style-type: none"> All financial plans reviewed by Congress All Congressional questions answered 	<ul style="list-style-type: none"> Local plans developed by appropriate parties Central plans developed by appropriate parties All plans monitored for unobligated balances Submit to Executive Committee for approval
Results:	Judiciary budget Incorporated into President's budget	Appropriation approval	Judiciary Resources Allocated	Begin to finalize financial plans. (Note: No FY 2006 budget, only a Supplemental passed in February 2007.)	Proper use of funds while staying within appropriation limits and language and maximizing use of available funds

Once the Judicial Conference approved the budget, the CFO prepared a two-page summary for the AO director to submit to OMB on October 15, 2005. Budget data were submitted as part of the President's budget submission to Congress in February 2006. The Judiciary transmitted its budget justification directly to Congress the same month.

In April 2006, the AO director and the chair of the Budget Committee testified before Congress. Between May and September 2006, the CFO submitted technical reestimates to Congress for items such as judgeship confirmations, fee reestimates, and revised workload data.

It is almost commonplace for most appropriations not to be approved by the start of a fiscal year; Congress passes continuing resolutions (CR) that permit agencies to operate until an appropriation is passed and the President signs it. An unusual aspect of the FY 2007 process was that the 109th Congress did not approve the budget before adjourning in January 2007. The 110th Congress decided not to individually address the FY 2007 appropriations further, but to place all federal agencies whose appropriations had not been enacted under a full-year CR.²³ The stopgap funding measures financed programs at the lowest possible level, which was current spending or the House- and Senate-passed appropriations bills. In the early days of the 110th Congress, there was substantial negotiation between agency staff and appropriations committee staff to try to ensure that the final CR encompasses at least some new spending.

Role of Judicial Conference Committees in Developing Estimates

In addition to the Budget Committee, nine other committees deal with subject matters that generate spending requests; Appendix E describes their jurisdictions. They are:

- Bankruptcy Committee
- Court Administration and Case Management Committee
- Criminal Law Committee
- Information Technology Committee
- Judicial Resources Committee
- Judicial Security Committee
- Magistrate Judges Committee
- Space and Facilities Committee
- Defender Services Committee

For the most part, individual committee budget development is zero based and separate from other committees, although committee chairs come together twice annually for the long-range planning sessions held in conjunction with Judicial Conference sessions. These 2.5-hour sessions are not designed to produce decisions on integrating subject-matter components. It is the Budget Committee's responsibility, with technical support from the Office of Finance and Budget, to consider how one committee's request may affect another program area. There are

²³ This does not include the two that Congress passed and President Bush signed -- the Department of Homeland Security Appropriations Act, 2007 and the Department of Defense Appropriations Act, 2007.

formal meetings and informal conversations to ensure that the Budget Committee understands the varied needs of the subject-matter committees.

Some interviewees with whom Academy staff spoke referred to the Judiciary's process as a "stovepiped approach" because budget requests are developed by function rather than across programs. For example, decision making about the policies and resources that influence the bankruptcy program are spread across at least three Judicial Conference committees: Bankruptcy, Judicial Resources, and Information Technology.

1. The Bankruptcy Committee has overall programmatic oversight of the program, including developing all related policies and identifying judgeship requirements.
2. The Judicial Resources Committee has the greatest impact on the level of resources the bankruptcy program will receive through its responsibility for the work measurement formulas.
3. The Information Technology Committee oversees automation initiatives and recommends funding for these projects.

Bankruptcy Court Administration Division staff identified limited integration among the functional committees to determine the collective programmatic impact of their actions. Other interviewees and appropriations staff thought the most extreme example of the lack of integration was how the cost of new facilities impacted other components of the Judiciary's budget. The Judiciary has a very specific process to plan for growth in space, based on Judicial Conference-approved guidelines, and uses the guidelines as it anticipates district and judicial council needs. Many factors, including caseload growth and age of existing facilities, are involved when considering these needs. The long-range space planning process drives the ultimate rent costs and budget requirements associated with the courthouse construction and space acquisition program.

Chapter Five discusses the Judiciary's efforts to reduce rental costs through its cost-containment strategy efforts. As early as 1996, predictions revealed that growth in the rent budget could severely impact the Judiciary's S&E account. However, the budget process did not adequately integrate these predictions as the Budget Committee weighed tradeoffs. With rent costs considered "uncontrollable" in the short term, the unanticipated drop in the FY 2004 appropriation led the Judiciary to severely limit funding available for the day-to-day operations of the clerks and probation and pretrial services offices. This accumulated to the overall loss of staff discussed earlier. The Judiciary's cost-containment efforts curbed future spending on rent by placing constraints on new construction and better relating future space costs with the budget process.

Cost-Containment as a Budget Formulation Tool

For many years, the Judiciary had what it considered to be reasonable growth in its appropriations as Congress approved funds largely to correspond with a growing caseload. In

FY 1995, the Judiciary received a 10.3 percent increase over the FY 1994 appropriation. In FY 2000, the increase was 5.6 percent and in FY 2003 it was 4.2 percent.

In March 2004, Chief Justice William Rehnquist directed the Judicial Conference's Executive Committee to review the policies, practices, operating procedures, and customs that have the greatest impact on the Judiciary's costs and to develop a strategy to control costs. An August 2004 report, *Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond*, summarized the results of several months of brainstorming and planning on ways to reduce expenditures—or at least avoid spending—in many areas. The Judicial Conference adopted the report's recommendations at its September 2004 session. The report noted that, "The policies driving costs have been reasonable, and the process for developing budgets has served the Judiciary well during periods when the Judiciary received adequate funding increases. Dealing with the budget as an annual decision-making process, however, is not conducive to attaining long-term changes in direction and lowering future costs."²⁴

The report estimated that future requirements would far outstrip reasonable expectations for funding. The broad topics covered in the report were:

- general budget control (caps for spending areas)
- space and facilities
- workforce efficiency
- compensation review
- effective use of technology
- program changes: defender services
- program changes: court security
- program changes: law enforcement
- program changes: law books
- program changes: fee adjustments

The AO deputy associate director, who also is the chief of the Office of Management, Planning, and Assessment, coordinates cost-containment implementation. A cost-containment steering group—which includes assistant directors, committee staff, and the FJC deputy director—meets monthly to discuss progress and crosscutting concerns. AO staff then produce status reports for the Executive Committee and other committees. A review of the dozens of proposals shows that some committees addressed immediate savings, while others designed their proposals to avoid future spending. Table 2-3 is a sample of the initiatives undertaken and some results.²⁵

²⁴ Executive Committee of the Judicial Conference, *Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond*, p. 6.

²⁵ Information on status is from *Federal Judiciary Cost Containment Initiatives: Current Status*, July 27, 2006, prepared by the AO's Office of Management, Planning, and Assessment.

**Table 2-3
Sample of Cost-Containment Initiatives and Results**

Topic	Samples of Actions Taken
General budget control (caps for spending other than space and facilities)	<ul style="list-style-type: none"> • In July 2006, the Budget Committee approved in concept an overall budget cap of 8.2 percent for average annual growth in the S&E account for 2009 and beyond. It directed staff to work with staff of the Defender Services and Judiciary Security Committees to develop proposals for caps in those areas for the January 2007 budget meeting.
Impose tighter restraints on future space and facilities costs	<ul style="list-style-type: none"> • In March 2006, the Judiciary adopted in concept asset management planning to identify all costs, including rent. • There will be new scoring criteria for projects, and they will examine space needs for a building/city/district rather than incrementally. • In July 2006 the Budget Committee approved caps on the annual rate of growth of 4.9 percent for rent for FY 2009-16. • The Judicial Conference established a moratorium on new construction projects through September 2006.
Examine fees to reflect economic changes	<ul style="list-style-type: none"> • The Judiciary continues to consider the balance between fee levels and access to justice. The next major review is June 2007. The CACM Committee is considering some fee proposals on an ongoing basis. • Congress raised bankruptcy fees by \$60 million as part of the 2005 Deficit Reduction Act, but this was to offset the budget deficit and did not go to the Judiciary.
Explore “fair and reasonable” opportunities to limit future compensation costs	<ul style="list-style-type: none"> • A Compensation study (through an outside firm, guided by the Judicial Resources Committee) is underway and phase two will conclude in July 2007. The committee was to review preliminary results in December 2006.
Reduce expenditures on law books research	<ul style="list-style-type: none"> • A law book policy change was announced in December 2005, with librarians and chief judges invited to share approaches to reduce library and chambers collections in FY 2006. Judiciary law books cost \$49.5 million compared to the \$75 million they would cost if the Judiciary bought the same subscriptions now that it did in 1995.
Explore savings regarding Federal Protective Service contract guards	<ul style="list-style-type: none"> • District-wide reviews of these contracts resulted in \$17 million savings in FY 2005.

Judiciary Conference Committees Discussions of Program-Based Planning and Budgeting Process

Judicial Conference committee discussions have focused on what the CACM chair termed the “cross-pollination” of ideas. This cross-pollination with subject-matter committees and the Budget Committee is designed to inform budget formulation and planning processes. In 1999,

the Judiciary developed a strengthened role and process for the Judicial Conference committees and Judicial Conference to integrate program planning and budgeting. To do this, conference committee chairs participate in a semiannual long-range planning meeting. This process change did not entail a formal budget development change.

At a September 2003 long-range planning meeting, Chief Judge John G. Heyburn, II, chair of the Budget Committee, proposed a program-based approach to planning and budgeting. He explained that the Judiciary presents its budget to Congress along its primary programs—appellate courts, district courts, bankruptcy courts, probation and pre-trial services, defender services, and court security—but develops the budget through subject-matter committees with responsibilities for such functional areas as staffing, technology, space, and other needs. He noted that insufficient attention is paid to the total needs for the court programs.

Chief Judge Heyburn stated that committees discuss trade-offs among investment choices, but that cross-committee issues are not a formal part of the budgeting process. He believed that when the Budget Committee works with other committees to make trade-off decisions, information about how those decisions will affect operations is lacking or incomplete.²⁶

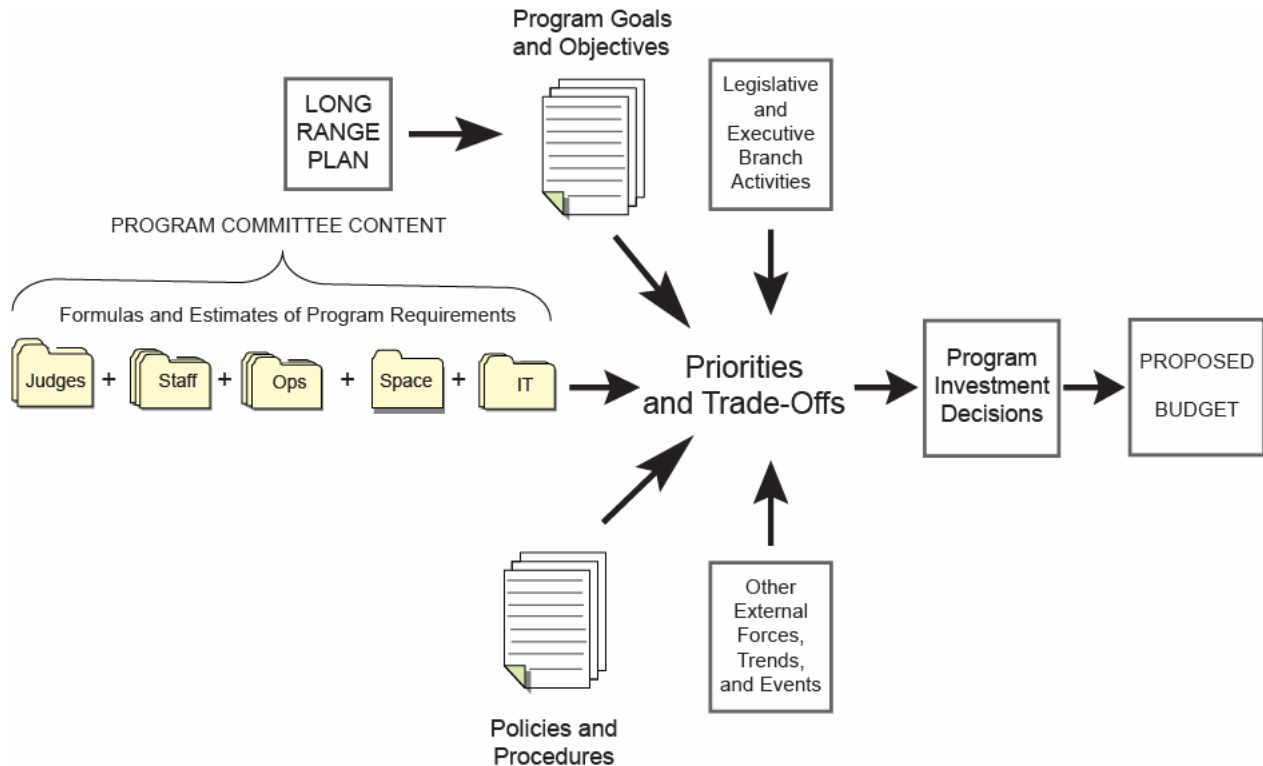
A background paper prepared for long-range planning discussion defined program-based planning and budgeting as “an approach in which an entire program is considered as the basis for long-range planning and the formulation of budget requests...the focus is on a program or mission and its goals. All resources or input related to each program are identified. For example, instead of showing a single IT budget for an entire agency, program-related IT costs would be shown as a part of the budget for each of the agency’s specific programs.”²⁷

Figure 2-6 depicts the factors that would comprise a comprehensive program planning and budget process. Central to this process are the priorities and trade-offs that the Judiciary would make as the Budget Committee assesses program budgets.

²⁶ Summary Report, September 2003 Long-Range Planning Meeting, p. 1.

²⁷ Appendix B: Paper on Program-Based Planning and Budgeting, prepared for the September 2003 Long-Range Planning Meeting by the AO’s Office of Management, Planning, and Assessment, p. 1.

Figure 2-6
Components of a Judiciary Program-Based Budget Formulation Process



SOURCE: Adapted from a graphic in a presentation to the September 22, 2003 meeting of the long-range planning meeting of the chairs of Judicial Conference Committees.

There was a range of views when the concept of program-based budgeting was discussed in the semiannual long-range planning meetings of committee chairs in 2003, 2004, and 2006. Some of these were:

- The concept has merit, but there are many implementation issues to consider.
- Better communication among committees and a coordination mechanism might be needed to ensure better integration of multiple committees' plans and resource requests for each program area.
- Increased coordination would be beneficial but it would be difficult for each individual committee to have a full perspective of all program objectives and resource needs.
- Would the realignment of the Judicial Conference Committee structure be necessary, or could a program-based budgeting approach work within the existing structure?
- Who would make decisions to approve program plans and set priorities?
- Circuit judicial councils could be more involved in setting priorities.

For the March 2004 long-range planning meeting, AO staff suggested a three-step proposal²⁸ to begin the program-based planning and budgeting process for the FY 2006 budget development cycle. The three steps are:

1. Develop program-based budget estimates for the budget formulation cycle, based on current policies and planning assumptions. Each committee's share of the overall budget would be broken down by program area to the extent possible. AO staff would provide these to the committees at their June meetings for information purposes and the budget committee at its July meeting. The proposal recognized that some costs—personnel, operations, defender services, court security, and some IT and space rental components—would be easily organized by program on a summary level. Defining more detailed and meaningful categories to array and track these costs would take more time. The key would be to break out costs in sufficient detail to understand the principal program activities, related costs, and cost drivers. Over time, costs could be incorporated more precisely into a program-based structure; the primary cost elements and cost drivers could be related to specific program activities.
2. Add a program budget discussion to the July Budget Committee meeting. In addition to considering individual committee budget requests, the Budget Committee could discuss program budgets with committee chairs. The proposal assumed that the Economy Subcommittee would focus on crosscutting issues that affect multiple committees, cost drivers, and trends, and the multi-year impact of the Judiciary's policies and initiatives on overall budgetary requirements.
3. Develop five-year strategic plans and cost estimates for each program. The AO—with input from Judicial Conference committees, chief judges, and court unit executives—could develop initial five-year strategic plans and cost estimates for each Judiciary program. These would be developed and provided for discussion at an upcoming long-range planning meeting.

Soon after the March 2004 long-range planning meeting, the Chief Justice determined that the Executive Committee should spearhead a long-range cost-containment strategy. Minutes of the March meeting indicate prior discussions of the program-based planning and budgeting concept will inform the Executive Committee effort. The objective deferred to focus on the cost-containment effort. This discussion resumed at the March 2006 long-range planning meeting. Office of Management, Planning, and Assessment staff again described the program-based budget approach and how it would compare with the current method of planning and formulating budget requests, which rely largely on formulas and standard assumptions, with resource requirements defined through separate process for judgeships, staffing, space, and technology. "Under the current approach, it can be difficult to consider the overall priorities for the courts and the impact of change in one aspect of a program, such as technology developments, on other aspects, such as staffing and space needs. Program planning would enable a mission-based assessment of each program's issues and needs [which would] entail looking at the functions and

²⁸ Appendix E: Program-Based Planning and Budget, prepared for the March 2004 Long-Range Planning Meeting by the AO's Office of Management, Planning, and Assessment, pp. 2-3.

activities of the program in terms of their proximity to the mission and how effectively and efficiently they contribute to the performance of mission-critical functions.”²⁹

At the March 2006 meeting, the goal was to have AO staff develop agenda items to help committees consider program issues at their September meetings. At the September 2006 long-range planning meeting, committee chairs stressed the importance of “identifying and addressing crosscutting issues” as well as “how well current committee jurisdictions enable (the Judiciary) to address crosscutting issues.”³⁰ They discussed crosscutting strategic goals and issues (described in Chapter Three) and developed a prototype planning profile for district courts (described in Chapter Four). However, there was no specific discussion of developing a program-based budget approach.

Figure 2-7 summarizes the gaps in the Judiciary budget formulation process that relate to individual committee budget development and the nature of the Judicial Conference Budget Committee’s review, as noted in the Judiciary’s discussion of program-based planning and budgeting proposal in 2003. In addition, it addresses the method to allocate resources based on the work measurement formulas. The Panel’s suggestions, described more fully in the conclusions and recommendations section, deal largely with ways to realign current business methods to better integrate the budget process with a more comprehensive long-range planning approach. The latter is described more fully in Chapter Three.

²⁹ Report of the Judicial Conference Committee Chairs Long-Range Planning Meeting, March 13, 2006, p. 4.

³⁰ *Summary Report September 2006 Long-Range Planning Meeting*, Administrative Office of the United States Courts Office of Management, Planning, and Assessment (September 18, 2006), p.1.

**Figure 2-7
Budget Process Gaps—Problems Caused—Proposed Recommendations**

	Individual Committee Budget Development, Workload & Other Formulas	Budget Committee Review	Allocation of Resources Based on formulas [interim and final]
Condition:	<ul style="list-style-type: none"> No formal interrelation with exec or legislative branch changes that affect the Judiciary Planning and budget processes not integrated Programs not integrated through budget process. Dated formulas, potentially overstated staff requirements 	<ul style="list-style-type: none"> Planning and budget processes not integrated Programs not integrated through budget process. 	<p>Dated formulas, potentially overstated staff requirements</p>
Recommendations:	<ul style="list-style-type: none"> Develop formal method to coordinate with exec and legislative branch on impact of law enforcement or prosecutorial initiatives Link strategic planning with budget process Initiate an integration committee or realign current committees around programs Develop means of work measurement that relate to processing reality – such as sampling. 	<ul style="list-style-type: none"> Link strategic planning with the budget process by starting with results of the priority-setting process (the strategic plan) Better integrate work of budget and planning committees and related AO staff by having some members cross-serve on conference committees and AO committees or work groups. 	<p>Better relate work measurement results to actual need, especially by using one year's actual resources used as a starting point for the next year's estimates.</p>

Conclusions and Recommendations: Budget Formulation Methods

The Judiciary has well-established processes to estimate its resource requirements. Given budget decentralization and the training associated with having dispersed responsibilities to manage court unit budgets, stewardship of federal funds is a strong issue throughout the Judiciary.

Budget requirements are assembled, integrated, and reconciled during the Budget Committee's summer review and deliberations. The committee serves a prominent role in reconciling the various subject-matter committee priorities, and the process is heavily driven by the size of the budget request that the Judiciary believes is politically feasible to present to Congress.

The Panel has concerns with these processes. First, there is no obvious locus for leadership to receive information on long-term trends and challenges. Absent one, it is not possible to debate and set long-term strategic goals and identify the resources and authorities needed to reach them. The individual subject-matter committees have adopted a range of priorities as they develop their budget requests. Although they are well informed about the needs of their areas, it remains unclear whether these priorities would rise to the top of a Judiciary-wide list if weighed against the second- and third-level priorities of other committees or organizations.

Committee chairs meet twice annually for planning sessions related to long-term issues emanating from their committees' jurisdictions. These sessions do not include—nor were they intended to include—discussions based on in-depth analysis of the reciprocal impact of one committee's plans on other programs. The chairs also meet jointly with the Budget Committee to present and discuss their proposals for the budget year.

An ongoing cost-containment initiative aside, there is no formal, long-term action plan to pursue Judiciary-wide, resource-based trends and challenges. A strategic, comprehensive approach to budgeting is further hampered by the constitutional separation of powers between the judicial and executive branches. The absence of communication or integrated deliberations about budgets for all parts of the Judiciary makes it more likely that executive and judicial branch budgets will not address reciprocal workload implications. Such disconnects can reduce the justice system's overall effectiveness and, in extreme cases, produce bottlenecks or disruptions that threaten the fair and full administration of justice. The Panel realizes that this is a matter over which the Judiciary has no control. It is not OMB or congressional practice to ensure that actions in one part of the federal budget do not impact another. Assembling a federal budget is a complex proposition and it can consume participants with broad issues and program details. However, as the entity at the final end of the "decision continuum," the Judiciary may have the greatest incentive to urge the branches to consider more effective ways to assess the impact of proposed policies and spending decisions.

The lack of a strategic, comprehensive approach and the limitations of existing performance information make it inevitable that judicial budget deliberations will focus on costs, cost-containment caps, and restraints rather than systematically setting priorities, determining resource needs, and adjusting funding to achieve the most important goals.

The Panel agrees that compiling program-based budgets would enable the Budget Committee, Executive Committee, and Judicial Conference to consider the total needs of each program and help individual committees see the implications of their investment choices. Further, it would help disclose the total cost implications associated with proposed options and decisions and would facilitate setting priorities. In other words, this approach would allow decision makers to better compare the relative costs and benefits of investments in various programs.

The Panel would like to assist the Judiciary in laying the groundwork to develop a system that integrates planning, budget development, and better informing the public and Congress about its results. The Judiciary knows the cost and drivers of its programs, an important element of a transition to program budgeting.

Therefore, the Panel recommends that the Judiciary:

- **Work with appropriate executive branch agencies to determine the impact of their operations on the Judiciary. The goal is to ensure that the judicial and executive branches can explain clearly these impacts to congressional appropriators and outline changing resource needs based on emerging legislative or executive branch priorities. This process could include an annual meeting of senior officials from the Judiciary, U.S. Department of Justice, and U.S. Department of Homeland Security, with the concurrence of the Chief Justice.**
- **Integrate the judicial planning and budget processes by having Budget Committee judges and staff work closely with the Executive Committee and related staff. The goal is to ensure that a long-term, comprehensive Judiciary plan guide budget development and that budget requests contain information on the current accomplishments of long-term plan objectives.**
- **Require subject-matter committees to prepare program-based budgets and submit them to the Budget Committee. The Budget Committee would retain its role of weighing tradeoffs, integrating committee requests, and preparing the final budget submission.**
- **Revise Judiciary budget training programs to ensure that judges on committees and senior staff learn to develop resource requests that are related to their program responsibilities rather than as components of, for example, a Judiciary-wide request for more staff.**

The Budget Committee must incorporate the Judiciary's comprehensive priority-setting process into its budget guidance memorandum and review all committee budget proposals for alignment with goals. Specific goals need accurate cost estimates to report on their achievements. The committee and division may need additional staff support to accomplish this.

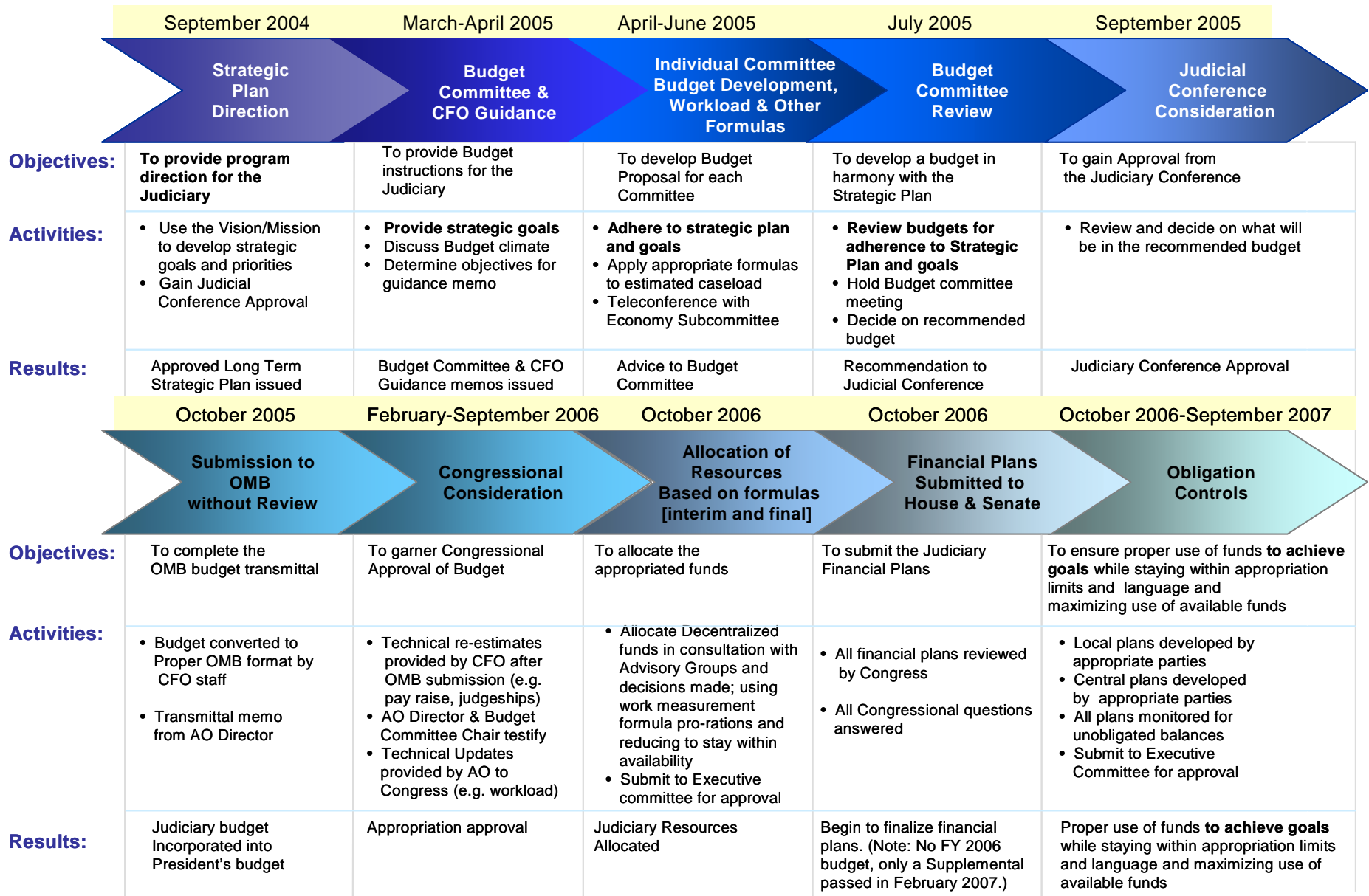
Figure 2-8 depicts the budget formulation process with a comprehensive, long-range planning process. It shows that in September of a given year, six months before the Budget Committee

issues instructions to Judicial Conference committees, the Judiciary would revise its comprehensive plan or (assuming the plan is revised only every few years) begin to develop its operational plan for the fiscal year that coincides with the next budget cycle.

Subject-matter committees with budget formulation responsibilities would start budget development using strategic and operational goals and any objectives as the springboard. This would not necessarily affect every activity within a subject-matter committee's jurisdiction, but it would impact priorities that rise to the top. The goal is to have top subject-matter committee priorities—those that a committee believes most need to be funded—reflect the Judiciary's goals rather than an individual committee's goals. This is not to say these goals historically have been "out of synch." Because planning activities have not come together in a regularly updated, overarching plan, however, there was no way for the Budget Committee and Judicial Conference to relate individual committee priorities to those of the Judiciary as a whole. The flow of the process shown in Figure 2-8 will help achieve this.

The comprehensive, long-range plan will inform and well serve the Budget Committee deliberations. Chapter Three discusses this impact in greater detail.

Figure 2-8
FY 2007 Long-Range Planning/Budget Formulation/Financial Plan Development Processes
 September 2004 – September 2007 (36 Months)



WORK MEASUREMENT FORMULAS IN BUDGET FORMULATION

The Judiciary assesses its needs for judgeships and staff by considering a range of workload-related factors. Using such information as responses to a survey of individual courts, the Judicial Conference biannually determines whether to submit to Congress a request for additional judgeships. The process begins with the quantitative, case-related workload measures that the Conference has adopted for district courts and courts of appeals: weighted case filings and adjusted case filings.³¹ These two measures recognize, to varying degrees, that the time demands on judges largely are a function of the number and complexity of the cases on their dockets. Judges account for more than 2,200 FTE. A projection of judge confirmations and those departing the bench factors into the budgeting. Judgeship formulas are not used for Judiciary budget formulation purposes.

The size of the chambers staff—generally law clerks and secretaries—is directly driven by the forecasted number of judges for the fiscal year and based on Judicial Conference policies. Chambers staff formulas account for the distribution of approximately 6,300 FTE.

Estimating the number of judges needed is a process that is separate from the workload measurement system for staff requirements. The number of judges and caseload volume are among the variables considered in devising the work measurement formulas used for court staff in the clerk's and other offices. The methodology is a tool to ascertain staffing needs for courts and provide a rational basis to support requests for resources.

The Committee on Judicial Resources approved the current court staff methodology in 1998 and it continues to oversee revisions, including a recent change to provide greater accuracy and transparency to the process. The Budget Committee reviews the formulas and the Judicial Conference has final approval. The Policy and Strategic Initiatives Office develops and revises formulas with substantial court staff input, intensive fact gathering and analysis, and job surveys and interviews. The outputs of the formulas are authorized work units, a budgetary measure of staffing needs. The Office of Court Administration and Office of Probation and Pretrial Services receive the Statistics Division caseload projections, provide comments, and suggest revisions. The Statistics Division then provides a final product for budget planning. The Office of Court Administration uses projected data only for budget formulation. Actual Statistics Division data is used for execution.

At the beginning of each fiscal year, the court program divisions within the AO, such as district or bankruptcy, determine the number of authorized staff to which their respective court units would be entitled under the staffing formula. For all functions, except circuit executives and libraries, the greatest weight is given to each unit's case filings, but other factors also are considered. For example, the number of offenders under supervision in the community is a

³¹ Each case filed in a district court is assigned a weight representing the average amount of judge time the case is expected to require, and this can vary substantially. In the courts of appeals *pro se* cases (in which a party does not use a lawyer) are weighted at .33 and all other cases at 1.0. *Pro se* cases may require substantially more judge and staff time.

major factor in the staffing formula for probation offices. These formulas account for the distribution of approximately 21,000 FTE of the Judiciary's S&E budget.

Other personnel requirements depend primarily on the number of judges and other factors not directly tied to case filings. These formulas are usually revised every three years. The appellate court formulas have not been updated as frequently as the other formulas, but updates for the circuit executive, library staff, and Conference attorneys are underway. The formulas, a calculation of the AO's Human Resources staff, are vetted with court advisory groups throughout the Judiciary and AO.

For 10 "non-staffing areas," the Judiciary also develops formulas as part of budget allotments and formulation. These are:

- cost control monitoring system formula: court salary allotments³²
- aggregate formula: recurring operating expenses
- historical formula: overtime utilities, parking, court of appeals travel, printing of court opinions, and bankruptcy court contract expenses
- law enforcement formula: law enforcement expenses such as for substance abuse treatment of offenders under the supervision of probation and pretrial services offices
- law books formula: law books in libraries and judicial chambers
- capital goods formula: non-information technology equipment, copiers, and non-judge furniture
- information technology infrastructure formula: the purchase and maintenance of IT and related equipment
- cyclical facilities maintenance formula: the costs for building upkeep such as painting, carpet replacement, and related repairs
- part-time magistrate judge salaries and expenses formula: the cost of staff salaries (secretarial or clerical) and related expenses in support of magistrate judges
- electronic public access (EPA) formula: recurring charges associated with installing and leasing dial telephone lines connected to electronic public access systems

Staffing formula updates have resulted in increases and decreases in average work unit requirements (also referred to as FTE). For example, only the FY 2000 and 2006 formula revisions for district courts have shown the need to increase staff. Meanwhile, the last three

³² The cost control monitoring system takes the information from the staffing formulas and turns it into staffing salary dollars allotted to the courts.

bankruptcy revisions have called for substantial reductions, due partially to automated case processing. However, Bankruptcy Abuse Prevention and Consumer Protection Act requirements have changed dozens of practices; preliminary analysis indicates that the act may cause a 10 percent rise in staffing requirements because work will increase on a per-case basis.³³ As most policy and procedural changes are in place, the Judicial Resources Committee will revise the bankruptcy formula in 2007.

In the aggregate, work measurement formula results consistently show the need for more staff than what expected appropriations will fund. The Budget Committee tries to balance this need with what it believes is a credible request to put before Congress. The committee supports having the Judicial Resources Committee continue to swiftly update formulas for the other court types in order to identify workload efficiencies and other productivity adjustments and build them into the staffing formulas.³⁴

Recognizing the need to reduce its proposed budget requests, the Judiciary has lowered its projected staffing needs by a given percentage during the budget formulation process. Part of the rationale was that the Judiciary had implemented new technology systems that made staff more efficient; because staffing formulas are reviewed only every three years, they cannot always reflect measurable productivity gains due to automation or other factors. Thus, the Judiciary established a standard two percent annual reduction to all formula results after their initial year of use.

It is difficult to measure the short-term impact of reductions on Judiciary staff and work. For example, the Judiciary had a difficult time measuring the impact of the loss of 1,350 staff from FY 2003 to FY 2004; it provided some data to appropriations staff that the staff did not think adequate. Judiciary staff believed that the largest impact occurred in the increased amount of unpaid overtime. Other issues raised included longer response times for requests for information from attorneys, the public, and law enforcement agencies; delays in juror payments; and time available to perform adequate budget planning, human resources management, and IT development.³⁵ Some clerk's offices have reduced the hours they are open to the public.

Since the work measurement system was used to determine proposed staffing needs, the Panel requested information that could be used as feedback. For example, if the formula estimated that a unit needed x number of people to process y documents for the year, could the Panel determine—at the end of the year—how many people a unit had and how many documents or outputs it produced. The AO asked some individual courts for input and reviewed anecdotal data, but it did not receive comparative data that could help to measure impact.

³³ Report on the Impact of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 on the Workload of the Federal Judiciary prepared for the U.S. House and Senate Committees on Appropriations and presented by AO Director James C. Duff in August 2006, p. 5.

³⁴ Budget Committee report to the Judicial Conference, September 2006, p. 4.

³⁵ Impact of Funding Shortfalls on Court Operations document provided by the Administrative Office of the U.S. Courts to the study team.

Conclusions and Recommendations: Workload Measurement Formulas in Budget Formulation

The process for developing the Judiciary's budget starts with an objective examination of the content and volume of work at all levels and entails input from judges and staff in individual program areas. These actions mean that the Judiciary has substantial information on the volume of work and time it takes to perform the tasks associated with it, more so than many other federal entities. The data are especially useful when allocating funds because decision makers know the magnitude of work in the many court units across the nation.

The Panel shares the Judiciary's concern that estimates may not be current given the three-year time between formula updates, technological changes, and other factors. Annual updates would be the most accurate alternative, but these would be time intensive. The Judiciary has relied on the informed judgment of professional staff to reduce the resource requests. It largely does so through across-the-board adjustments, which may be an acceptable method on an occasional basis, but one that raises questions when done as the norm. Even with current formulas, the available resources and tradeoffs inherent in the congressional budget process further complicate the issue and outcome. The Budget Committee has tried to balance the need for staff with a credible request for congressional consideration.

The Panel sees the need to build on the Judiciary's approach, in part to gain greater credibility with Congress. One option pertains to situations when a changing work method—such as a better practice or legislative change—alters resource needs. The Judiciary could review one or more offices to compare the new results to those of applying the work measurement formula in that office. The resulting difference then could be applied to the allocation formulas. If it is not appropriate to apply the formula *pro forma*, the newer information can better inform judgment on an across-the-board reduction (or increase) for an area. The Panel understands that local rules and work methods vary across the courts, so it would be difficult to have a precise representative sample. However, the Judiciary can select varied types of courts in the sample group—much as it does now with work measurement formula revisions—that give a more precise picture of both the impact of changes in work methods and the results of applying the formulas.

The Panel is more concerned that there is no method to compare the level of resources actually used with the resources the judiciary said would be required in a fiscal year. This does not imply that staff work less than what they expected; on the contrary, there has been consistent discussion of the “extra effort” needed to accommodate caseload changes or absorb work after a colleague has departed. Nonetheless, a system is needed to reconcile resources stated as needed, resources expended, and work accomplished. It is generally accepted that resources are scarce and that appropriators will cut funds until they see a strong disadvantage to doing so. When the Judiciary reports that it lost 1,350 staff through lay-offs, voluntary early retirements, buy-outs, and not filling 664 vacated positions, Congress does not see the impact. It may seem professional not to highlight backlogs, routine unpaid overtime, or attrition. However this only creates frustration among Judiciary staff and may imply that justice is not being adversely affected. This is an unnecessary vulnerability for the Judiciary.

The Judiciary must clearly present work that is done with a given level of resources, work that is not done, and the impact of the work not completed. Steps in such a process would include:

- Record staff time on tasks and relate the time to outputs (time to supervise an offender or update case information in a database) to determine the actual time devoted to tasks rather than the estimated time, as with the work measurement formula development.
- Calculate, for a given organizational entity or type of work, the total amount of staff resources used to the total volume of work.
- Compare the actual inputs and actual outputs to their work measurement formula estimates and determine how close the actual matches.
- Determine reasons for any differences—new technology, staff gained experience, and the like.
- Document the backlog in the entity or for the type of work.

It would be costly to implement this process across the Judiciary. The Panel also recognizes that much Judiciary work is not output oriented in the sense of producing a part on an assembly line. However, deploying the process to a small sample of court units or subunits would allow for a statistically-based extrapolation on why a given volume of work can be accomplished with a given level of resources and what happens to the level of work that can be accomplished when the level changes.³⁶ The Panel knows that variations among courts make comparisons difficult. Even local rules aside, many factors will vary, such as the type of case; losing a judge to retirement or having a temporary judge assigned to assist with a growing volume; and instituting a new component of an IT system. The Panel does not suggest that a sample be accepted as doctrine. The Judiciary has a strong resource in its Judicial Conference committees and court unit advisory groups. Few agencies could assemble such a resource to apply informed judgment to a set of data. Congress needs to see such an assessment applied to data that show what work can and cannot be done with a given level of resources.

These methods not only enhance understanding of the resources the Judiciary needs, but ensure that appropriators understand what can be gained with marginal additions to appropriations. In times of scarce resources, Congress may not be able to provide funds to, for example, fully supervise felons on probation or process new bankruptcy cases within a given time period. These methods would let them know that for a given level of dollar reductions there would be less supervision of offenders by probation officers and bankruptcy filers will wait a defined longer period of time for information on a filing.

³⁶ The Academy at various times has reviewed federal agency resource estimations approaches. Appendix 5 to an October 1999 report, *Aligning Resources and Priorities at HUD: Designing a Resource Management System*, discusses methods used in several agencies. That report led to HUD developing a resource estimation and staff time tracking methodology that HUD believes permits it to better inform Congress of its resource needs.

Therefore, the Panel recommends that the Judiciary revise its work measurement system through a three-step process:

- 1. Develop a structured feedback loop that compares the estimated work years to the actual work years. Document the amount of work done.**
- 2. Document a sample of work not done in the same period and estimate the impact/consequences of not performing the work. The latter may be qualitative, but should be based on systematic documentation and informed judgment by court personnel inside and outside the Judiciary, such as lawyers and their clients.**
- 3. Use actual staffing data from the prior year as the starting point for estimating the amount of work that may be done with a given level of resources and the work that will remain undone.**

DESCRIPTION OF THE BUDGET EXECUTION PROCESS

The Executive Committee oversees management of the budget execution process. The Judiciary budget is allocated to organizations with obligation authority based on such factors as historical usage, work measurement formulas, and recent changes to Judiciary responsibilities. Unlike many federal organizations, executives and their staffs are permitted to manage their budget with relatively little concern that they will lose funds if they do not spend them early in the fiscal year or that they will receive less in the next year if they do not spend all of them. Budget decentralization and ongoing financial management training make judges and court managers very aware of their roles as financial managers.

Financial Plan Development

The AO director prepares, and the Judicial Conference Executive Committee approves, annual financial plans for the Courts of Appeals, District Courts, and Other Judicial Services accounts. The plans allocate available funds by program and category of expense in accordance with the priorities established by the subject-matter committees and the Executive Committee and approved in the Judiciary's budget request.

Financial plans are composed of estimated obligations financed by enacted appropriations, fee revenue carried forward from prior years, estimated current year fee collections, and reimbursements from other accounts. Court support staffing requirements are based on actual caseload for the period ending the previous June. Resources are allocated between court allotments and centrally managed accounts. Because final appropriation levels typically are not known by the beginning of the fiscal year, the AO Budget Division prepares interim financial plans prior to the start of the fiscal year. Updated financial plans are prepared once a final appropriation is enacted. The AO Budget Review Committee reviews both the interim and final plans and the AO director recommends them to the Executive Committee:

Interim financial plans—absent enacted appropriations—are submitted to the Executive Committee prior to the start of the fiscal year. This process begins with developing the Judiciary’s full requirements using the same formulas used to construct the annual budget request. These requirements contain details by program activity on funding levels for mandatory activities and expenditures necessary to maintain current service levels. Also identified are discretionary expenditures for enhanced services and new and expanded initiatives. Stated funding needs then are reduced to balance the budget based on expected available resources. In developing the interim plans, the Budget Division first considers anticipated appropriation levels based on feedback from the appropriations subcommittee staff and level of funds in the approved or pending appropriation bills. Congressional feedback is shared with the Judicial Conference subject-matter committees and the AO’s court advisory groups and councils for advice on the actions necessary to bring the fully funded plan in balance with anticipated congressional action. Normally, these reductions are expressed in terms of a percentage reduction.

The final financial plans are submitted to the Executive Committee after Congress enacts the appropriation. The plans typically incorporate updated information regarding prior year carry forward balances and updated assumptions in fee collections and mandatory requirements (judges, chambers, rent, and benefits). The difference between the final plans and interim plans depends primarily on the enacted appropriation.

Financial Plan Execution

Once the Executive Committee adopts them, the plans officially become the Judiciary’s National Financial Plans. Budget Division staff work with allocation holders to incorporate any required budget-balancing reductions. In recent years, each directorate was provided a reduction target. Rather than systematically reduce every budget object class to achieve the target, the directorate sets priorities, thereby allowing it to protect some initiatives from across-the-board reductions. The plans then are summarized by program activity, transmitted to the appropriations subcommittees, and serve as the basis for tracking congressional reprogramming activities.

Allocations/Allotments/Reporting

Fund and allocation levels (interim or final) are updated in the Central Budget Database, which uploads to the Central Accounting System (CAS). Allocations are prepared to spread the funding by activity and budget object class based on the specific initiatives and programs supported. The allocations are provided to the program staff along with guidance for operating under a CR, if applicable.

The Congressional Financial Plan Package given to Congress occurs only after the Judiciary receives its appropriation. Bill language stipulates the amount of time before the report is due to Congress; typically, it is 45-60 days after enactment. Although the Executive Committee does not have jurisdiction over all Judiciary accounts, appropriators require that the Congressional Financial Plan include spending plans for all Judiciary accounts, including the Supreme Court, Court of International Trade, Court of Appeals for the Federal Circuit, Federal Judicial Center, United States Sentencing Commission, Administrative Office, and Judiciary Retirement Funds.

Funding for court allotments is provided via electronic notification to individual court units at the start of the fiscal year in three general categories: personnel compensation, operating expenses, and IT/automation. In times of a CR at the start of the year, funding allotments are provided in incremental amounts that provide for expenses generally considered controllable and spent at the court's discretion. The funds are allotted primarily based on formulas, and each court unit tracks its obligations and expenditures against the allotments in its local financial system and provides an accounting to the AO of all funds using an electronic status of funds report. Once allotted, the funds are available to be obligated and, in most cases, eligible to be reprogrammed within the courts' budgets without AO approval.

Formula Allotments

In addition to the formula allotments, circuit judicial councils receive funding to employ temporary secretaries and law clerks to support judges in emergency situations on a circuit-wide basis. This is called the Temporary Emergency Fund. Funding also is provided to the circuit judicial councils for circuit-wide tenant alterations and for circuit conferences. Funding provided to the circuit council cannot be used for purposes other than circuit-level responsibilities and cannot be augmented by funds from other units or moved to another court unit. Reprogramming of funds between the Temporary Emergency Fund account and tenant alterations is permissible. However, no reprogramming involving circuit conference funding is permitted.

The AO provides event-driven allotments to the courts based on specific funding needs and there is a process to request supplemental funding for contingencies and emergencies. An event-driven example would be for a new or replacement judge to fill a vacancy. Related costs might include furnishings, law books, computers and initial supplies. Funding held centrally and specifically for these event-driven requirements is allotted to courts when the events occur.

Obligation Controls

The financial plan the Executive Committee approves divides the funding from appropriations into allocations. Some of these allocations may cut across program activity lines, such as an allocation that funds furniture for new judges or one for new telephone systems, funding from which is provided to court units on a case-by-case basis. The allocations are further divided among line items so that allotments to the courts can be generated in specific budget categories. The CFO makes allocations to the AO divisions responsible for various program areas. For example, the allocation to the Space and Facilities Division includes funding for space rental, overtime utilities, and tenant alterations. The allocation to the Office of Probation and Pretrial Services includes funding for compensation of probation and pretrial services officers and staff, probation and pretrial services travel, substance abuse treatment contracts, pretrial alternatives to detention contracts, and electronic monitoring services. The AO director approves the issuance of allotments and delegates authority to the chief judges to incur obligations. This authority is subsequently delegated to the CUE. Approximately 95 percent of court allotments are determined by formula.

The data entered locally into an individual court unit's automated financial system are transmitted electronically to CAS. They are the official record with respect to obligations and expenditures against available appropriations. Allotments are recorded in CAS via interfaces in the budget systems at the Administrative Office. Modifications to approved financial plans, submission of reprogramming notifications to Congress, and/or submission of supplemental appropriation requests are evaluated throughout the year. If necessary, the AO director makes recommendations to the Executive Committee for appropriate action.

Decentralized Budget Management to Court Units

Prior to fiscal year 1992, before entering into the budget decentralization's pilot project, the AO centrally administered all funds for the courts, including salaries for court employees. Court units requested funding for supplies, copiers, furniture and other operational expenses by submitting written requests to the AO. Courts did not prepare financial plans.

Based on experience with a three-year pilot project, the Judiciary fully decentralized a portion of its funding in FY 1994 to support court operations, giving courts the authority and flexibility to make local spending decisions and reprogram funds to meet changing needs. Court managers can make personnel compensation and staffing determinations, procure products and services, fund courtroom technology, and dispose of surplus property. Further flexibility allows court units within the same district to engage in shared administrative services arrangements, such as sharing costs of an administrative unit that manages such services as automation, telephones, and bulk purchasing. The district courts, bankruptcy courts, probation and pretrial services, and appeals courts manage about \$2 billion annually. Budget decentralization requires the Judiciary to develop training programs and each court had to develop management and stewardship capabilities at the local court level. Courts do not manage most spending for space rental.

In 2002, the AO commissioned a study of budget decentralization. KPMG found that all objectives were met and termed the program a success.³⁷ The tenets of budget decentralization are continually reinforced. At its September 2006 meeting, for example, the Budget Committee reviewed a proposal from the Space and Facilities Committee, which wanted to ensure that funds provided for cyclical maintenance could not be reprogrammed for anything other than tenant alterations. The Space and Facilities Committee also recommended that cyclical facilities maintenance funding carry over from year to year so courts could have the ability to use the funds for more costly projects. The Budget Committee viewed both proposals as contrary to a primary principle of budget decentralization: that "each court unit has the ability to prioritize its need as determined locally and to reprogram allotments in a manner that allows it to address local objectives. It is this local funding flexibility that has enabled many courts to reprogram cyclical maintenance and other operating funds into salaries during difficult budget years in order to maintain on-board staffing levels." Courts can continue to reprogram these funds.

Further, the Budget Committee did not permit funds to carry over to another fiscal year, noting that "the Administrative Office cannot guarantee full funding of cyclical facilities maintenance

³⁷ KPMG, Assessment of the Judiciary Budget Decentralization Program, June 2004, Part 1, Executive Summary; Part 2, KPMG's Assessment of the Judiciary Budget Decentralization Program; Part 3, History and Current Status of the Budget Decentralization Program; and Part 4 Appendices

allotments and similar allotments into future fiscal years in light of the uncertainty of future budget requirements and appropriation levels. Also of concern was how Congress would view 400 court units having the ability to ‘bank’ funds from previous fiscal years.” The Budget Committee stressed that courthouse facilities are the face of the Judiciary to the public and that upkeep should be a priority. It recommended further education on the importance of cyclical facilities maintenance for chief judges and clerks.

CONTROLLABLE VERSUS UNCONTROLLABLE PORTIONS OF THE BUDGET

The Financial Plan divides the budget into several categories and labels several of them “uncontrollable.” Table 2-4 shows the breakout for FY 2006.

A long-range forecast in the 2004 cost-containment report suggested that the portion of the budget regarded by the Judiciary as mandatory/uncontrollable, if unchecked, could increase from nearly 60 percent to 72 percent by 2009.³⁸ Actions taken through the cost-containment initiative have substantially reduced this growth.

Table 2-4
Judiciary FY 2006 S&E Spending Categories

Mandatory	\$ 407,800,000	
Historically Fully funded	\$ 791,769,000	
Uncontrollable	\$ 1,551,312,000	59%
<hr/>		
Controllable—Court Allotments	\$ 1,696,836,000	41%
Controllable—Centrally Managed	<u>\$ 385,711,000</u>	
Total S&E Funds	\$ 4,833,428,000	

The first three spending categories are defined as follows:

1. Mandatory. Includes judges’ compensation and benefits.
2. Historically Fully-Funded. Includes items that the Judiciary deems critically important to its operations, such as chambers staff compensation and benefits and law enforcement costs for probation and pretrial services. Other spending includes Vaccine Injury Trust Fund operations, background investigations, Court Operations Service Center, National Archives charges, computer-assisted legal research, Central Violations bureau, and such general authorizations as judge-related travel and training, interpreters, payments for psychiatrists, and transcripts.
3. Uncontrollable. Includes spending categories where the Judiciary believes it cannot reduce its expenses in the short-run, even though long-range cost-containment measures are underway. Categories include spending for space rental, postage, and Federal Telephone System phone services.

³⁸ See the Judicial Conference Cost Containment Report dated August 2004.

These three spending categories comprise 59 percent of the FY 2006 spending plan, and generally are excluded from budget reductions.

The Judiciary defines two portions of the financial plan as discretionary. Since these are the only discretionary areas, they are subjected to 100 percent of any budget-balancing reductions. They are:

Controllable—Court Allotments. Includes funding for the court support staff salaries (other than chambers staff) and operating expenses. The court staffing allotment is based on the previous year's actual workload. For example, court support staffing allotments for FY 2006 are based on actual caseload through the 12-month period ending June 30, 2005.

Controllable—Centrally Managed. Includes such items as IT backbone funding to support national IT programs, including Internet security, infrastructure for Internet gateways and data communication network and telecommunications for new/renovated buildings. This category includes funding held on behalf of the Judiciary for non-formula events provided from centrally managed allocation holders for such one-time events as minor alterations, furniture for new judges, audio system upgrades, and court relocations. It also includes reimbursable programs, national training programs, and miscellaneous contract services.

Congressional appropriations staff stated that they do not understand why so much of the Judiciary's budget falls into uncontrollable or historically fully funded categories. They believe that the Judiciary may be decreasing its flexibility due to custom, and that nearly all types of spending should be subject to thorough discussions in the budget development process.

Conclusions and Recommendations: Controllable vs. Uncontrollable Portions of the Budget

The Panel understands that the terms "controllable" and "uncontrollable" apply primarily to determining the allocation of enacted appropriations in an executable year. However, these internal categories have created confusion, leaving appropriations staff with the perception that the Judiciary believes that much of its budget represents an entitlement that cannot be reduced. For example, by court order the Judiciary must pay for drug testing, mental health and drug treatment, and other items. Additionally, "historically fully funded" implies that some areas are sacrosanct. This is a luxury the Judiciary cannot afford.

Therefore, the Panel recommends that the Judiciary:

- **Reexamine all categories of mandatory, historically fully funded, uncontrollable, controllable court allotments, and controllable centrally managed funds; determine whether more spending can be allotted into the controllable categories; and consider different terms for the resulting budget groups.**

The Judiciary has begun this process through the cost-containment initiative undertaken on spending for major construction projects. The smaller the “judicial footprint” in terms of space requirements, the smaller the rent budget and the greater the flexibility within the S&E account.

The Judiciary also can take a broader look at what is classified as fully funded. This area could be dissected into its major components to identify areas of largest “payback,” in the sense of gaining more flexibility. It then would be essential to drill down to identify which expenses do, in fact, have a discretionary element. For example, the Judiciary has vigorously pursued large savings in law books but there may be further opportunities for savings. The Judiciary has achieved substantial savings by reviewing its rent bills to reduce overcharges, as discussed in Chapter Five. It is this kind of “fresh-start thinking” that may lead to other potential savings.

CHAPTER THREE

DEVELOPING A PLANNING PROCESS THAT WILL SUPPORT THE FEDERAL JUDICIARY'S PROGRAMS AND BUDGET

A thoughtful planning process can be a valuable precursor to an effective budgeting process which, in turn, produces objective programs and a persuasive budget request to support the programs. External funders, stakeholders, and organizational executives also may expect planning to satisfy other management needs. These needs are as diverse as clarifying missions, expressing shared visions, foreseeing crises, establishing goals against which progress can be measured, developing an attractive picture to present to interested stakeholders, and identifying and addressing critical issues.

In the Judiciary, various forms of planning take place in myriad locales: the Judicial Conference, 94 districts, 12 courts of appeals, 12 judicial councils, and the AO. Within individual courts, each unit may do its own planning and the CUE may coordinate it. A judge may do operational planning for his or her own chambers in addition to the administrative planning that a CUE oversees.

This chapter:

- Summarizes recent history of planning in the Judiciary.
- Summarizes some of an Academy Panel's 1992 report on long-range planning for the Judiciary.
- Describes the Judiciary's 1995 most recent long-range plan for the federal courts.
- Discusses the 1996 strategic business plan.
- Presents planning criteria and the contributions of planning activities.
- Provides information on the Judicial Conference September 2006 planning issues.
- Provides information on Judicial Conference committee discussions related to planning criteria.
- Provides information on planning activities done in Judicial Conference subject-area committees, including semiannual meetings of the conference's committee chairs.
- Discusses priority setting done through the budget process.
- Explains the management planning process that was in place in the AO.
- Provides examples of planning done in individual circuits, courts, and functions.

- Describes the Federal Judicial Center in terms of its availability to serve as a resource for planning.
- Describes in a matrix the relationship of Judiciary planning components to the planning criteria.
- Assesses current planning activities and offers recommendations to create a systematic approach that might better serve the Judiciary.

RECENT HISTORY OF PLANNING IN THE JUDICIARY

In the early 1990s, the Judicial Conference, judicial councils throughout the nation, and individual courts worked together to develop an enterprise-level, long-range plan. The Judiciary sought input from many stakeholders that work with the courts and asked for advice from this Academy. The 1995 long-range plan resulted from the former and a 1992 Academy Panel report resulted from the latter.

1992 Academy Report on Judiciary Long-Range Planning

As part of the Judicial Conference's initial efforts to develop more extensive planning capabilities, the Judiciary asked that an Academy panel suggest an approach. The Academy initially conducted a staff study to review state court methods and then convened a Panel to make recommendations.³⁹

Three of the 1992 Academy Panel's recommendations are most relevant to today's discussion:

The [Long-Range Planning] Committee should begin the process of creating a national plan by identifying critical issues to be addressed, through a participatory process involving Judicial Conference committees, judicial circuits, and districts. It should ask for ranking and ratings of the issues from these organizations.

The Long-Range Planning Committee should have, as part of its charter, a mandate to pull issues together, compare results, and determine which issues are important. It should decide upon the components of the plan to be proposed, develop a national plan for the federal Judiciary, and submit it to the Judicial Conference.

The Long-Range Planning Committee should develop plans for evaluating and assessing the planning process. It should also evaluate effectiveness of the long-range plans in providing guidance to the Judiciary and how well they are implemented.⁴⁰

³⁹ National Academy of Public Administration, *Long Range Planning in the Federal Judiciary*, June 1992. National Academy of Public Administration (staff study), "*Long Range Planning in the State Courts*, June 1992.

⁴⁰ *Ibid.*, pp. vi and viii.

The report envisioned a committee with a similar role to what today is an enterprise-level office in an executive branch agency. The 1992 Panel also envisioned that other organizations within the Judiciary would develop plans that relate to the national plan, and that the plans would link to the budget process. It suggested a small permanent planning staff to provide continuity and corporate memory, and recommended augmenting them with loaned staff during peak planning points.⁴¹

In 2007, organizations talk in terms of enterprise-level planning, sometimes referred to as strategic or long-range planning. GAO summarizes strategic planning as:

A structured, ongoing process that systematically identifies an organization's mission and establishes the goals and objectives that need to be achieved to accomplish that mission. When done properly strategic planning enables organizations to establish their vision of the future, set goals and objectives that will achieve that vision, assess alternative ways of accomplishing goals and objectives, and identify and resolve any significant problems. Elements of an enterprise-level plan often include:

- a vision statement that describes what the agency and its programs ultimately intend to achieve
- goals, which are the result of outcomes to be achieved over the long term if the agency fulfills its mission. They provide the context for developing shorter-term objectives.
- objectives, which are specific, measurable actions to be achieved in the nearer term
- alternate courses of action, which are analyzed to determine the potential risks and rewards. The alternative selected should be the one that best fulfills the agency's objectives, goals, and vision.
- an assessment which evaluates the organization's capabilities, deficiencies, and performance. The organization should periodically assess its strengths and weaknesses and its capacity to carry out plans to achieve approved objectives⁴²

1995 Long-Range Plan for the Federal Courts

The 1995 plan displayed many of the characteristics and components typical of an enterprise-level plan. For example it put forth vision and mission statements as well as core values.

Although the plan was produced more than 10 years ago, it is still frequently mentioned as the federal Judiciary's "plan." The plan addressed the activities of the judicial staff to a greater extent than any of the activities or processes previously described.

⁴¹ Ibid., pp. 31 and 29.

⁴² U.S. Government Accountability Office, *Civil Space: NASA's Strategic Planning Process*, GAO/NSIAD-89-30BR, November 1988, pp. 1, 4-5.

By any measure, the plan's development was a major, if not monumental, effort. For example:

- It was precipitated by the recommendation of the Federal Courts Study Committee in 1990.⁴³
- The Committee on Long-Range Planning, which included nine judges and was supported by seven staff members and 10 consultants, developed the report
- The effort was divided into two fields of inquiry: (1) structure, governance, and workload-related issues; and (2) jurisdiction and Judiciary size.
- The Committee on Long-Range Planning engaged Judicial Conference subject-area committees; it received 13 reports from them in 1993 and 1994.
- The Long-Range Planning Committee sponsored more than 12 research projects, including the previously noted Academy work.
- The plan names more than 300 individuals and 60 organizations that contributed to the effort.

This extensive effort was described as a planning exercise and produced typical and atypical results.

Among the typical products are statements of the organization's vision, core values, and mission (see the shaded boxes). The structure and content of the vision and core value statements are not unusual. In contrast, the mission statement is somewhat unique in length and focus since it includes a detailed delimitation of the Judiciary's responsibility and a defense of its independence.

VISION

The federal courts of the future will conserve their core values even during periods likely to be characterized by rapid change and uncertainty. The federal courts of the future will provide a base of stability for society, yet maintain flexibility to serve the nation's changing needs.

The plan exhibits four characteristics that are atypical:

1. The plan has characteristics of an environmental scan or situational analysis in that it addresses not only the federal Judiciary but the entities that shape its responsibilities and workload.
2. As a result of this more encompassing perspective, the plan contains recommendations rather than goals or objectives, which are common plan components.

⁴³Report of the Federal Courts Study Committee, 1990, p. 146.

3. Many of the recommendations contain activities that Congress, the states, or others should consider.

CORE VALUES

- *The rule of law*
- *Equal justice*
- *Judicial independence*
- *National Courts of limited Jurisdiction*
- *Excellence*
- *Accountability*

4. Although published by the Judicial Conference, each page of the plan contains the statement, “The Judicial Conference of the United States has approved the recommendations and implementation strategies in this *Long-Range Plan* to guide future administrative action and policy development by the Conference

and other judicial branch authorities. All other text in the *Long-Range Plan*, including commentary on individual recommendations and strategies, explains and supplements the approved items but does not necessarily reflect the views of the Judicial Conference.”

The last item reflects the third branch’s culture. The Judiciary had the other three items in the plan because it can have a mission and vision, but its mission can expand due to factors like making crimes formerly covered in state statutes now under federal jurisdiction. Such was the case when Congress passed legislation to make carjacking a federal crime or make juvenile crimes fall under federal statutes. Also, the plan stated the Judiciary’s view on the appropriate role of the federal courts as special-purpose courts, designed and equipped to adjudicate small numbers of disputes involving important national interests.⁴⁴ The 1995 plan suggests changes in the behavior of other entities so as to constrain the burden placed on federal courts.

MISSION

The mission of the federal courts is to preserve and enhance the rule of law by providing to society a just, efficient, and inexpensive mechanism for resolving disputes that the Constitution and Congress have assigned to the federal courts. That unique mission requires a commitment to conserving the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism, leaving to the state courts the responsibility for adjudicating matters that, in the light of history and a sound division of authority, rightfully belong there.

The mission also requires protection of judicial independence to ensure that the judicial branch can carry out its constitutional role in a governmental system of checks and balances, to preserve and protect the individual rights and liberties guaranteed by the Constitution, to interpret and enforce treaties, federal statutes, and regulations, and to ensure that cases are decided fairly and impartially.

⁴⁴ Judicial Conference of the United States, *Long Range Plan for the Federal Courts*, December 1995, p. 6.

A sample of the recommendations that speak to the cases that should be brought before federal courts are:

- Recommendation #1. Congress should be encouraged to conserve the federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism. Civil and criminal jurisdiction should be assigned to the federal courts only to further clearly defined and justified national interests, leaving to the state courts the responsibility for adjudicating all other matters.
- Recommendation #8. The states should be encouraged to adopt certification procedures, where they do not currently exist, under which federal courts (both trial and appellate) could submit novel or difficult state law questions to state supreme courts⁴⁵
- Recommendation #13. When legislation is considered that may affect the federal courts directly or indirectly, Congress should be encouraged to take into account the judicial impact of the proposed legislation, including the increased caseload and resulting costs for the federal courts.

1996 Strategic Business Plan

In 1996, the Judicial Conference approved an AO-proposed planning report titled, *A Strategic Business Plan for the Federal Judiciary*, which had 12 strategic objectives to support the Judiciary's mission and goals.⁴⁶ They were:

1. Ensure access to the federal courts by the citizens.
2. Strive to retain the independence and dignity of the Judiciary, its collegiality, and its preeminent legal competence.
3. Maintain systems of accountability.
4. Maintain effective governance mechanisms.
5. Operate with economy and efficiency without sacrificing effectiveness and care for the individual case and the requirements of justice.
6. Seek and encourage innovations that improve service.
7. Make effective use of technology and information.
8. Seek to control growth, obtain adequate resources, and manage resources effectively.

⁴⁵ As noted in the 1995 plan, state court certification procedures relieve the federal Judiciary of time-consuming tasks of deciding questions of law more wisely left to the states.

⁴⁶ Office of Management Coordination and Long-Range Planning, Administrative Office of the U.S. Courts, *A Strategic Business Plan for the Federal Judiciary*, September 1996.

9. Attract, develop, and retain a highly-competent workforce.
10. Provide for adequate security for the protection of judges, staff, and the public.
11. Communicate effectively with the other branches of federal government and the public.
12. Foster cooperation and communication with other American and foreign judicial systems and bodies.

The business plan listed six categories of activities and stated objectives. The categories were:

1. adjudication
2. administration of the courts
3. supervision of defendants and offenders
4. defender services for eligible criminal defendants
5. policy making and national administration
6. rulemaking

PLANNING CRITERIA AND THE CONTRIBUTIONS OF PLANNING ACTIVITIES

Many planning techniques and activities may be useful for enterprise-level planning. These include scenario building, priority setting, forecasting, simulation, and environmental scanning. The challenge for organizational leaders is to select and effectively execute the best combination of planning techniques to meet the organization's needs and fit their management style.⁴⁷

Selecting the best set for the Judiciary is a challenging task for a number of reasons, including the following:

- The many people involved—judges and chambers staff; the heads of court units, such as district courts, probation, and pretrial services offices; and the AO staff—are from entities with different functions and of varied size and organizational construct, such as flat versus hierarchical. Given these differences, it is not surprising that various Judiciary entities have had preferences for substantially different planning initiatives.
- There are a variety of planning and planning-related activities that could be used to meet the needs of the Judiciary at different organizational levels within these entities.

⁴⁷ For additional information on the selection of planning activities to meet organizational needs see “Targeted Planning: A Paradigm for the Public Sector.” (Gerald Barkdoll and Morris Bosin), *Long Range Planning*, August 1997.

- Committees of judges, supported by staff, are one of the principal ways the organization operates. This way of functioning has advantages, but it encourages developing function-specific stovepipes—that is, compartmented and separate frames of reference. This can complicate, even constrain, cross-organization priority-setting and planning activities.
- Judicial Conference committee turnover can interrupt continuity of planning processes.

Planning encompasses different activities designed to accomplish many different objectives. For purposes of discussion, the Panel is using a set of criteria to identify the contributions that existing Judiciary management activities make. The criteria encompass the desires and needs expressed in interviews with Judiciary managers, as well as planning needs typically found in public sector organizations.⁴⁸

The first criterion addresses the direct role of planning in support of budgeting activities, the central theme of this chapter that will receive the most attention. On the other hand, there are aspects of the remaining criteria that affect an organization’s budget and may be equally important to overall management. Ultimately, planning can help an organization in all stages of the budget process. Thus, all the planning criteria have been discussed to the extent possible.

Planning Activities Criteria

Planning activities and processes may be used to:

- Inform and support the development of the organization’s budget request by helping set organizational priorities.
- Precipitate considering new alternatives and thinking “outside the box.”
- Establish goals and objectives against which progress can be measured.
- Provide an early warning system for potential crises.
- Identify critical issues and support their resolution.
- Facilitate, encourage, and support effective planning activities throughout the organization.
- Support productive working relationships and communication throughout the organization.
- Produce public documents and demonstrate the organization is planning savvy and well managed.

⁴⁸ For additional details on the criteria used by other agencies see “Targeted Planning: A Paradigm for the Public Sector.” (Gerald Barkdoll and Morris Bosin), *Long Range Planning*, August 1997.

JUDICIAL CONFERENCE AND JUDICIARY PLANNING

The Judiciary told project staff that Judicial Conference subject-area committees are engaged in long-range planning. Some may not have a fully developed plan, but all committees have adopted core values or guiding principles. Appendix F shows the September 2006 Judicial Conference *Strategic Planning Issues*. The document is largely the compilation of the June 2006 long-range planning discussion in individual Judicial Conference committees; in some cases, individual committees included 2003 strategic issues because they did not expect to have completed their long-range strategic issue discussions until December 2006.

A list of 14 cross-cutting strategic goals and issues appears at the beginning of the document. They are:

1. Preserving the quality of justice.
2. Preserving judicial independence.
3. Maintaining appropriate federal jurisdiction.
4. Ensuring judicial security.
5. Enhancing relations with Congress.
6. Maintaining high standards of ethics and conduct.
7. Maintaining effective judicial governance, internal controls, and oversight systems.
8. Obtaining needed resources from Congress.
9. Controlling costs while ensuring operational effectiveness and quality.
10. Coping with changing workloads.
11. Attracting and retaining a highly-competent and diverse workforce.
12. Providing fair and reasonable compensation for judges and staff.
13. Enhancing productivity and service through innovation and investment in information technology.
14. Sustaining public trust through open access to the courts and to case information.⁴⁹

⁴⁹ AO of the U.S. Courts, Long-Range Planning Office, Strategic Planning Issues of the Committees of the Judicial Conference of the U.S., September 2006.

The Judiciary advised the study team of several planning activities. Planning issues are discussed in the Conference as a whole and within its subject-area committees. The committee chairs have semiannual meetings to discuss long-range planning. The AO's Office of Management, Planning, and Assessment (OMPA) has provided staff support and works with the judge who serves as the Executive Committee's long-range planning coordinator to develop agendas for the semi-annual meetings. OMPA does research on strategic issues and serves as the primary clearinghouse for information on planning.

Discussions in Conference Subject-Area Committees that Related to Planning Criteria

Subject-area committees undertake planning differently, determined largely by their scope of budgeting responsibilities. Committees with functional jurisdictions—the three committees that address staffing, technology, and facilities—are much more involved in budget planning than those with program responsibilities which have a fairly broad jurisdiction over court operations but a very limited budget role.

For example, the CACM committee is to “review matters affecting the operation of appellate, district, and bankruptcy clerk’s offices.” Yet its budget responsibilities are limited to law books, computer-assisted legal research, bankruptcy noticing (a contracted service), records management, and other relatively small items. Similarly, the Committee on the Administration of the Bankruptcy System has broad jurisdiction over matters related to bankruptcy courts, but other committees develop budget requirements for bankruptcy clerk office personnel, information technology, and space.

The Defender Services Committee has budget and operational responsibilities, and performs more comprehensive planning activities that reflect the broader scope of its duties. It believes its strategic plan, which presents four broad goals and 14 crosscutting issues, helps the committee identify program challenges and assess and improve program performance systematically.

As noted in Chapter Two, the Judicial Conference Budget Committee’s planning activities reflect this structure and are organized primarily by committee, spending categories, and account, not judiciary program. The concept and benefits of a program-based approach to planning and budgeting were revisited at the March 2006 long-range planning meeting; it was noted that the approach could better address the varied requirements of the Judiciary’s major operating components.

Academy staff reviewed reports of the March and September 2006 subject-area committee meetings to gain additional insights and determine the extent to which these topics relate to the planning criteria. Both reports noted topics associated with each of the 20 subject-area committees. The March 2006 report, 267 pages long and an additional 51 pages of appendices, had sections on individual committees that ranged from one to 29 pages. The September 2006 report was 377 pages and an additional 725 pages of appendixes, including a 584-page appendix related to the Rules of Practice and Procedure Committee.

The reports include recommendations from subject-area committees to the Judicial Conference and items discussed for “informational purposes.” The specifics addressed are diverse but share

some common topics. For purposes of analysis, Academy staff established a taxonomy of topics. Table 3-1 shows the number of times any of the 20 subject-area committees addressed the individual topics. These are the predominant topics, but not the only ones.

Table 3-1
Number of Times
Any of the Twenty Judicial Conference Subject-Area Committees
Addressed Certain Topics

Topics	March 2006 Judicial Conference Committee References	September 2006 Judicial Conference Committee References
Budgets	5	5
Administrative Services	4	-
Legislative Matters	4	6
Emergency Plans	3	2
Information Technology	3	1
Planning/Strategic Issues *	3	12
Rent/Space	3	6
Training	3	2
Electronic Transcript Policy	3	2
Appropriations	2	4
Cost-Containment	2	3
U.S. Courts Design Guide	1	2

*At the September 2006 meeting, the Conference received the report on *Strategic Planning Issues*.

Discussions labeled as “planning” and/or “strategic issues” in one or both reports are summarized below:

- **Administrative Office.** The committee reviewed previously articulated Judiciary-wide strategic issues. It will suggest to the Executive Committee’s long-range planning coordinator some modifications to: emphasize the need to preserve judicial independence; maintain effective communication with Congress, the executive branch, and others; and maintain an effective oversight system. The committee expressed its support for assessing trends, issues, and needs in a comprehensive way for each court program, and encouraged the AO to enhance its ability to undertake this work.
- **Administration of Bankruptcy System.** In the March and September meetings, the committee examined the costs and benefits of the bankruptcy judge recall program as requested by the Executive Committee. It determined that the recall program continues to be an effective system for providing needed temporary assistance to courts at a substantially lower cost than additional bankruptcy judgeships. The analysis presented to the committee showed that the benefit-to-cost ratio of the program is conservatively estimated at about 8 to 1.

- **Budget.** The committee reported that it had reviewed the strategic issues facing the Judiciary and the committee to determine how to improve discussions at the semi-annual long-range planning meetings.
- **Court Administration and Case Management:** The committee discussed issues related to enhancing access to the courts for persons with limited English proficiency, stemming the growth of the Judiciary's budget, closure of court facilities, courtroom sharing, and the efficient use of technology in the courts.
- **Criminal Law.** The committee discussed issues related to long-range planning, including continuity of operations, federalization of criminal law, and use of evidence-based practices in decision making.
- **Defender Services.** In the March and September meetings, the committee reported that it had received an update on long-range planning activities for the program. The committee discussed strategic issues facing the Judiciary, as well as cost-containment materials.
- **Federal-State Jurisdiction.** The committee reviewed the strategic issues facing the Judiciary as a whole, as well as within its jurisdiction. It examined issues in the context of its review of legislation that would expand the jurisdiction of the federal courts in ways inconsistent with principles of federalism and in the context of its charge to foster communication between the federal and state judiciaries.
- **Information Technology.** The IT committee recommended that the Judicial Conference approve the 2007 update to its long-range plan.
- **Judicial Branch.** The committee reported that it had considered the strategic issues facing the Judiciary and its programs. It determined that five issues within the committee's jurisdiction were of particular importance to the Judiciary:
 - Increasing judicial compensation to continue to ensure the quality of justice.
 - Advocating other matters of welfare to judges including enhanced benefits.
 - Ensuring that the Judiciary has a strong public image.
 - Maintaining good relations with Congress.
 - Maintaining judicial independence.
- **Judicial Resources.** The committee received the report of the Judicial Conference committee chairs' long-range planning meeting held March 13, 2006 (see Appendix F). The committee discussed long-range strategic issues facing the Judiciary and its programs and the areas under its jurisdiction. The committee determined that its objectives and initiatives address the most critical issues. The committee decided to sponsor a study of law clerk utilization by active, senior, and recalled judges.
- **Judicial Security.** A subcommittee on strategic and long-range planning met for the first time on May 1, 2006. It discussed new methods to analyze and approach judicial

security, improve technology used in judicial security, and strengthen relations with the Marshals Service. It also discussed improved education and training methods for judges in the area of judicial security. The subcommittee plans to focus its long-range planning efforts in three areas: internal security relations, external security relations, and technology/labor. It recommended that the chair request the director of the Marshals Service to appoint the chair of the subcommittee to the USMS Institute on Judicial Security, a newly formed think tank on judicial security, comprised of academics, judges, security experts, and Marshal Service members.

- **Magistrate Judges System.** In light of the request that each committee consider strategic issues, this one agreed to reinvigorate its long-range planning activities. A brainstorming session is planned for a future meeting, and staff will prepare background materials on a number of specific issues.
- **Rules of Practice and Procedure:** In the March and September meetings, the committee received a report of the meetings of the Judicial Conference's committee chairs involved in long-range planning.

Judicial Conference Committee Chairs' Semiannual Long-Range Planning Meetings

In the early to mid-1990s, the Judicial Conference had a Long-Range Planning Committee. When that committee completed its work, the conference wanted a mechanism to continue to look at issues that concern more than one committee. Following approval of the 1995 *Long-Range Plan for the Federal Courts*, Chief Justice Rehnquist determined that responsibility for planning should rest with the committees responsible for their respective subject areas, and that the Executive Committee should have a coordinating role. Each committee designated a liaison to serve as a focal point for planning within the committee and as a part of a planning liaison network. Through mid-1999, the planning network's emphasis was almost exclusively focused on committee-based planning and implementing the long-range plan. Designated committee members, other than the chair, served as planning liaisons. The judges would report on their committees' actions on the 1995 plan recommendations at the planning meetings, where crosscutting issues could be addressed, as well.

At its February 1999 meeting, the Executive Committee determined that "the long-range planning process would be enhanced if it made use of the chairs of appropriate conference committees rather than designated liaisons from committees. This change is particularly important in light of increased need for emphasis on long-range budget projections, since it is the chairs that interact on behalf of their committees with the Budget Committee."⁵⁰ This was the beginning of the current semiannual meetings. One judge from the Executive Committee coordinates semiannual, long-range planning meetings of the chairs of the Judicial Conference subject-area committees to identify and address strategic issues that they believe cross committee lines. The purpose of the meeting is to "promote long-range planning by committees and

⁵⁰ *Strengthened Long-Range Program Planning and Budgeting Process*, April 1999. Document provided by the staff of the AO OMPA, p. 2.

provide a forum for information exchange and communication on strategic issues facing the Judiciary.”⁵¹

OMPA staff provide supplemental support to committees as they consider planning issues, which is generally done at the committees’ June or July meeting. To prepare for the 2006 discussions (which would lead into the semi-annual long-range planning meeting of all chairs), OMPA staff sent a memo containing a framework for strategic thinking to those who work with the committees. The memo suggested that each committee outline key Judiciary-wide and strategic areas of concern and committee objectives or initiatives.⁵² Staff work with the judges who chair the committees who, in turn, work with other judges on the committee. This process helped lead to the September 2006 *Strategic Planning Issues* paper.

Representatives of most subject-area committees regularly attend the semiannual meetings, as shown in Table 3-2.

⁵¹ Summary report, March 2006 Long-Range Planning (LRP) meeting. The meeting purpose has also been described as providing a forum for issues that cut across multiple committees.

⁵² May 3, 2006 memorandum and attachments from Brian Lynch of OMPA to AO staff of committees with planning responsibilities.

Table 3-2
Judicial Conference Committees
Represented at the 2003-2006 Semiannual Long-Range Planning Meetings

DATE COMMITTEE	March 2003	Sept 2003	March 2004	Sept 2004	March 2005	Sept 2005	March 2006	Sept 2006
Administrative Office	X	X	X	X	X	X	X	X
Bankruptcy System	X	X	X	X	X	X	X	X
Budget	X	X	X	X	X	X	X	X
Court Admin & Case Mgt	X	X	X	X	X	X	X	X
Criminal Law	X	X	X	X	X	X	X	X
Defender Services	X	X	X	X	X	X	X	X
Federal State Jurisdiction	X	X	X	X	X	X	X	X
Information Technology	X	X	X	X	X	X	X	X
Intercircuit Assignments	NR	X	NR	X	NR	X	X	X
Judicial Branch	X	NR	X	X	X	X	X	X
Judicial Resources	X	X	X	X	X	X	X	X
Admin of Magistrate Judges' System	X	X	X	X	X	X	X	X
Rules of Practice & Procedures	X	X	X	X	X	X	X	X
Security & Facilities *	X	X	X	X	X	X	X	X
Judicial Security **	NA	NA	NA	NA	NA	X	X	NR
Judge who is LRP Coordinator	X	X	X	X	X	X	X	X
Executive	X	X	X	X	X	X	X	X
Total Represented ***	15	15	15	16	15	17	17	16

NR Not represented

* Name changed to Space and Facilities, March 2006.

** Judicial Security Committee established October 1, 2005.

*** Codes of Conduct, Financial Disclosure, International Judicial Relations, and Review of Circuit Council Conduct and Disability Orders do not attend Judicial Conference or the semiannual planning meetings.

As shown in Table 3-3, the meetings attract a substantial number of AO attendees who serve as staff support.⁵³ However, only the 18 judges participate in discussions, unless they ask staff for input. The meetings are structured more for presentations than for give-and-take. Academy staff interviews showed that the short duration of the meetings—about 2.5 hours—resulted in shared information rather than interactive discussions that addressed how issues would be resolved or addressed. An AO staff member indicated that discussions that start in the meeting may continue later or become part of future Judicial Conference committee meetings.

⁵³ Based on the list of participants listed in the meeting summaries.

**Table 3-3
Attendees at Semiannual Meetings**

Meeting Date	Number of Judges Attending	Number of Supporting Staff Attending	Total Number of Attendees
March 2003	18	47	65
September 2003	19	42	61
March 2004	21	57	77
September 2004	21	48	69
March 2005	21	50	71
September 2005	24	51	75
March 2006	23	48	71
September 2006	24	50	74

The judges addressed a variety of topics. Academy staff analyzed summaries of the eight meetings from 2003 to 2006 to provide insights into the topics. The unit of analysis adopted was the committee whose activities were presented and/or discussed at each meeting. Table 3-4 indicates that the judges discussed the activities of 11 subject-area committees during the four-year period, and that activities of some committees were discussed more frequently than others.

**Table 3-4
Number of Times Committee Topics Were Mentioned
During Semiannual Meetings (2003-2006)**

Committee	Number of Times Mentioned
Budget (Including Economy Sub-Committee)	6
Information Technology	6
Court Administration and Case Management	5
Judicial Resources	5
Security and Facilities	3
Criminal Law	2
Defender Services	2
Executive Committee	2
Administration of the Bankruptcy System	1
Judicial Branch	1
Rules of Practice and Procedure	1
Total Committee Topics Mentioned	34

The topics related to each committee also demonstrated substantial diversity. Representative topics from the four committees most often mentioned are listed below.

- **Committee on the Budget.** Topics related to this committee were the most frequently mentioned and notes concerning budget topics were the most voluminous.

The Budget Committee chair briefed attendees on discussions of whether to pursue a program-based planning and budgeting process. The Judiciary already submits its budget to Congress by program; a program-based approach would consider the long-range

budgetary impact of personnel, operations, technology, space, and other policy and resource proposals by program. The committee believes that the process would refocus resource decision making from a functional model to a programmatic one. AO staff made presentations on the approach's mechanics, benefits and costs, and potential pitfalls.

Summary notes indicate that the planning session discussions were precipitated in part by an interest in moving discussions from dollar issues to policy issues and enabling critical trade-offs to be considered across committee lines. The decision to implement such a system was deferred after it had been presented and considered at three meetings. This was due in part to the focus on cost containment. Judiciary staff said the idea did not reach fruition because it likely would cause substantial reorganization of the Conference committee structure; judges generally believed the current system was efficient.

Updates on the congressional status and expected outcome of pending budget requests were discussed at many meetings. The sessions also included projections of budget trends and the portrayal of the consequences of different budget scenarios. Related items like the cost impact of rent, facilities, and IT were discussed, as were the results of the cost-containment initiative and need to continue it.

- **Committee on Information Technology.** IT topics generally were organized around three themes: productivity, efficiency, and responsibility. How technology can help individual judges be more efficient and productive dominated the discussions. Reports of money saved in bankruptcy and district courts as a result of IT innovation served as springboards for further discussion on expanding technology in other areas. Demonstrations of new technology, including a prototype web portal, were featured.
- **Committee on Court Administration and Case Management.** Trends in the number of jury trials and juror utilization were discussed.⁵⁴ Concern was expressed that these trends could be misused or may demonstrate inappropriate use of settlements. Information on the costs of administrative services and alternative approaches to obtaining them informed several meetings.
- **Committee on Judicial Resources.** The organization's compensation policies and practices were an ongoing topic. Closely linked topics were attracting and retaining employees and cost reduction.

The history of discussed topics indicates that many cut across committee lines. The budget, IT, court efficiency, cost reduction, pay structure, and other topics are of broad interest. To the extent that some issues may develop into real crises if left unattended, the meetings contribute to crises identification and avoidance.

⁵⁴ Civil and criminal jury trials decreased from 1998 to 2003. Plea of guilty by all defendants went up from 82 percent in 1998 to 86 percent in 2003 and number of defendants going to trial went down from about 4,700 to 3,500.

PRIORITY SETTING DURING THE BUDGET FORMULATION PROCESS

Each committee chair is to “promote tactical and strategic planning and to achieve the linkage of planning with budgeting for the committee.” When the Judiciary defined that role in 1999, however, it said “the enhanced planning process will not change the current development and decision-making processes involved with formulating the Judiciary’s annual budget.”⁵⁵ The two integrating elements in the Judiciary’s budget planning process are the Judicial Conference’s Budget Committee and the AO’s budget staff within the Office of Finance and Budget. The Budget Committee requires each subject-matter committee to set priorities within its individual budget requests before submitting it to the Budget Committee.

Each entity performs planning in support of budgeting differently, but the Budget Committee weighs trade-offs among the functional areas and sets priorities for the Judiciary as a whole. AO budget staff work closely with the committee and make technical revisions to budget requirements based on caseload projections and changing factors.

There is open discussion among subject-matter committee chairs about their individual requirements. Further, the Economy Subcommittee and subject-matter committees have preparatory sessions to learn about the latter’s submissions so that the subcommittee can advise the Budget Committee on potential budget reductions and other changes. Because resources are not unlimited, the Budget Committee ultimately weighs priorities, tradeoffs, cutbacks, and the political realities of the likely appropriation.

The Judiciary’s budget planning has a long-range component that entails an annual appropriations update for courts of appeals, district courts, and other judicial services, specifically S&E, defender services, fees of jurors and commissioners, and court security. The estimates reflect the current budget request to Congress, plus nine more years. The Office of Finance and Budget uses alternative appropriation assumptions and projects budget impacts at varied levels. Much of the discussion addresses staffing levels; segments also talk about the impact of cost-containment initiatives and potential legislative actions.

A striking element of the Judiciary’s priority-setting process is that large portions of the budget are either mandatory (judges’ salaries); protected as historically fully funded (such as chambers staff and some expenses related to probation and pretrial service) during the execution process; or considered uncontrollable (such as rent). These automatically receive a higher priority level than areas termed “controllable,” such as most of the S&E account.

As discussed in Chapter Two, participants at the September 2003 long-range planning meeting discussed a program-based approach to planning and budgeting, while individual committees considered the subject at the December 2003 and January 2004 meetings. The individual committees indicated a desire for more specifics about the practical aspects of implementation, and the issue arose again at the March 2004 semiannual long-range planning meeting.

⁵⁵ *Strengthened Long-Range Program Planning and Budgeting Process*, April 1999. Document provided by the staff of the AO OMPA, pp. 3-4.

In response, AO staff prepared a paper describing how the budget development process might change. It emphasized the importance of developing five-year strategic plans and cost estimates for each program. Additionally, AO staff reported that strategic planning by program would help identify specific objectives and priorities and describe each program's activities and associated resource needs. The staff envisioned naming an activity, then its sub-activities, then the cost elements.⁵⁶

The paper also intertwined planning and budgeting activities, and noted that other characteristics of strategic program plans would include examining trends affecting the work of the program; examining projected funding needs; considering a range of funding scenarios; identifying external cost drivers; identifying internal cost drivers; examining each program's business processes; and identifying program-specific and crosscutting strategic issues. The first element of a strategic program plan would be to develop a preliminary five-year budget estimate for each program. Other elements include examining total resource needs; identifying the interactions of functions and resources within each program; setting priorities; assessing how best to invest resources in each program; and developing revised five-year budget estimates for each one.⁵⁷

The development of strategic program plans has not yet taken place, though the September 2006 long-range planning meeting focused more on the strategic issues that each committee identifies.

MANAGEMENT PLANNING PROCESSES

The AO's management planning process covers AO entities.⁵⁸ It was established in 1989 to:

Enable the agency to devote its limited resources to achieving its highest priority initiatives. The process focuses on strategic thinking in defining tangible, measurable results which are critical to the Administrative Office and the courts. On an annual basis, Administrative Office divisions and offices submit individual plans to the Office of Management, Planning, and Assessment, which coordinates the management planning process.⁵⁹

The planning process is being revised, and the quarterly update session for the fourth quarter of 2006 was not held. Because this process long has been in place and past experience will likely inform the new system, the recent AO management planning process is described here.

The major items listed in the plan included new and continuing initiatives, cost-containment studies and activities, and IT projects. AO program managers were to develop financial plans for all major functions and the AO associate director for management and operations instructed them

⁵⁶ Appendix E to the minutes of the March 2004 minutes of the long-range planning meeting of Judicial Conference Committee chairs, pp. 3-4.

⁵⁷ *Ibid.*, pp 4-6.

⁵⁸ Though the AO has only about 890 of the more than 33,200 Judiciary employees and less than two percent of its budget, its planning efforts cover topics and issues that affect nearly all judges, staff, and the public.

⁵⁹ From the cover page of the Administrative Office FY 2006 Major Initiatives.

to do so in conjunction with the AO Budget Division. These plans included quarterly spending estimates.

The associate director for management and operations and the deputy associate director meet quarterly with each program assistant director and his or her senior staff. The stated purpose is to “discuss progress, identify problems or requirements ensure proper coordination and make adjustments as needed to initiatives, priorities, approaches, or schedules.”

Although the management system did not include ongoing work—it is handled through a separate report—it encompassed a substantial number of activities. Table 3-5 shows the number of 2006 initiatives by AO office.

**Table 3-5
Number of Initiatives In The
2006 Management Planning Process**

Office	Number of Initiatives
Office of Court Administration	29
Office of Internal Services	27
Office of Judges Programs	19
Office of Finance and Budget	12
Office of Human Resources	10
Office of Defender Services	9
Office of Facilities and Security	9
Office of Probation and Pretrial Services	8
TOTAL	123

A review of the initiative titles indicates that they are a combination of “projects”—activities with clear beginning and ends—and hoped-for changes in performance levels of processes.

Some sample initiatives, picked randomly, are listed below to demonstrate their diversity:

- Provide staff support to the AO and CACM regarding courtroom sharing.
- Examine additional opportunities for cost-savings in the defender services program.
- Migrate the Central Accounting System (CAS) to Momentum (CTM).
- Enhance IT awareness and training for judges.
- Develop an AO budget handbook covering the AO’s budget policies, processes and procedures.
- Amend federal rules regarding electronic filing.
- Improve the collection and reporting of judicial statistics.

The management planning process was included on the list because of its title and the thought that such a system was likely to involve priority setting as annual initiatives were selected. The Management Planning System also was included because it frequently was referred to as the “MBO system,” suggesting that it incorporated the characteristics of the Management by Objective Systems introduced in the 1950s. MBO is described as:

A process of agreeing upon objectives within an organization so that management and employees buy into the objectives and understand what they are. The Management by Objectives term was first popularized by Peter Drucker in 1954 in his book *The Practice of Management*...The process requires that the manager and the employee agree to what the employee will attempt to achieve in the period ahead, and (very important) that the employee accept and buy into the objectives (otherwise commitment will be lacking).⁶⁰

Interviews with participants in the prior management planning system suggested that it was more a progress-tracking approach than a planning system. In addition, because projects were tracked by program office, the system was geared to individual office functions, though OMPA managed the process agency wide. As usually is the case with performance monitoring processes, substantially different opinions abounded regarding the cost effectiveness of the process.

PLANNING EXAMPLES IN INDIVIDUAL CIRCUITS, COURTS, AND FUNCTIONS

At the discretion of chief judges, individual circuits or districts may develop strategic plans. To assist them, the AO published, with input from courts, the *Planning Handbook for the Federal Courts* in 1994.

An example of decentralized planning activities, the Bankruptcy Court for the District of Maryland worked with the Federal Judicial Center to develop a strategic plan; new judges are encouraged to become involved with its development. Part of the process was to develop five core values on which employee ratings are based: providing service to the public in a manner that demonstrates issues have been resolved fairly; promoting team work and appreciation for diversity; focusing on productivity and quality; maintaining passion for innovation and learning; and demonstrating commitment to honesty, fairness, trust, and respect. The plan also lists critical functions and provides strategies, actions, steps, and projected accomplishment dates for several of them.⁶¹

A second example: With initial assistance from OMPA, the Northern District of West Virginia began a strategic planning process in 1999 and finalized a five-year plan in 2001. All of the district’s judges participated as members of the Long-Range Planning Committee, as did the clerk of court and chief deputy clerk. Other participants were the Bankruptcy Court, magistrate judges, attorneys who practice in the district, U.S. Marshals Service, U.S. Attorney’s Office, and

⁶⁰ Drucker, Peter F., *The Practice of Management*, 1954, Chapter entitled “Management By Objective and Self-Control,” pps. 121-130.

⁶¹ http://207.41.17.84/CO_plan.aspx.

Probation and Pretrial Services. In 2006, the court underwent another planning process to revise the plan. It will issue an update in the near future.

Functional planning, including the *Long-Range Plan for Information Technology in the Federal Judiciary*, is updated annually.⁶² The AO director has a statutory requirement to prepare and annually revise the plan for which the Judicial Conference Committee on IT provides guidance and recommends it for Conference approval. At that point, the director transmits the plan to Congress.

The annual plan states objectives in five categories and estimates resource requirements for the current year and five years out. The annual revision does not report on the prior year's achievements; those usually are reported in the Judiciary's Congressional Justification submission. Other conference committees, such as the Committee on International Judicial Relations, have completed strategic plans.

In 1988, the Judicial Conference directed individual districts to develop long-range plans for their facilities. The study team did not determine the resulting impact of that directive. Since 1996, the Judiciary has used a five-year plan to set priorities for new courthouse construction projects. Chapter Five discusses facilities planning in greater detail.

THE FEDERAL JUDICIAL CENTER AS A RESOURCE FOR PLANNING

Established by Congress in 1967, the Federal Judicial Center (FJC) is the research and education agency of the federal judicial system. Its work is not a Judiciary "management process," but its activities are directly related to several planning criteria. The Chief Justice chairs the center's board, which includes the AO director and seven judges elected by the Judicial Conference.

The FJC's \$22 million FY 2006 budget supports 125 staff who work in education and research.⁶³ Education staff, which comprise two-thirds of the workforce, conduct off-site and in-court programs for judicial officers and Judiciary staff; produce web-based programs and publications; broadcast television programs by satellite; and produce manuals, monographs, and other print publications.

Some of FJC's training programs deal explicitly with planning and planning related topics. Among them:

- National Strategic Planning Workshops for district courts, delivered to 451 chief judges, judges, and unit executives, from 1995 to the present
- National Strategic Planning Workshops for bankruptcy courts, delivered to 603 chief judges, judges, and unit executives, from 1995 to the present

⁶² *Long Range Plan for Information Technology in the Federal Judiciary*, Fiscal Year 2006 Update (approved by the Judicial Conference), September 2005.

⁶³ Details on the FJC mission and programs are at www.fjc.gov.

- 20 Federal Court Leadership Programs, including a planning component, from 1996 to the present
- 239 in-district Strategic Planning Workshops that attracted 4,722 participants
- publication of resource material, including the *Planning Handbook for Probation and Pretrial Services Managers*, which is based on a planning handbook the AO's long range planning office published in 1994 and revised in 1997.

The Research Division undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences. These often are done at the request of the Judicial Conference and its committees, courts themselves, or other groups in the federal system. In FY 2005, this division completed 21 major research and evaluation projects and responded to more than 200 requests for short-term research assistance. As FY 2006 began, an additional 36 major projects were underway. The study team did not ascertain the contribution that FJC research makes to planning activities but the potential is clear.

RELATIONSHIP OF JUDICIARY PLANNING COMPONENTS TO THE PLANNING CRITERIA

Table 3-6 summarizes the relationship between the major processes or activities discussed in this chapter and the planning criteria. Because this project did not include a specific review of the Judiciary's planning activities, some pertinent information was not able to be obtained. In other cases, the information collected was contradictory or inconclusive or resolution was not possible. Such circumstances are noted in the table.

**Table 3-6
Relationship of Judiciary Planning Components
to the Planning Criteria**

Planning Activity Planning Criteria	1995 Plan	Judicial Conference Committee Discussions	Semiannual Committee Meetings on Planning	Priority Setting in Budget Process	AO Management Planning (MBO)
Inform and support budget request by helping set organizational priorities	Yes	Undetermined	Limited	In allocation.	No, at that time (completed after the request developed)
Precipitate considering new alternatives	Yes	Yes	Yes	Undetermined	Yes, at beginning of cycle
Establish goals and objectives against which to measure progress	Possibly, but not confirmed	Possibly, but not confirmed	No	No	Yes
Provide an early warning system for potential crises	Yes	Possibly, but not confirmed	Yes	Yes, for resource crises	Undetermined

Planning Activity Planning Criteria	1995 Plan	Judicial Conference Committee Discussions	Semiannual Committee Meetings on Planning	Priority Setting in Budget Process	AO Management Planning (MBO)
Identify and support the resolution of critical issues	Yes for identification; not confirmed for resolution	Yes for identification; not confirmed for resolution	Limited	Yes for identification; not confirmed for resolution	Yes, for issues in process
Facilitate and support effective internal planning activities	Possibly, but not confirmed	This is internal planning	No	No	Possibly, but not confirmed
Support productive internal working relationships and communication	Possibly, at that time	Yes	Yes	Undetermined	Conflicting data
Produce public documents that demonstrate the organization is planning-savvy and well managed	Yes	No	No	No	No

Judicial Conference meetings look ahead to many issues, but they are not planning meetings *per se*. Although Budget Committee topics receive more attention than those of other committees, there is little evidence that budget topics are addressed in terms of priority setting. There is substantial AO staff effort to develop scenarios and anticipate the results of varied spending levels, but the discussions appear to center largely on the “here and now” of budget circumstances. The Panel’s conclusions and recommendations below concern the degrees to which Table 3-6 documents activities or functions related to planning criteria.

CONCLUSIONS AND RECOMMENDATIONS

Enterprise-level planning is likely to contribute to development of an organization’s budget in numerous ways, including the following:

- Providing an overarching perspective for internal and external stakeholders that shapes their perception of the organization and consequently establishes their role. Such a planning process typically addresses the organization’s mission and vision and may produce statements of values, operating principles, and other benchmarks to guide decision making and operations.
- Providing an opportunity to set organization-wide priorities that transcend internal organizational structure. The contribution of a planning process that establishes organization-wide priorities extends beyond the budget process since some priority initiatives may require non-resource solutions (e.g., the development of a new policy).

The Overarching Perspective

For 12 years, the Judiciary has had the opportunity to reexamine the expression of its mission, vision, and core values. It has recognized the advantages of devoting time to planning and

related activities, but it has not revisited the concepts that typically appear at the highest level of a strategic or longer-term plan. Revisiting the concepts presented in the 1995 plan may confirm that they remain the best ones to guide the organization's policy making and operations, though it would be a surprising outcome given the legislative and societal changes that have taken place.

Even if the guiding concepts of the 1995 plan are reconfirmed, there is an equally compelling reason to revisit enterprise-wide planning: There has been considerable change in the ranks of judges and Judiciary employees. Assigning the effort to a few bright individuals who might do an excellent job will miss an opportunity to engage a much larger audience in a valuable exercise. Individuals who do not have the opportunity to participate in developing, refining, or reaffirming an organization's overarching principles are more apt to be unaware of them or may view them as outdated or irrelevant. In contrast, their involvement can enable them to gain understanding, develop commitment, and be motivated.

Challenging an organization's expression of mission, vision, and core values provides an opportunity to build a more informed and dedicated group of internal actors. It also may be beneficial to engage external stakeholders. Internet postings and other mechanisms are effective ways to demonstrate openness, inform the public, and learn of public interests and concerns.

That the Judiciary's 1995 plan continues to be cited indicates that it would be an appropriate starting point for the concepts to be challenged, but it also could minimize the effort required to develop concepts from scratch. In any case, the planning process may be substantially more important than the resulting product. The ideas and decisions developed in a plan are much more motivating to the individuals who developed them than they are to those who simply read them.

Setting Organization Priorities

Setting priorities is essential to developing a proposed annual or multi-year budget. However, an organization's culture or practices may determine whether it sets priorities as part of the planning process or budget process. Too often, federal budget constraints become the basis for setting priorities; spending decisions drive the planning process, not vice versa. No matter what the sequence or dominance, the two are inextricably related. Recent discussions in the semiannual long-range planning meetings emphasize the extent to which judges see planning as a subset of budgeting within their subject-matter areas. This is understandable given extensive efforts to examine priorities as the committees have tried to reduce costs since 2004. However, it underscores the need to discuss priorities prior to making budget decisions. The latter—in all organizations—tends to reinforce maintaining broad spending decisions. A “step back” approach would focus first on the most important elements of the mission.

Operational planning in the Judiciary, especially allocating available resources to the most important operational priorities, occurs almost daily. Judges, senior staff nationwide, and AO managers look ahead to manage cases, develop new systems, and operate such functions as human resources and IT. Priority setting also is evident in the Judiciary's annual financial plans, the primary vehicle to allocate resources. The Executive Committee oversees development of the annual financial plan, which changes if there is a need to reallocate priorities. However, it is almost impossible for someone outside the Judiciary to see how these activities are integrated.

Planning is associated with Budget Committee decisions, but each subject-matter committee already has made individual decisions about their priorities by the time requests come to the Budget Committee. Since the overall budget size is fixed, decisions by one committee have an impact on discretionary resources available to another. The classic example is the building program overseen by the Space and Facilities Committee; its decisions have a long lead time. When new courthouses come on line, the rent must be funded. If the budget is not bigger, resources generally must come from court support staff S&E; this was especially the case in 2004. The alternative is to discuss these relationships in advance and make conscious decisions about where to invest. The program-based budgeting initiative was an effort to introduce a process, and the Budget Committee chair has made related presentations to other chairs at long-range planning meetings. The discussions associated with the cost-containment initiative have tried to better align space and program needs so that program decisions with an impact on space costs are highlighted and considered in terms of rent and direct program costs.

Other Planning-Related Activities

The semiannual long-range planning meetings are an ongoing activity that may effectively bridge the periodic reassessment of the expression of the organizations' overarching principles and critical, even strategic, issues that naturally emerge. Based on the analysis of four years of summaries, the meetings addressed numerous planning criteria. The number and diversity of individuals involved provide an opportunity for communication and productive working relationships. On the other hand, approximately 18 judges participate in the discussions and the timeframe is only 2.5 hours. These factors limit participation, issues clarification and resolution, and alternatives exploration. Similarly, the highly structured nature of the meetings may establish formal or highly scripted formats. Ultimately, the meetings are not meant to reach decisions, and are not—nor meant to be—a substitute for an enterprise-wide planning process that would shape the organization's priorities.

Concluding Panel Observations

The Panel has several broad observations about the Judiciary's planning efforts:

- A long-range plan developed 12 years ago is likely to be outdated at best and irrelevant at worst.
- Judicial officers, court support staff, and the AO engage in many planning activities within particular subject-matter categories. Yet they have approached them—particularly planning in support of budgeting—without the benefit of an overarching construct.
- Existing management processes independently address many planning expectations, though there is no integrating mechanism to achieve possible synergies.
- Other than space and facilities and IT, planning activities tend to focus on operational topics and short-term perspectives.

- Setting overall organizational policies in committees requires exceptional attention to cross-committee communication and coordination (similar to that required to support and sustain a matrix organization). However, no mechanism exists to accomplish this.
- The semiannual long-range planning meeting of the Executive Committee’s planning coordinator and Judicial Conference subject-area committee chairs provides a potential mechanism to address longer-term issues. Yet the expectations and conduct of these sessions must be altered substantially to do so.

As the Judiciary’s principal policy maker, the Judicial Conference should lead and have the final say in any initiative to reexamine the concepts expressed in the 1995 plan. However, a process to involve employees at all levels would require applying communication and process skills. Process development and execution will extend over a period of time and certainly be guided by appropriate judicial oversight. On the other hand, doing the work may be an effective use of judicial time. Some aspects of a judge-directed but staff-executed process may be antithetical to the Judiciary’s culture. Consensus is traditional among the judges, but the Judicial Conference may need to recognize that there will not be one best decision on which all agree on, but an effective decision that can move the organization forward in this crucial arena.

Ultimately, the Judiciary will not revise its existing practices unless judges see a benefit to doing so. The Panel believes that setting enterprise-wide priorities before discussing the resources will make the rationale behind budget choices clearer to all judges, staff, and other stakeholders. Stating priorities by program also may permit the Judiciary to make a stronger case for its resource needs internally and to appropriators.

Should it be necessary to contain costs further, decisions on how to do so will not be as time-consuming as those associated with the 2005 cost-containment effort. This valuable process saved the Judiciary money and has the potential to do so in the future. However, having an effective priority-setting process that is separate from the budget process, yet guides it, will make future decisions even clearer. Fewer time-consuming processes allow judges to spend more time in their adjudication roles.

Steps for a priority-setting process to precede and complement the budget process could be:

1. Reinvigorate a planning capacity, among Judiciary staff, with senior leadership and access to the Judicial Conference through the AO director.
2. Determine—through an inclusive mechanism such as interviews, surveys, and focus groups—what judges and staff would like to see in a periodic enterprise planning process, addressing overarching concepts and an annual planning process that contributes to budget development through priority-setting.
3. Review a staff-prepared set of alternatives for various planning processes and decide which ones the Judiciary will adopt. It may be necessary for the Conference to decide that the Executive Committee can reach such a decision between Judicial Conference meetings so that a decision is not delayed for six months.

4. Demonstrate continued support for the planning processes by actively participating as indicated by the process design.
5. Review the results of the various planning processes and, as appropriate, make them available to the public through the Internet and other mechanisms.
6. Recognize and commend entities that conduct planning within the Judiciary.
7. Develop an overarching budget presentation that explains how the activities within individual budget accounts relate to the Judiciary's plan and priorities.
8. Present, in succeeding budget presentations, a report that describes the degree to which the Judiciary is achieving its priorities.
9. Assess how the revised planning processes worked and can be improved by seeking input from participants at the conclusion of each planning cycle. The process need not be exhaustive but must be valid—that is, feedback on each planning process should be collected and analyzed by individuals not engaged in the process design or implementation.

The FJC's research activities traditionally have provided a mechanism for judges and staff to explore alternatives and new ideas before applying them on a widespread basis. The Judiciary is fortunate to have this resource. It may want to explore ways that FJC staff or consultants can provide advice and analysis to the Judiciary's planning processes, in terms of process design and substantive input to issue identification and resolution. Certainly, FJC training capabilities will help institutionalize whatever process the Judiciary develops.

The Panel's recommendations are not as specific as the steps above. This is deliberate. The Judiciary should develop a process that suits its needs.

Ultimately, the Panel recommends that the Judiciary:

- **Reexamine the organization's 1995 expression of its mission, vision, and core values in order to revise or reaffirm them, and do so in a way that provides an opportunity to create a more informed and dedicated group of judges and employees.**
- **Establish an enterprise-wide priority-setting process that supports the organization's mission, vision, and core values and encompasses more than budget issues to help shape budget development.**
- **Ensure that adequate organizational capacity exists to establish the organization's planning needs and design and facilitate the planning process.**

The Panel believes that any planning capacity would be more viable with a Judicial Conference Planning Committee. This would make clear and legitimize the relationship of a staff-supported planning capacity to the Judicial Conference. If planning-related activities remain spread throughout the organizational structure—likely given the culture of distributed power and committee-based operation—the Panel envisions a planning capacity with a coordinating and information sharing role, with oversight by Judicial Conference designees.

It will take several iterations of a process before the Judiciary is comfortable with how it moves from long-range planning to annual priority-setting to informing the budget process with priorities set during the planning process. The Panel believes that the level of interaction among the Judiciary’s leaders through the Judicial Conference and its committees will enable them to continue to refine the process.

CHAPTER FOUR

ADVISING CONGRESS AND THE PUBLIC ON ACCOMPLISHMENTS

Providing information on an organization's accomplishments is the other component that relates to effective budget presentation and management. The Judiciary publishes statistical reports that show outputs in many forms, such as cases filed or terminated by type of court, people under supervision, or offenders receiving substance abuse treatment. The annual report of the AO director provides an overview of many activities and describes the results of improvement projects, including electronic case management, enhanced interpreter services, and juror utilization. Because there are no periodically updated long-term plan and annual operating plans, however, there is no integrated report or series of reports on the extent to which goals and objectives are achieved.

To set the stage for considering what the Judiciary might do to more systematically present its achievements, this chapter examines the Judiciary's past consideration of using more formal performance measurement and current approaches to reporting achievements. It then discusses a concerted effort to measure performance in Probation and Pretrial Services and use indicators in bankruptcy courts. The chapter also presents information from a OMPA-prepared District Court Planning Profile and suggests ways the material could contribute to establishing performance measures for district courts. The chapter concludes by describing interviews conducted with judges and staff and making recommendations on relating planning to performance.

PAST CONSIDERATION TO ESTABLISH PERFORMANCE MEASUREMENT

Executive branch agency budgets link to their planning processes through a congressionally mandated five-year strategic plan, annual performance plans, and annual performance reports that present the results of work outlined in the performance plans.⁶⁴ Congress has become familiar with this system, and appropriations staff may refer to an agency's annual performance report as they review budget submissions.

In FY 2000, the Judiciary responded to a congressional inquiry about whether it could relate its budget to performance. It established working groups to examine each judicial program area and tried to develop performance measures. At the time, the Judiciary noted that it did not fall under the Government Performance and Results Act, but that it was interested in incorporating the act's tenets into operations because it made good business sense. The five-page response to 10 questions posed by a congressional committee noted that the quarterly AO management planning process required that "managers develop measures that can indicate how successful the program has been in meeting its goals and objectives." The situation was described differently in the courts:

⁶⁴ With passage of the Government Performance and Results Act (GPRA) of 1993, executive branch agency budgets were required to link to their planning processes through a mandated five-year strategic plan, annual performance plans, and annual performance reports that present the results of work outlined in the performance plans.

The structure of the federal courts is decentralized. Unlike business organizations that can enforce policies from the top down, the federal court's work is carried out by judges whose independence is guaranteed by the U.S. Constitution. In an effort to hold local court managers accountable and employ more efficient business practices, a decentralized budgeting program was adopted for the courts in 1991. Under this program, most budget execution functions are decentralized to the local court level rather than conducted centrally at the Administrative Office. This system gives local court managers an incentive to identify and employ more efficient business practices, a greater ability to prioritize scarce resources, and the flexibility to distribute resources according to unique local needs. The system holds managers accountable for their performance since they must accomplish their mission within defined budgetary limits.⁶⁵

The response further noted that the Judiciary uses the *Federal Court Management Statistics* report and the *Annual Report of the Director* to "assess program performance and focus on the link between resource investment and program results."

Staff report that the effort to institute performance measures met with limited success overall. Many interviewees noted that this is due partially to the organization's culture; local rules affect how individual courts operate. The more administrative and automated a process, the easier it may be to compare an activity across courts. Yet many of these data already are captured in statistical reports. The Judiciary did not continue active pursuit of performance management, and Congress has not encouraged the Judiciary to publish GPRA-like data. Instead, the Judiciary's focus has been to improve operations by sharing better practices among the court units; better use automation to become more productive; and maximize the benefits of decentralized budgeting and management. In these ways, several interviewees noted that the Judiciary has incorporated the tenets of performance management by broadly pursuing practices to improve operational efficiency, though not necessarily measure performance.

Technology enhancements are the most often cited accomplishment. For example, the CM/ECF system gives federal courts the ability to maintain electronic case files and offers electronic filing of court documents over the Internet. CM/ECF is used in all 90 bankruptcy courts, all but two of the 92 district courts (the last are scheduled for June or July), and as of April 1, in one Court of Appeals and one Bankruptcy Appellate Panel. Millions of cases and tens of million of documents are on CM/ECF systems, and thousands of attorneys file documents electronically. Other technology advances include the electronic public access program, centralized bankruptcy noticing center, telephone interpreting program, and videoconferencing.

⁶⁵ Taken from a five-page written response that the Judiciary prepared after a congressional committee submitted 10 questions about performance measurement, in 2000. The document, provided by an AO staff member, is undated.

REPORTING ON ACHIEVEMENTS

The Judiciary produces many annual reports, such as those of the AO director, individual circuits, and some districts. They present detailed information on case statistics, legislative actions that affect the Judiciary, and management initiatives.⁶⁶ For the most part, the statistics do not indicate how effectively the Judiciary generally or individual courts specifically perform their mission of providing timely equal justice under law; how well management systems operate; and whether they attain their goals. They do, however, clearly show outputs and change in volume of work over time.

The FJC, the Judiciary's education and research arm, has issued numerous reports that address the impact of court activities. As a result of this research and at the request of courts or the AO, FJC conducts training programs for judges and their staffs. For example, a recent publication serves as a reference guide on mediation and settlement conference programs in the 13 federal courts of appeals.⁶⁷ Such publications do not address results *per se*, but they offer bases of comparison.

Research on Results in Probation and Pretrial Services

In 2004, IBM and the Urban Institute issued a report with 13 recommendations on federal probation and pretrial services related to outcome-based management.⁶⁸ At approximately the same time, chief probation officers began to discuss outcome measures as a way to demonstrate to the Congress and public that their work is meaningful and makes a difference. Some AO and court officials suggested to the study team that probation/pretrial is the function most amenable to performance measurement because success and failure are more easily defined through recidivism rates. Yet AO staff emphasized that the performance measures are not similar to GPRA and there would not be a score associated with the information collected.

The AO Office of Probation and Pretrial Services, with the help of Caliber and Associates, began to assemble broad program goals, identify the indicators, and set up measurement systems to collect data. Central to this effort is the Probation and Pretrial Services Automated Case Tracking System (PACTS), which collects case-based data from all 94 districts and produces statistical reports. After the trial phase, it is envisioned that Probation and Pretrial Services will be able to report the most effective method—i.e. a specific treatment regimen—for a certain type of offender. This approach requires examining all types of interventions taken and measuring intermediate and longer-term outcomes.

The Judicial Conference's Criminal Law Committee also distinguishes "critical work" and "non-critical work" to make decisions about allocating funds. The distinction is not unlike the broad goals that Probation and Pretrial Services sets for the outcome measures process. However, non-

⁶⁶ The three reports with the most extensive data (generally output data) are *Federal Court Management Statistics*, *Judicial Business of the United States Courts*, and *Annual Report of the Director*. The latter is the AO director's report.

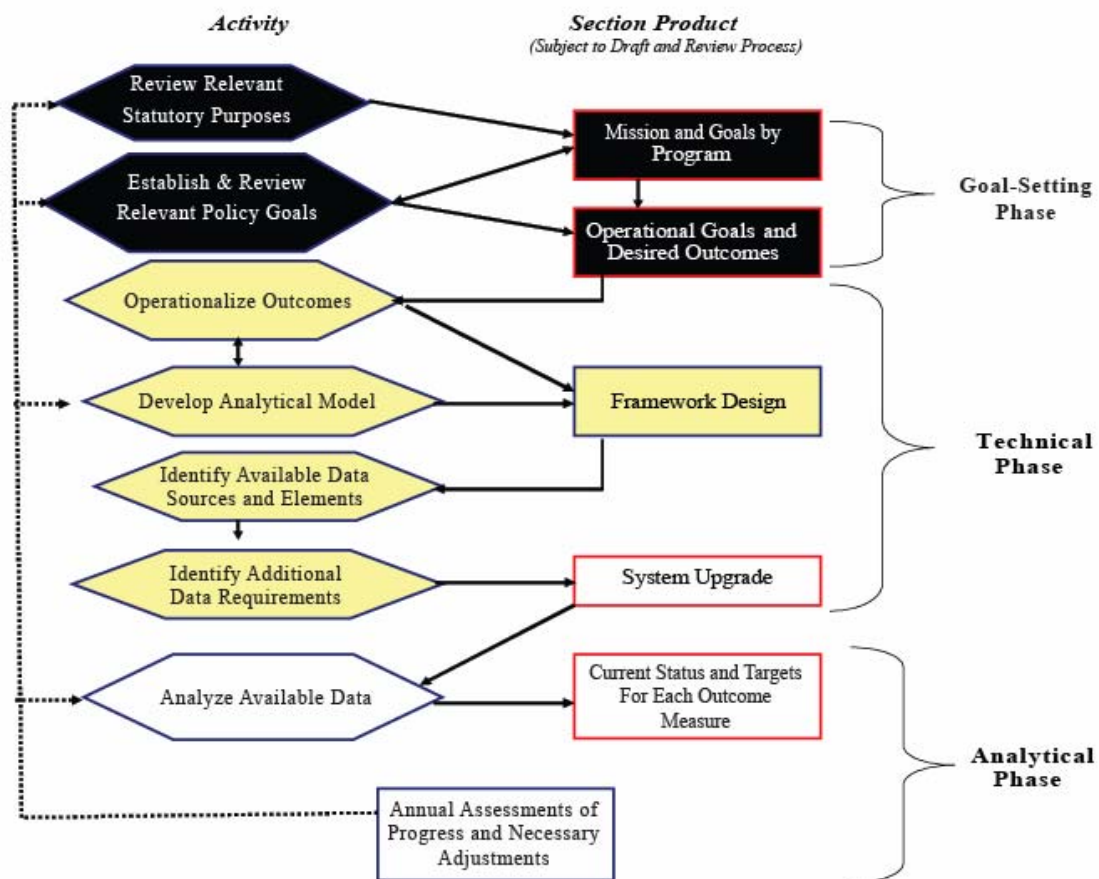
⁶⁷ Robert Niemic, *Mediation & Conference Programs in the Federal Courts of Appeals: A Sourcebook for Judges and Lawyers*, Second edition, Federal Judicial Center, 2006, Washington, DC.

⁶⁸ IBM and the Urban Institute, *Strategic Assessment: Federal Probation and Pretrial Services System*, September 2004.

critical work does not get eliminated from staff workload because chief judges generally require it. The non-critical work receives reduced funding.

Judicial outcome measurement processes will take time to implement. The first cohort of offenders received for supervision and included in the outcome measurement system will arrive in 2007; the first report will be completed in 2010. Office of Probation and Pretrial Services staff are scrubbing previously collected data based on important data. They also are educating staff on the importance of data quality and beginning to incorporate improvements in the data collection process. At this time, they have no timeline for connecting performance measures to the budget process because of the length of time expected to implement the new system. Figure 4-1 displays the process to establish outcome indicators and explains where Probation and Pretrial Services was in the process earlier in 2006.

Figure 4-1
Status of Process for Establishing Outcome Indicators
for Supervision Functions
 (Black=completed; Yellow=In Progress, White=Future Task)



As with any new data system, Probation and Pretrial managers have had to discuss with staff how these data will be used. Some staff are concerned that the information will be used against them. However, most have been on board with the initiatives since the release of the 2004

IBM/Urban Institute report, which recommended a results-based management system. Chief probation officers support the need to demonstrate impact and measure success.

Developing Better Practices to Improve Performance

The Judiciary launched its Methods Analysis Program (MAP) in 1994 under the guidance of the Judicial Resources Committee and the Budget Committee's Economy Subcommittee. The program's goal is to suggest tested practices that courts can implement to accomplish work with fewer resources. District courts conduct MAP, a continuous effort that has spanned the past three years; another phase will start shortly. The work is divided into defined areas, such as arrest warrant process and scanning documents, by subject matter experts.

These functional experts and analysts develop descriptions of work for each area. They map the process through a workflow diagram that includes time estimates. A group of approximately 18 employees discuss the estimates and methods, and which proposed option is likely to be most efficient and effective. One practice, or sometimes two, emerges as a "better practice" for district courts. In the case of the latter, the two better practices are referred to as A and B.

Selected members of the District Court Advisory Group test the MAP process in their courts. Once the group agrees that it works well, AO staff vet and approve it. They compare the new practice with Judicial Conference policy and ensure the procedure adheres to applicable law. Upon approval, the practice is posted as a better practice on the Judiciary's Intranet so other courts can consider using it. The AO cannot require court staff to use a practice, but it bases funding allocations on the assumption that courts use it. If a court chooses a less efficient practice, it gets only the funds to support the better method.

AO staff note that the MAP estimates are not the "same time" estimates that go into workload measurements used in formula development. After a MAP practice is adopted, it is integrated into the system. The new process then is used in the work measures and formulas. The 21 courts sampled during formula revision undergo a redesign process similar to MAP to ensure that the most efficient and effective practices are measured.

The Judiciary does not maintain a checklist of which courts adopt a better practice and which do not; it believes that the resource allocation process permits individual units to make their own determination. Not all districts can adopt a practice immediately given local rules. These rules can be changed, but it takes time. As one judge noted, another way of performing a task may be valid, so a district or individual court may believe its methods are even more efficient than MAP's.

Changes to Bankruptcy Operations through Improving Performance

Underway since 2004, the Bankruptcy MAP Program is an ongoing effort. Since its establishment, a working group has made 200 recommendations to improve the efficiency and effectiveness of clerk office operations. In addition, it has compiled a set of resources—manuals, operational guides, and forms—to enable courts to adopt new practices without the need to reinvent the wheel. Staff explained that courts are relatively independent organizations

and that, under the Judiciary's governance system, they cannot be mandated to implement a particular practice absent certain legal or financial processes. Yet given substantial change in bankruptcy law and staff reductions, most bankruptcy courts have looked to automation and ways to save postage and printing costs through electronic notice.

Bankruptcy courts use a MAP process similar to that of district courts, but they do it through the Bankruptcy Advisory Group, selected clerks who discuss areas in which better practices could be implemented. However, the group does not solicit volunteers to test the practices in their court prior to posting the description of the new processes on the Intranet.

The Bankruptcy Court of the Maryland District gave several examples of process reengineering that led to improved performance.

- **Integrating Form Orders with Case Management/ Electronic Case Files (CM/ECF).** Like many others, the Maryland court uses standard orders to ensure consistency of language and instruction. The judges can determine the order's appropriateness by noting the form number rather than drafting a separate order. To save more time, the court converted the form orders to HTML and integrated them into the appropriate event in CM/ECF so that the correct form was produced for the motion or application docketed. The resulting form order includes the proper style of the case with the case heading information automatically propagated in the CM/ECF form. Staff said this initiative saved a lot of time for case administrators and eliminated erroneous form orders.
- **Improved Quality Control (QC) Process.** Six data quality analysts reviewed case administrators' work, specifically a hard copy of select pleadings docketed on two days each month. The QC review typically was done two weeks to one month following the docketing. Because the team maintained the case administration manual instruction and guidance, implementing new procedures could be delayed weeks due to conflicting deadlines. By decentralizing QC and implementing an automated tool for reporting docketing events, the court expanded the volume of work reviewed from 5 percent to nearly 50 percent of the total docketing performed. This led to improved work quality, less work redone, and a higher level of confidence in the integrity of records.
- **Reporting Case Activity.** Attorneys frequently contacted the clerk's office for information about activity in their cases due to problems with their local email accounts, such as a full in-box. This required the case administrator to review numerous reports to gather information to satisfy a query. Systems staff developed a report for outside users that gather all activity in assigned cases over a certain period of time. This report format can be generated by the outside user and reviewed via PACER.⁶⁹ This saves time because the entire docket need not be reviewed, freeing the case administrator to perform other tasks.

Bankruptcy Advisory Group members reported that some clerk's offices developed performance indicators for case processing. However, organizational performance goals are in transition

⁶⁹ Public Access to Court Electronic Records (PACER) is the Judiciary's on-line database through which the public to track federal cases, allowing retrieval of information whenever it is needed.

given changes in work processes stemming from the Bankruptcy Abuse Prevention and Consumer Protection Act and changes in staffing levels due to resulting low filings. One court noted that it had established a goal to reduce the median time to disposition for Chapter 7 cases. The changes to case administration under the revised law effectively increased the average time that a Chapter 7 case will remain open; the goal for that indicator is in transition.

Performance indicators also can relate to individual staff member performance in Bankruptcy. In Maryland, individual case administrators have much of their work reviewed on a daily basis against a preset standard for quality and timeliness. The accuracy rate is used to support the employee performance rating which, if at the top level, may then qualify the employee for a monetary award.

District Court Planning Profile Could Help Establish Performance Measures and Indicators

In their September 2006 long-range planning meeting report, committee chairs stressed the importance of “identifying and addressing crosscutting issues,” as well as “how well current committee jurisdictions enable [the Judiciary] to address crosscutting issues.”⁷⁰ At previous meetings, the chairs discussed ways to coordinate planning among committees to address the needs, issues, trends, and developments in appellate courts, district courts, probation and pretrial services system, bankruptcy courts, and defenders services program. As a follow on to the discussion, OMPA staff introduced a draft *District Court Planning Profile* the AO developed as an example of the types of information and analysis that relate to policies and issues affecting district courts. The profile was presented as something committees could use to:

- Identify committee strategic issues and goals.
- Identify, monitor, and address district court trends and issues.
- Foster collaboration on issues that cut across committee lines.
- Inform the development of budget requests related to the district courts.
- Consider the impact of policy decisions on district court operations.
- Consider the inter-related nature of policy issues facing committees.⁷¹

The last page of the draft document, titled “Insider Future Profiles,” provided areas in which performance measures could be experimented with or developed. The prototype suggested that future *District Court Planning Profiles* could cover such topics as:

⁷⁰ *Summary Report September 2006 Long-Range Planning Meeting*, Administrative Office of the United States Courts Office of Management, Planning, and Assessment (September 18, 2006), p.1.

⁷¹ *Summary Report September 2006 Long-Range Planning Meeting*, Administrative Office of the United States Courts Office of Management, Planning, and Assessment (September 18, 2006), p.C-1.

- median time to disposition for civil and criminal cases terminated
- juror utilization trends and statistics
- trends in the number of proceedings reported as using real-time court reporting
- trends in the number of electronic court recorder operator positions
- number of certified and otherwise qualified interpreters available by district
- distribution of staff court reporters
- illustration of district courts that provide telephone interpretation services to other courts
- trends in district court rent costs
- trends in spending on tenant alterations and cyclical facilities
- information on the number of facilities that meet security standards
- information on the types of courtroom technology available

Some of these may not be classic performance indicators, but there could be some that the Judiciary initially could consider to measure results. Data already are collected in several areas. For example:

Goal: Use juror time effectively so that it is clear the Judiciary values the time of citizens and expends its resources more effectively.

Goal achievement: A decreased proportion of prospective jurors who reported for jury service but were not selected, serving, or challenged; a corresponding decrease in expenditures for juror time.

Potential Indicators:

- time potential jurors wait for interviews
- cost to reimburse jurors for their time
- surveys of potential jurors

The Judiciary annually reports on juror utilization in the *Annual Report of the Director*.

Perspectives of Some Judges

The study team met with several judges who visited Washington, DC for the July 2006 Budget Committee meetings. In addition to discussing their views on the budget process, they opined on performance metrics and areas that need better measurement.

Judges indicated that some judge-driven and administrative staff-driven data are useful to them as they manage their docket. After the Civil Justice Reform Act, for example, the Judiciary began to release semi-annual reports that provide a snapshot of civil cases. The reports list information on cases pending (more than three years), motions pending (more than six months), bench trials submitted (more than six months), bankruptcy appeals (more than six months) and social security appeals (more than six months). The reports do not show total caseloads, only what is happening with chambers staff. They do not depict administrative processes in the clerk's office. However, bankruptcy court reports may contain more information about what happens with clerk's office staff.

Given decentralization, many courts have and track their own goals and measures, but the Judiciary does not do this on a national level. The Panel agrees that local court standards can be measured but do not need to be subject to national standards. The judges believed that most of their colleagues would think it inappropriate to set national standards for their work because of the considerable differences in their cases, methods for managing their dockets, and independence in delivering timely and equal justice. The Panel concurs.

Perspectives of Some Staff

AO staff in program offices dealing with court units said the Judiciary had tried to develop measures for clerk's office staff⁷², but found it difficult because many items measured (such as time to disposition) are not staff driven. Nor are they totally judge driven, as litigants may seek to delay a trial or settle following lengthy trial preparation. Courts with the shortest average time to disposition would not assume it was due to the efficiency of the clerk's office; it could have more to do with the number of judges available in that circuit/district or other factors. Court staff interviewed through their respective advisory groups said metrics are collected and available for all court units.

The District Court Advisory Group cautioned that any look at performance indicators must recognize that much of what a clerk's office does is tied to judge's actions which, in turn, relate to actions of others—such as motions filed by attorneys or a defendant's or prosecutor's efforts to delay or expedite a trial. If there is a backlog, judges intervene to move cases along or a court may request a visiting judge to assist. One group member noted consequences to even minor delays in clerk's office tasks. If the office is short staffed and cannot process records quickly, it needs more storage space which affects the rent bill. If it cannot promptly follow up on juror summons, there may be perceptions of unfairness related to demographic composition of the jury pool. Group members raised these issues not to suggest that performance measures would be impossible to develop, but to show the interrelated nature of the tasks and actors in the system. Developing measures and indicators is challenging. However, it would offer an opportunity to look at the impact of decreased staffing levels. For example, rising error rates for some steps in processing could indicate the need for more staff training or demonstrate that staff are trying to work too quickly to prevent or reduce a backlog.

⁷² Discussions of staff in courts in this section deal with those in the units rather than in judges' chambers.

Factors that are more administrative and staff driven do not have dramatic effects on measures, such as processing jurors or meeting requirements for interpreters. Staff and several judges noted varied levels of judge involvement, especially in some bankruptcy cases, and very different judicial processes in district and appeals courts. Some may be a direct result of local court rules. Staff also noted a trend toward summary judgments and fewer cases going to trial, due to such factors as new sentencing guidelines and funding available for the discovery process. Since judges are needed for trials, not summary cases, this would be one area on which to focus when examining measures that are clerk office driven as opposed to judge driven.

The major reluctance in moving to measuring performance is the belief that adjudication cannot be measured, staff reported. They said quality of decisions is the hardest thing to conceptualize and measure; there is no set formula to administer justice or determine the time to spend on sentencing. All advisory groups warned that the wrong conclusions could be inferred from certain measures, and they were unanimous that reversal rates should not be a performance indicator though the information may be easy to collect. Many of the National Center for State Courts' recommendations in *CourTools*⁷³ (discussed in Appendix G) are judge based. The study team reiterated to the interviewees that the Panel's suggestions would be geared toward performance measures in areas other than judge work.

Staff of court administration divisions noted that discussions held in 2000, when the Judiciary considered using a GPRA-like approach, led them to think there were few options to do this in the courts themselves.

Conclusions and Recommendations: Relating Planning to Accomplishments

The Judiciary publishes many informative statistics. For the most part, however, these statistics do not directly indicate how effectively the Judiciary or individual courts perform their mission of providing timely justice under law. They largely are workload and output measures, which congressional appropriations staff value. A promising step toward outcome reporting has been taken by the AO's Office of Probation and Pretrial Services through its multi-year effort to develop an outcome-measurement system to help determine how to make the most effective use of resources.

The *District Court Planning Profile* highlighted areas for developing performance goals on which to base results reports; data are collected in many of these areas. The Panel is aware that reaching consensus on indicators is time consuming and that tracking indicators would be a major undertaking if the data are not already collected. Given the decentralized nature of court operations, numerous district courts already may use some of the data. Testing a common approach across a sample of districts may show that the benefits of doing so—better informing judicial peers, Congress, and the public—outweigh the costs. The measures also could show whether some district courts achieve similar results with similar levels of resources, better

⁷³ *CourTools* is a set of ten trial court performance measures for use by court managers to evaluate court operations. In designing the *CourTools*, the National Center for State Courts integrated the major performance areas defined by the Conference of Chief Justices' and Conference of State Court Administrators' *Trial Court Performance Standards* with relevant concepts from successful performance measurement systems used in the public and private sectors.

demonstrating the results of courts' work. The discussion surrounding which measures and indicators to use could be an important way to integrate performance management into certain clerk's office functions.

The MAP process provides well-researched information to develop what the Judiciary terms "better practices," in deference to an organizational culture in which no one entity can determine what is best for each other. Over time, clerk's office operations reflect the fact that numerous courts have adopted the more efficient practices outlined in the MAP program; this results in fewer resources being allocated to perform some tasks than previously provided. Although the Judiciary does not require that individual courts adopt work methods deemed more efficient, its adjustments to work measurement formulas to provide staffing levels based on better practices is a strong incentive to rethink operations.

The Judiciary has other efforts underway to improve performance. It does technical and operational planning and examines outputs in many areas, and its judges and staff advisory groups continually assess operations to develop better ways of doing judicial and administrative business. However, it is difficult for outsiders to determine how the Judiciary decides which approaches are better without clearly established performance targets and priorities.

Congressional committees are familiar with the performance management process of a strategic plan, annual performance plan, and annual performance report. They can see results, comment on results achieved, and discuss the indicators used to measure them. The documents are visible to the public in print and electronically. The Panel recognizes that congressional appropriators are not necessarily enamored with all aspects of what is termed "performance budgeting." Most appropriations staff want to see budget justifications organized by spending account and information on workload and outputs; they do not want lengthy reports on program accomplishments that do not directly relate to programs or accounts. Thus, the Panel does not advocate that the Judiciary restructure its budget presentation and align it with a performance plan. Rather, it recommends what one member has termed a "performance-informed budget."⁷⁴

The Judiciary needs a systematic effort to identify, develop, and report useful information about judicial outcomes based on the resources received so that it can better substantiate its annual budget request. This will take substantial effort, but the Judiciary will not need to start from scratch. The work measurement and MAP systems offer a wealth of information on how work is done, and extensive output data exist. In addition, FJC research can contribute to developing data to measure results.

The Panel understands the reluctance to develop a full performance measurement system for the Judiciary. Effective justice has many aspects, some of which are highly nuanced. Assessing judicial outcomes tempts political and other non-judicial interference in the essential and prized

⁷⁴ GAO notes that, as a member of an advisory panel to GAO, Academy Fellow Dr. Philip Joyce coined the term 'performance-informed budgeting' to better characterize the role of performance information in the budget process. While performance budgeting may imply some automatic relationship between performance and funding, performance-informed budgeting simply implies that information on the performance of programs or agencies serves as an input to resource allocation and budget management. Note in *Performance Budgeting: States' Experience Can Inform Federal Efforts*, GAO-05-215, February 2005, p. 20.

independence of the Judiciary. However, the Judicial Conference may decide that there are reasonable proxy measures for certain aspects of quality. Or, it may determine that initial performance measures should address primarily administrative areas, such as court unit management systems or citizen access to information. The Panel does not believe the adjudicatory work of judges should be evaluated in this fashion. However, the Judiciary should not refrain from determining what non-judge activities can be measured in terms of the quality and timeliness of justice.

The essential point is that the Judiciary needs to make information on aspects of its performance available on a regular basis. Without a routine system for stating goals and objectives and systematically documenting the level of their achievement, the Judiciary is placed in the vulnerable position of not being able to fully justify its needs by providing the documented impact of resource losses or gains.

Therefore, the Panel recommends that the Judiciary:

- **Continue developing measures for the Probation and Pretrial Services operations.**
- **Select a second area to develop measures and systematic documentation for some court operations. One possible operation is Bankruptcy, where staff actions affect case processing to a greater extent.**
- **Tie data on workload accomplishment, as already documented in several annual publications, to the goals presented in the Judiciary's planning process.**
- **For one or more selected areas, develop indicators of results or outcomes—rather than outputs—similar to those in the District Court Planning Profile. Tie these to the goals and objectives of that area or areas in a model performance report.**

The Panel believes that reporting on results will better demonstrate the value of the resources expended and place the Judiciary in a better position to justify its budget requests. Over time, there will be a much richer base of information about the results that court units and programs produce and ways that resource decisions and program reforms affect the Judiciary and its stakeholders.

CHAPTER FIVE

REDUCING SPACE COSTS THROUGH ENHANCED COOPERATION

The Judiciary's growth in spending for space has been at the forefront of contentious budget discussions. Staff of the Senate Appropriations Subcommittee on Transportation, Treasury, HUD, Judiciary, and Related Agencies requested the Academy Panel's opinion on this issue, especially as it relates to the budget process.

This chapter examines the Judiciary's policies on space and discusses federal policies about how agencies should pay for it. The chapter then documents growth in the amount of space the Judiciary uses, the proportion of the budget expended for rent, recent proposals to the General Services Administration (GSA) to grant the Judiciary an exemption for many of its rent payments, and reactions to these proposals. It also looks at the Judiciary's relationship with GSA, including the accuracy of GSA's rent-setting mechanisms and steps to improve them. Finally, the chapter offers ideas to control rent cost through enhanced cooperation with GSA.

JUDICIARY SPACE AND RENT BUDGET

Federal entities that operate in facilities under the GSA's control and custody are required to pay rent for the space they occupy. Rent payments, which by law must approximate commercial rates, are deposited into the Federal Buildings Fund (FBF), a revolving fund that GSA uses to provide such real property services as construction, operations and maintenance, repairs, and alterations to agency-occupied space. Through FBF, GSA encourages agencies to be accountable for their space and requires them to budget and pay for their space requirements.

In the Judiciary, space consists of, among other things, courtrooms and chambers, office space, public space, and separate corridors and elevators for security needs.⁷⁵ By statute, the Judiciary must hold court in 459 locations. Its usable rent charge basis increased from 10.5 million square feet in FY 1985 to an estimated 28.4 million square feet in FY 2007, growth of 170 percent. The average cost per usable square feet increased from \$12.16 to an estimated \$35.16 during this same period. In constant 1985 dollars, the average cost increased from \$12.16 to \$19.74, or 62.3 percent. Table 5-1 shows Judiciary-occupied space for FY 2006 by courtrooms and other facilities.

Since 2002, average annual appropriations for the federal courts have increased 4.7 percent while GSA's average annual rent charges have increased 6.2 percent. During this time, the space assigned to the Judiciary increased by about 3,651,000 square feet, an increase of 15 percent. The Judiciary is expected to pay almost \$1 billion in rent to GSA in FY 2007.

The Judiciary believes that the rent increase has greatly constrained its spending and was a factor in the FY 2004 layoffs. It also recognizes that a portion of the rent increase is due to space

⁷⁵ For example, some corridors are open to the general public, some are largely for judges and staff from the Department of Justice and the Judiciary, while more secure areas are used for inmates brought to court under guard. Such separation is designed for public safety.

increases. Clearly, the Judiciary would have been better positioned to absorb a single across-the-board cut in its 2004 appropriation rather than the double across-the-board cut. Although the amount of space an entity uses is controllable, Congress exempts payments to GSA from across-the-board cuts. With rent payments being almost 22 percent of its S&E budget in FY 2004, the Judiciary absorbed most of the across-the-board reduction through staff reduction-in-force, buy-outs, and early-out retirement actions.

**Table 5-1
Judiciary Occupied Space
Courtrooms and Facilities FY 2006***

Circuit	Usable Square Feet	Rentable Square Feet	Number of Courtrooms	Number of Facilities		
				Courthouses	Other	Total
01	969,766	1,331,966	78	15	9	24
02	2,572,321	3,659,237	167	23	26	49
03	2,137,001	2,888,680	162	25	24	49
04	2,560,448	3,405,604	158	59	53	112
05	3,195,380	4,124,447	226	57	51	108
06	2,807,200	3,877,252	186	51	29	80
07	1,527,514	2,180,267	123	22	17	39
08	2,206,030	3,191,022	138	41	29	70
09	6,022,770	7,961,354	373	67	76	143
10	1,872,378	2,541,757	131	29	34	63
11	2,974,385	3,924,949	224	56	46	102
DC	569,310	859,725	39	3	5	8
Total	29,414,503	39,946,260	2005	448	399	847

* Numbers compiled from May 2006 GSA Rent Bill

BROAD JUDICIARY POLICIES ABOUT SPACE

The Judicial Conference, with input from its Space and Facilities Committee, sets the Judiciary's policies on space requirements, planning, and design. The Judicial Conference establishes space standards that apply to new buildings, annexes and leased building where new space is required to house an entire court unit. It publishes these space standards in the *U.S. Courts Design Guide*, which it has revised periodically since initial publication in 1991. By law, each circuit judicial council makes its own decisions on space needs based on requests from individual courts. The Judicial Conference approves any requests from circuit judicial councils for major spending, such as construction of new courthouse.⁷⁶

In March 1988, the Judicial Conference directed the courts to develop long-range plans for their facilities and space requirements and the Space and Facilities Committee to review and approve

⁷⁶ Prospectus-level projects are those above \$2.54 million, and the Judicial Conference approves them. These projects also require congressional authorization and funding approval. Projects for lesser amounts could either be funded through the budget assigned to a court or be part of the larger Judiciary budget process.

instructions the AO prepared for the courts' use in developing the plans. To evaluate space needs, the planning process considers statistical projections, on-site physical assessments, one-on-one interviews with court unit executives, and the *U.S. Courts Design Guide*. The Judiciary updates about 10 to 12 plans annually. The AO's Office of Facilities and Security works closely with the district and an architect visits each city that has a courthouse to document current conditions and assess needs. Executive branch stakeholders, including GSA and the U.S. Marshals Service, provide input into the process.

Shared Courtrooms

Much of the discussion on space cost is intertwined with the issue of courtroom space allocation. This chapter does not address the issue directly because FJC recently began a multi-year assessment of courtroom utilization. Because the issue is referenced in other reports and some GSA and GAO recommendations, this section provides general background.

Over time, the Judiciary has maintained a policy of “one judge, one courtroom.” For planning purposes, the Judiciary provides one courtroom for every active Article III judge and every senior judge for 10 years after taking senior status if the judge draws a caseload requiring substantial use of a courtroom.⁷⁷ Although there is no formal Judicial Conference policy for bankruptcy and magistrate judges, the Judicial Conference CACM committee has stated that the unique nature of the work done by magistrate and bankruptcy judges supports the practice of providing them with a dedicated courtroom. For new courthouse construction planning, the Judiciary projects needs based on existing requirements and anticipated new judgeships. As budgetary constraints push Congress and its staff to seek more cost savings, the Judiciary has requested more research on the possibility of judges—specifically senior judges—sharing courtrooms to save money and thus reduce the amount of new space needed.

Several government entities and private organizations have produced reports that describe and attempt to address this issue. The U.S. Government Accountability Office (GAO), Congressional Budget Office (CBO), RAND Institute for Civil Justice (RAND), the Judiciary, and Ernst and Young (E&Y) have examined courtroom sharing over the past 10 years. The Judicial Conference contracted for the E&Y and RAND studies. Congress requested the other reports as a way to learn more about the issue or to get an outside perspective on the E&Y study.⁷⁸

Most of these reports draw a common conclusion: The data on courtroom use collected thus far are insufficient to draw conclusions about the usage of capacity. They state that the Judiciary needs more research and extensive data before determining whether courtroom sharing would be useful or detrimental.

⁷⁷ Senior judges are retired judges who maintain a caseload. Their retirement opens a judicial vacancy for Congress to fill, meaning a court could have a new active judge while retaining some level of service from the retired judge. This is generally seen as a strong benefit in a time of growing caseloads.

⁷⁸ *Independent Assessment of the Judiciary's Space and Facilities Program*, Ernst & Young, May 2000.

For its 1997 report, GAO analyzed data that the AO collected through its JS-10 form for a 14-month period in 11 courthouses out of a possible 300.⁷⁹ Each judge in those courthouses used the JS-10 form to document the number and length of trials and the amount of time he or she spent on a case. GAO combined the information from the JS-10 forms with an analysis of each court's daily calendars and the clerks' minutes to draw conclusions on the time those courtrooms were used for trial. GAO determined that those courtrooms studied were used for trial or non-trial purposes about 54 percent of the time, and that they were used for trials less than one-third of those days. AO officials noted that the study did not include scheduled and latent courtroom use, where often a courtroom is scheduled for use long in advance of trial but is not used because of an eve-of-trial settlement or last-minute guilty plea. The courtroom cannot be rescheduled for another trial at the last minute because of due process noticing requirements. -

In 2000, E&Y based its findings on the same information that GAO had collected. It concluded that the Judiciary should only consider courtroom sharing in courthouses with more than 10 courtrooms, and supported the Judicial Conference's policy of one judge, one courtroom. Recently, the AO reviewed the potential implementation of this policy. It found that of 35 future courthouses to be built, six had plans to include 10 or more courtrooms. At the same time, it estimated the resulting savings at \$1.6 million for each courthouse. It also pointed out that a reduction in the number of planned courtrooms could result in earlier space shortages, requiring additional and more expensive construction. The Academy study did not examine the extent to which estimates of new courtroom needs correspond to their immediate use.

Congress asked GAO to review the E&Y study. In its December 2000 report, GAO concluded that the study design did not provide the kind of data needed to adequately study courtroom use and sharing.⁸⁰ AO officials noted that the analysis GAO suggested would be theoretical, not empirical, and would require statistical models and numerous assumptions to simulate courtroom sharing. The AO also believed that such an analysis would place mathematics above expert judgment.

GAO recommended that the AO develop a better research plan to fully assess courtroom use and sharing. More recently, Congress repeated its request for a study on the financial savings that could be accomplished through sharing. The AO provided a report that essentially restated the E&Y findings and provided perspectives on the disadvantages of having active judges share courtroom space.

The then chair of the House Subcommittee on Economic Development, Public Buildings and Emergency Management requested that the Judiciary study the use of courtrooms and "document how often courtrooms are actually in use (meaning that there are people in the courtroom for official functions)." The CACM, which was assigned responsibility for the study, asked FJC to conduct it. Since this study is not complete, the AO continues to use the E&Y findings.

The FJC study will collect three types of data about courtroom use. The first are data on the actual use of courtrooms, which is the time spent in each courtroom in the study districts. The second are data on the time spent in case proceedings and ceremonies that could be held in

⁷⁹ Better Courtroom Use Data Could Enhance Facility Planning and Decision Making, GAO, May 1997.

⁸⁰ Sufficient Data and Analysis Would Help Resolve Courtroom-Sharing Issue, GAO, December 2000.

courtrooms but for various reasons are held elsewhere. The third type of data, sometimes referred to as “latent use” data, focus on scheduling of events in the study courtrooms. These data address a point judges often make—i.e., that a courtroom may be dark but that does not mean it was not used, since scheduled events often drop off the calendar (due to settlements or pleas, for example) with too little notice to schedule other events.

FJC will submit a report to CACM in October 2007. Decisions the Judiciary makes on this issue will affect courthouse design and will involve GSA in any efforts to change designs to adjust to new policies.

GSA’S FEDERAL BUILDINGS FUND

GSA, which Congress created in 1949 through the Federal Property and Administrative Services Act, is the central agency that manages much of the federal government’s real property. It oversees most general-use space—such as traditional office and warehouse space—for the federal government and some special-type buildings like land ports of entry and laboratories. Some agencies with specialized space needs—the Department of Defense, NASA, and Bureau of Prisons among them—have their own real property authority; this means they manage their own space and deal directly with Congress on these issues. When GSA was established, the Judiciary was one of many tenants in federal buildings. Although it had courtroom space, it generally was within the multi-purpose federal building located downtown in major cities. The exception is the U.S. Supreme Court, located near the U.S. Capitol and managed by the Architect of the Capitol.

Today, the Judiciary is more likely to have separate courthouses or be the major tenant in a GSA-built or leased building constructed largely to house it. GSA controls about 1,600 federally owned buildings, including 333 courthouses. According to GSA, 152 courthouses were constructed prior to 1949, specifically for the Judiciary. GSA also provides space to the Judiciary in about 125 leased properties. The Judiciary is second only to the Department of Justice in terms of the amount of space occupied and on which it pays rent in GSA-controlled space. The Judiciary occupies about 39 million square feet of space.

GSA’s Public Building Service (PBS) is responsible for the construction, repair, maintenance, alteration, and operation of public buildings for the federal government, including the Judiciary. GSA’s regional office staff deal with CUEs as well as AO space and facilities specialists regarding courthouse maintenance, renovation, and construction.

The Public Buildings Amendments of 1972 made several important revisions to the 1949 Act. First, the amendments created a new revolving fund, later named FBF. Next, it required entities that occupy GSA-controlled buildings to pay rent to GSA. Previously, Congress appropriated money to GSA which paid for agency space requirements. The FBF was intended to provide for the space needs of all GSA tenants and maintain buildings in the federal inventory. Congress requires through the appropriation process that GSA charge rents that approximate commercial charges for comparable space. Congress sets limits on how much FBF revenue can be spent for various activities.

The FBF is financed in large part by revenue from rental charges that GSA assesses federal government occupants for their space. Federal entities operating in facilities under the control of GSA are required to pay rent for the space they occupy. Congress, through establishment of the FBF, encourages federal entities 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 each entity would budget for its space needs, which would promote more efficient and economical use of space.⁸¹

Statute gives the GSA administrator authority to set rental charges to occupants for federally owned space. GSA determines the rates through an appraisal that sets a market rate rent for a five-year period, based on comparable properties. At GSA's discretion, contractors do most appraisals, though GSA did more of them with its regional staff in the past. Each assignment in GSA-managed space is the result of an "an occupancy agreement" between GSA and the federal entity occupying the space; it states the financial terms and conditions for the occupancy.

GSA tenants pay rent in government-owned buildings based on several components. They are the building shell rate, operating rate, tenant improvements amortization, and other. Appendix H provides additional details on these components.

Congressional committee staff and members generally believe the FBF is working as intended to encourage federal entities to economize on spending for space needs by requiring that GSA charge them commercially equivalent rent.

EFFORTS TO MANAGE SPENDING FOR SPACE

A 1987 Academy report, prepared at the Judiciary's request, noted that the Judiciary needed more concerted planning and reliable funding for construction. It recommended that Congress provide funds for major projects directly to the Judiciary.⁸² The 1987 Panel anticipated that the Judiciary would continue to work through GSA even though funds would go directly to the Judiciary. At that time, the Judiciary believed that GSA was moving too slowly to construct new courthouses.

Shortly after the Academy's report, then-GSA Administrator Terry Golden and then-AO Director Leonidas Ralph Mecham signed a memorandum of understanding where the Judiciary's rent would be divided into two accounts—one to reimburse GSA for the costs of operating courthouses, and the other to build new courthouses or to renovate existing ones. The memorandum would have become effective in FY 1990. Specific language provided that:

GSA will bill the Judiciary Rent for standard level space and related services at a rate that is sufficient to cover projected obligations by GSA for the standard level operation and maintenance of court space during the fiscal year. This will include custodial services, utilities, day-to-day maintenance and repair, cyclical maintenance and repair, cyclical maintenance and repair in accordance with

⁸¹ H.R. Rep. No 92-989, (1972)

⁸² National Academy of Public Administration, *Improving Facilities Management for the U.S. Courts*, August 1987.

normal practices, protection and security, lease payments, purchase contracts (debt), and general management and administration. It will also include an allowance for costs of repairs to the structure and systems of buildings on which the courts are assigned space. In addition...The Judiciary will reimburse GSA for all obligations incurred by GSA for the design, construction, management, and inspection of prospectus-level and non-prospectus level work involving renovation or alteration of existing court space, and construction of new court space.⁸³

When the second account was insufficient to pay for everything needed in a given year, the Judiciary asked Congress for direct appropriations specifically to construct new and modernize existing courthouses. Administrator Golden left GSA shortly after signing the memorandum; it is the Judiciary's understanding that OMB directed GSA not to implement it.⁸⁴

By the early 1990s, GSA and the Judiciary worked fairly well together and a number of major projects were underway. As the Academy Panel had recommended, the Judiciary hired more professional staff, and GSA made a concerted effort to assign priority to courthouse projects.

In September 1995, the Judicial Conference asked its Security, Space, and Facilities Committee and Budget Committee, working with the AO, to reduce the future growth of space rental costs. The Judicial Conference was concerned that rent was consuming greater portions of Judiciary funding during a period when Congress was limiting the overall growth in Judiciary spending. The Judicial Conference considered and approved a plan in March 1996. That was the same year that GSA, detecting growth in Judiciary space, sent a memo to the AO noting that the Judiciary would see a substantial rise in its rent bill in the coming years. The Judiciary's 1996 plan projected that rental costs could require approximately 23 percent of the Salaries and Expense budget by FY 2000, which would have affected the Judiciary's ability to fund other programs, principally staffing. It proposed the following space actions for reducing the cost of rent:

- Examine and reduce the current and projected space inventory. This initiative involved examining existing and future space through FY 2000 to (1) identify 'marketable' square footage that circuit judicial councils, working with the AO, could release to GSA; (2) identify space appropriate for sharing; (3) review existing space layouts to determine possible reconfigurations; (4) ensure current space assignments did not exceed current *Design Guide* standards; (5) involve the CACM and other committees to examine visiting court facilities without a resident judge, library space needs, and divisional and branch probation/pretrial services offices; and (6) develop space reduction reports.
- Review the Judiciary's *U.S. Court Design Guide* and space allocation standards, including the impact of technology on space standards. This initiative focused on appropriate controls to limit too much discretion, ensure the functionality and availability of space, and consider congressional advice to do more courtroom sharing.

⁸³ MOU agreed to by former GSA Administrator Golden and former AO Director Mecham.

⁸⁴ Testimony of Leonidas Ralph Mecham before the House Subcommittee on Economic Development, Public Buildings, and Emergency Management of the House Committee on Transportation and Infrastructure, June 21, 2005, p. 11.

- Change rent funding policies and establish ceilings on space rental growth. This initiative entailed providing circuit judicial councils with authority to manage a square footage allotment to curb space rental growth, initially, to no more than five percent annual growth through FY 1998. After judicial council space reduction reports were analyzed, then the percentage of growth for FY 1999 and beyond would result. It also involved submitting to the Judicial Conference of an annual Five-Year Courthouse Project Plan and developing a system of financial incentives to courts to reduce rent liability.
- Develop alternatives to GSA rent rates and rules. This initiative focused on independent appraisals of selected properties to determine any GSA overcharges in rent and consider alternatives to persuade Congress to change the policy of reimbursing the federal buildings fund for construction costs. The objective would aim for the Judiciary to pay only operating costs and contribute to building maintenance and repairs.

In 1997, still concerned about the rising costs of rent and the need to maintain staffing at 84 percent of what the work measurement formulas indicated was needed, the Judicial Conference endorsed with regard to space management:

- the 1997 edition of the *U.S. Courts Design Guide*
- a policy to report to Congress any exceptions/departures from the *Design Guide* circuit judicial councils approved
- a courtroom policy for senior judges without caseloads requiring substantial use of a courtroom and for visiting judges, as a model for circuit councils to use in courtroom planning
- a policy that strongly encouraged courts to enter into shared facilities arrangements with state and local governments as a cost savings measure
- criteria for closure of non-resident facilities
- amendments to the Space Management Initiatives, which: limited space rental costs for small construction projects and required biennial space reduction reports from circuit judicial councils; set aside the provision for square footage allotments and rent caps included in the 1996 Space Management Initiatives Report; and added language providing for development of space cost reduction mechanisms to use when funding levels did not support Executive Committee priorities.
- established space benchmarks
- use of Space Acquisition Guidelines by circuit judicial councils.

The Committee also amended the Space Management Initiatives Plan to set aside the allotment of space rental funds because estimated space rental costs decreased for FY 2000 projections from the FY 1995 projections. This decrease was attributed to enhanced space management through efforts to reduce and limit future rent growth and delays in construction and assignment of space by the GSA.

In 1999, the Judicial Conference added another space management policy when it encouraged circuit judicial councils to consult with the circuit's representative to the Security and Facilities Committee before approving exceptions to the *U.S. Courts Design Guide*. This policy was followed in 2000 by another that courts and judicial councils: advise the AO about any proposal from non-judiciary parties that propose and recommend repair, alteration, and replacement of court facilities; and discuss the financial implications of such proposal to ensure funding availability.

The Space and Facilities Committee was to begin a program to address repair and alteration of court facilities to improve operations and/or security. In the ensuing years, the Judicial Conference and the committee updated the Space Acquisition Guidelines (first issued as part of the space management initiatives). In 2003, it endorsed several options for controlling future rental costs, which by then were 20 percent of the judiciary's budget. Among those options was freezing the Five-Year Courthouse Construction Plan for FY 2005-2009.

2004 Cost-Containment Efforts and Subsequent Judiciary Conference Actions

In its 2004 cost-containment report, the Executive Committee noted that the Judiciary's "long-range facilities planning process was designed to identify new space needs. It was not designed to produce a cost-benefit analysis. The *U.S. Courts Design Guide* establishes the standards for space including sizes and finishes, all of which affect construction costs and the ultimate rent costs. For those who request and approve new space, there are no incentives to control costs and no systematic budget checks in place. The rent portion of the budget has been effectively excluded from annual budget-cutting actions by the Judicial Conference's committees because rent charges estimated in the budget request are linked to commitments already made. Thus, the rent payments have been categorized 'uncontrollable' in the facilities planning, and budget formulation and execution processes."⁸⁵

As part of the ensuing 2004 cost containment efforts, the Executive Committee of the Judicial Conference imposed tighter restraints on future space and facilities costs; the rent budget was approaching \$1 billion annually. The issue the Executive Committee identified was whether facilities should take priority over the Judiciary's other needs. The Executive Committee required a comprehensive review of all relevant space planning, management, and design policies, as well as decision-making mechanisms and budgetary controls. The Judiciary's

⁸⁵ Executive Committee of the Judicial Conference of the United States, *Cost-Containment Strategy for the Federal Judiciary: 2005 and Beyond*, August 12, 2004, approved by the Judicial Conference on September 21, 2004, p. 14.

objectives were to define a program that considers costs and benefits for good and bad economic times and acquire new space only as a last resort after consideration of other alternatives.

Part of this approach was a interim budget check for all pending space projects, which the AO and circuit judicial council staff would perform together to consider alternative space, future rent implications, and affordability. This action involved a one-year non-prospectus space project moratorium, which was extended by the Judicial Conference until March 2006. As of mid-2007, this budget check mechanism was to remain in effect until a rent budget cap mechanism is implemented.

The 2004 effort marked a strong Judiciary effort to bring rent costs under greater control. The moratorium on planning, authorizing, and budgeting for courthouse construction projects and new ‘prospectus-level’ repair and alteration projects (except those solely for building system upgrades) was intended to enable a reevaluation of the long-range facilities planning process. This was to include an assessment of the underlying assumptions used to project space needs and how courts can satisfy those needs with minimal costs in a short and long-term constrained budget environment.”⁸⁶

The report had specific strategies, such as asking federal defenders if they could close any non-staffed branch offices, and asking circuit judicial councils to identify opportunities to release space or close visiting facilities that did not have a resident judge.

Judiciary Proposals for Rent Reduction

The Judiciary believes that it pays above-market rent in some areas, and that GSA needs to examine its ‘commercially equivalent’ pricing policy in a way that recognizes the courts as a long-term anchor tenant entitled to a lower, long-term level rent reflective of the guaranteed, long-term occupancy of the buildings specifically designed and constructed for the courts.

In December 2004, the Judiciary proposed to then-GSA Administrator Perry that GSA grant it a permanent annual rent exemption of \$483 million. The Judiciary’s reasons for the exemption request included the following:

- Current appropriations did not support court activities.
- Others—such as the Department of Defense or the U.S. Postal Service—do not pay rent to GSA. (These entities have statutory real property authority to own or lease space.)
- Congress makes direct appropriations to GSA’s FBF for Judiciary expenses, and the benefits to the Judiciary were not as great as those appropriations made to the fund for the Judiciary
- GSA’s rent pricing system is flawed.

⁸⁶ Cost Containment Strategy, p. 18.

The Judiciary proposed that it pay GSA only the direct operating costs for existing buildings and ask Congress for direct appropriations for all new construction and major renovation projects needed. According to GSA data, shell rent represented 60 percent or more of the Judiciary's rent bill payments for FY 2000-2005 and operating costs represented 20 to 23 percent. The remaining 17 to 20 percent included TI, real estate taxes, security, and parking.

GSA Reasons for Denying Requested Rent Exemption and Judiciary Benefits from FBF

GSA's position on the rent exemption requests is that they are granted infrequently; if they are, they are for a single building and for a limited duration, usually one year. GSA reviews exemptions annually and they are not permanent unless Congress passes legislation otherwise. GSA's reasons for denying the Judiciary's request included unprecedented scope, unsustainable economic impact, inconsistency with GSA's own authorizing legislation, and inconsistency with OMB and congressional direction.

GSA data indicated that FY 2005 tenant improvements (TI) dollars⁸⁷ for the courts are the highest of all agencies; the courts rank sixth in terms of what other agencies average in terms of TI to billable square feet. The Judiciary's improvement dollars for FY 2005 were \$65,455,849. The Justice Department is the next largest governmental entity, with \$47,226,446 in TI. Both organizations have a great deal of space designed for their specific needs. The TI costs are part of the capital costs of the projects discussed below and are repaid through rent payments.

GSA data show that 36 percent of the FBF capital expenditures from 1990 to 2005 are for projects in which the Judiciary, along with other agencies such as the US Attorneys and US Marshals Service, are tenants. Over that same period, the Judiciary paid 11 percent of the total rent to the FBF. Specifically, about \$7.5 billion of a total \$20.9 billion (36 percent) from the FBF was spent for capital projects in which the Judiciary was a tenant; the Judiciary paid \$9.3 billion (11.3 percent) in rent to the \$82.1 billion that GSA collected overall. The Judiciary told the Academy study team that it is important to note, however, that these payment figures include lease payments that GSA passes through to commercial lessors. Comparing funding from the FBF Capital Program and the Operating Program for capital projects in which the Judiciary is a tenant, the Judiciary received \$600 million more than the rent paid. The Judiciary maintains that because capital costs show up immediately and rent costs show up over time, comparisons during this timeframe do not reflect the total amount of rent the Judiciary will pay to offset the capital expenditures.

THE JUDICIARY AND GSA WORKING RELATIONSHIP

The Judiciary has expressed keen interest in obtaining data from GSA that documents space used, and reports that it has exerted substantial effort to obtain necessary documentation and information to track space and rent trends and identify mistakes in GSA data. The Judiciary and GSA recently have worked together to gather data that will help identify mistakes in rent bills. This effort began in earnest after the Judiciary commenced its cost-containment efforts.

⁸⁷ The Judiciary spends more for 'tenant improvements,' essentially the build-out of the space, since much of the space is used for such specialized needs as courtrooms and prisoner holding areas rather than office space.

The Judiciary reported that for five years it had attempted to get information from GSA that would help it track space inventory better and identify trends in space growth. In its comments on the GAO report, the AO said it anticipated its need to have information on court components at a micro level so that the courts, the AO, and the Judicial Conference may better analyze its rent and space needs with regard to the various components of the judicial branch. From the Judiciary's point of view, this has gone more slowly than desired. GSA believes it has gone to great lengths to deconstruct the monthly rent bills to a degree of detail that is more than other customers require. The two agencies are working together to resolve the range of issues related to establishing fully accurate rent bills.

The Judiciary provided GSA with Agency/Bureau Codes ("assignment codes") so that data can be parsed in ways that enable analysis by various categories within the appeals, district, and bankruptcy courts. As a result, GSA increased the Judiciary's assignment codes from six to eighteen, which meant reclassifying and measuring space assignments. This process has taken longer than either GSA or the AO anticipated; GSA has completed remeasuring 277 of 377 buildings with eighty more in progress. GSA said that not all remeasured buildings have yet been converted to the new code classification, as the process is time-consuming.

In June 2006, the PBS commissioner testified that GSA had partnered with the Judiciary on three levels. At the Executive level, there is an opportunity to reestablish an effective partnership given new leadership at GSA, the Judicial Conference, and the AO. He stated that he had met with the Executive Committee chair and spoken with the Chief Justice on this matter. He also met with the chair of the former Committee on Security, Space, and Facilities and attended portions of the last two Judicial Conference committee meetings. Finally, he stated that he and the new GSA administrator would meet with the new AO director.

The commissioner stated that GSA has reestablished partnering sessions between GSA and the Judiciary at the national program level to discuss recent projects and such program issues as courtroom accessibility and design management. GSA said it is committed to work together on space analysis and planning methodology, offering comments on the design guide, discussing GSA's risk assessment tool for physical security, and enhancing the architect/engineer selection process. At the project level, every courthouse has a formal partnering meeting that includes the GSA project team, Courts' project team, design architects and engineers, and eventually the general contractor.

The new GSA and AO leadership met in July and August 2006. In their second meeting, the AO director discussed GSA's pricing policy, whether it was appropriate for courthouses, and whether the pricing policy was consistently followed in GSA regions. In areas without an adequate commercial real estate market on which to develop 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. ROI is primarily used for border-related facilities; less than 1 percent of GSA non-Judiciary facilities use this approach. ROI is used for about 28 Judiciary facilities, including 7 facilities built between 1898 and 1939.

ROI was initially introduced in July 2000 and last updated in June 2004. The pricing structure is based on a private sector model to ensure cost recovery and ROI. Revisions reduce the rate of return for shell improvements and amortization rate for tenant improvements. GSA said it did this to match the current policy for market-based pricing and generate a level of revenue to better match expenses, create operating efficiency incentive, and produce returns closer to its target level. Appendix I highlights the specific changes in GSA's policy and provides an example demonstrating the potential rent impact for the Judiciary for a new construction project where market pricing is not appropriate.

In a September 2006 letter, GSA's commissioner for PBS said that it had revised its ROI pricing protocol. GSA will use the new protocol in developing Judiciary occupancy agreements for pipeline projects where ROI is appropriate. GSA proposes converting all existing ROI-priced assignments to the new protocol by FY 2008. It estimates that the revision will result in a 10 percent or more reduction in a customer's rent projection for ROI-priced projects.

For leased space in privately owned buildings, GSA negotiates leases with commercial firms and adds an 8 percent administrative fee, or 6 percent if the lease is non cancelable. The courts lease a small amount of space. GSA passes through all lease contract costs to agencies. This includes shell, operating expenses, real estate taxes, and tenant improvements allowances. GSA is reducing its lease fee to 7 percent for cancelable space and 5 percent for non-cancelable space in FY 2008. GSA estimates that the Judiciary lease savings will be about \$1.4 million in 2008.

Errors in GSA Rent Bills and Appraisals

The Judiciary is expending resources to examine rent bills and appraisals in many cities. It has formally requested that GSA reexamine rent bills and appraisals. The former AO director sent a May 2006 letter to the acting GSA administrator stating that the Judiciary believes it was overcharged \$27 million in FY 2006 based on a review of independent appraisals of 16 buildings. He wrote that GSA had unilaterally raised contract-appraised rates in eight of the 16 buildings and neglected to make adjustments for inefficiencies in two other cases. In a June 2006 response, GSA informed the director that it was deeply concerned about cases in which its appraisers exceeded their authority in setting rent rates. It said it would treat the dispute as a formal rent appeal and conduct a full review of all appraisals at the 10 locations.

Judiciary staff examined GSA billings and identified rent overcharges in the Northern District of New York. In response, GSA issued a \$3.2 million rent credit to the Judiciary. GSA regional office staff also misapplied GSA's pricing policies at the Moynihan Courthouse in New York City; the errors included misapplication of floor space and errors in adjusting the Rentable to Usable (R/U) factor.⁸⁸ GSA headquarters asked the region to adjust the price but the region did not act quickly. The District Court in the Southern District of New York followed up with a Freedom of Information Act request.

⁸⁸ A facility's R/U ratio is used to evaluate the efficiency of a facility from the landlord's standpoint. A Facility's R/U ratio is a component in determining the rental rate of a property. GSA multiplies a tenant's assigned usable square footage by the facility's R/U ratio to arrive at a "rentable" square footage.

GSA undertook its own court rent validation project by reviewing all Judiciary space assignments for rent accuracy. A total of 1,227 billing adjustments entries were made using the "FY 05 Court Validation" reason code (both debit and credit) impacting 714 Occupancy Agreements/Bills. The review resulted in a net decrease of \$13.1 million, including \$12.2 million in rent credits to the Judiciary in New York.

Beginning in 2006, the Judiciary expanded its efforts nationally to identify billing errors and has trained clerks' office staff on how to research and detect errors. They focused their rent review on two factors affecting rent. First, they validated rent in all federally-owned space (approximately 400 locations) by verifying the classification and measurement of court space and common areas in buildings. According to AO officials, they conservatively estimate about \$3 - \$5 million in overcharges based on on-site validation of records. Second, the Judiciary examined the rental rates GSA levied for space in federal buildings to ensure it is being charged a rate that approximates commercial charges for comparable space. Savings associated with the review of appraisals to date is approximately \$18 million annually. The Judiciary and GSA continue to work together to identify and correct rent bill errors and additional savings are expected. This has taken substantial time for staff in the Judiciary.

GSA's inspector general reviewed the PBS rent pricing in 2004 and found that tenant rent rates generally were being established in accordance with PBS' rent pricing strategy. However, three areas were identified for improvement:

1. Regional appraisers' changes to contract appraisal rates need to be better supported. This was highlighted by variances in the shell rent rates recorded in three key PBS databases.
2. While PBS is placing more emphasis on monitoring the financial performance of leased properties, increased efforts, including consistent recovery of GSA funded repairs and alterations, would enhance PBS's Funds from Operations, the main indicator of financial performance.
3. PBS' resolution of customer questions could be improved through more detailed information in the property files, rent bills, and the System for Tracking and Administering Real Property (STAR).

GSA's rent appraisal quality initiative review for FY 2005 identified appraisal errors, unsupported fair annual rental (FAR) rates, and appraisals conducted by non-qualified appraisers. This annual quality review program, conducted by GSA's Office of Real Property Asset Management, is designed to address quality and data integrity of appraisals for federally-owned properties.

GSA is working to make its billing process more accurate and efficient. Prior to implementing this process, it is conducting a complete rent review of all of its customers' space assignments to verify that rent bills are accurate. An overview of the PBS Rent Bill Management Program is provided in Appendix J.

A June 2006 memorandum to PBS assistant regional administrators was issued by the GSA assistant commissioner for the Office of Real Property Asset Management. It provided instructions regarding reforms for appraisal and rent rate settings. (Appendix K) Among those for immediate implementation were:

- GSA's central office will review and approve all new appraisals used to determine rent.
- Only state-certified contract appraisers will perform, modify, or update FAR appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.
- Regional appraisers cannot update appraisals. Any circumstance requiring correction or modification in FAR reports must be brought to the attention of the original contract appraisers. Only the appraiser can make corrections, changes, or revisions to his or her original FAR report. After presenting all issues of concern, the regional appraiser must reject the appraisal and procure another FAR appraisal if he or she finds that the report remains technically incorrect or includes unsupported conclusions.

In a September 2006 letter, GSA stated that it was making substantial progress in its review of appraisals, including the 10 buildings discussed above. It identified about \$6.3 million in rent credits for FY 2006 for four appraisals and was reviewing three more with the intent to make corrections and provide rent credits where applicable. GSA concluded that the remaining appraisals warranted no change. Additionally, GSA's New England region reviewed appraisals in that district and identified two appraisals where adjustments of \$1.3 million for FY 2006 were warranted. GSA was scheduled to process these adjustments in October 2006. It recently told the study team that the reappraisals resulted in 2005 rent reductions totaling \$8.4 million

GSA reviewed future rental and operating cost rates in its FY 2007 and 2008 rent estimate for court-occupied space. It identified about \$7 million in shell rent reductions in FY 2008 from the projected FY 2007 rent budget estimates. GSA also expects to see some cost savings for new courthouses in the pipeline based upon the AO's work in revising the courts' design guide standards.

The Chief Justice addressed rent in his inaugural year end *Report on the Federal Judiciary for 2005*. He said "the disparity between the Judiciary's rent and that of other government agencies and between the costs to GSA of providing space and the amount charged to the Judiciary is unfair. The Judiciary cannot continue to serve as a profit center to GSA."

GSA is making an effort to address rent and appraisal issues and to advance partnering efforts on multiple fronts, all striving to reduce rent to the fullest extent possible. It believes that these initiatives will result in increased accuracy and confidence in rent bills, reduced costs, and enhanced responsiveness and information sharing between the agencies.

JUDICIAL CONFERENCE ENDORSEMENT OF REAL PROPERTY AUTHORITY

At its March 2006 session, the Judicial Conference affirmed its support for legislation to establish independent real property authority, with the form and timing of seeking such authority subject to Executive Committee approval in consultation with the Space and Facilities Committee and Budget Committee. The Conference first approved asking Congress to remove real property for the courts in 1989, but interest declined until the late 1990s.

A draft implementation plan has been endorsed, as well. It will continue to be refined should independent authority ultimately be enacted. The plan is premised on the transfer from GSA of each owned or leased building in which courts and Department of Justice entities occupy at least 55 percent of the building's federal tenancy.

The plan includes detailed budget models of operating and capital expenditures, which states that the Judiciary could fully fund capital repair and replacement needs, operation and maintenance costs of this transferred inventory, and \$300 million in new courthouse construction per year—all for approximately \$60 million less than the current level of Judiciary rent payments. Moreover, the plan claims that the Judiciary's assumption of independent real property authority could translate into genuine savings of approximately \$70 million through the elimination of GSA overhead expenses. It reports that upon property transfer, funds that the Judiciary otherwise would have been paid and that GSA would have used to defray overhead expenses could fund court capital projects.

The plan proposes to outsource all major real property management activities under a strategic alliance partnership business model. This model entails a prime contract with a full-service national-scope commercial real estate company that will self-perform or procure second tier contractors to assist with:

- all facilities management operational tasks for the government-owned inventory
- brokerage services for leases
- lease and occupancy administration for all leased properties and for non-Judiciary tenants
- project management services for all construction activities, from ground-up development, repairs and replacements, to fit-out of tenant space

The plan recommends choosing a large real estate company under a strategic alliance partnership arrangement that enables the Judiciary to control its real estate without having to grow an in-house bureaucracy to manage it. It also contemplates using the alliance partner's automated real property data management platform in lieu of acquiring or enhancing its own IT system to manage the inventory. This level of service provider will bring a sophisticated disaster planning and recovery capability to assist the courts in the event of manmade or natural calamity.

Accordingly, the plan does not call for a large new bureaucracy within the AO or the courts themselves. Rather, it is premised on extensive competitive outsourcing of real property

management to leverage private sector expertise in these fields, and garner the economies of scale that a large inventory can foster when purchasing power is consolidated. Further, the plan would provide a protocol for the transfer of property management so that the conversion to courts' responsibility is invisible to judicial councils and courts. In lieu of courts dealing with local GSA service centers and regional offices, courts would be empowered to work directly with the strategic alliance firm and local service providers as applicable.

By outsourcing operational and transactional aspects of real property management, the Judiciary need only increase staffing by approximately 30 to 40 people who would perform four functions: strategic and long-range planning; procurement and contract administration; courts liaison and customer service; and financial analysis and asset management. The Panel and study team cannot assess the accuracy of these staffing estimates. The plan and related model do not estimate the total number of staff required to manage the Judiciary's multi-billion dollar capital program and the operations and maintenance associated with the individual buildings.

In summary, the plan would establish a business model and strategy to take control of most court-occupied real property, achieve a reduction in overall space costs, and provide more efficient and cost-effective provision of real estate services. Appendix L has further discussion of the advantages and disadvantages.

Conclusions and Recommendations: Reducing the Costs of Space through Enhanced Cooperation

The Panel believes that it is important for all government entities to pay the proper amount of rent for the space they occupy. If GSA or a commercial appraiser has made an error that led to a higher rent bill, the rent bill should be lowered and the tenant should receive a credit for past overpayment in accordance with applicable appropriation laws. GSA has worked with the Judiciary to review rent costs, recently issued additional rent credits, and begun to work more with its regional offices to ensure that appraisals and rent bills are accurate.

The Panel believes that the Judiciary/GSA/FBF structure is fundamentally sound and structurally equitable. The Judiciary is charged rent on the same basis as other federal entities, many of which are long-term tenants. However, the working relationship between the Judiciary and GSA has been weaker and was strained to the point of being counter-productive. Tension can arise at many points in such large organizations. With new executives at the helm of GSA and the AO, there is an opportunity to improve this relationship. Judiciary staff told the Panel that the relationship with GSA has improved greatly in recent months and that there is much more give and take in discussions.

Therefore, the Panel recommends that the Judiciary develop a memorandum of understanding with GSA to establish a process that is:

- **collaborative, fact-based, transparent, and non-adversarial and that includes agreed-upon time limits on the analysis and resolution of specific issues**

- **impartial in the methods identified to address and resolve problems and issues regarding facilities design, rent determination, service delivery, and space utilization**

This process would be used instead of the alternative—creating statutory independent real property management authority for the Judiciary—unless the collaborative process proves unfeasible. If the process fails to produce the desired results, the Judiciary can seek real property authority. The Panel believes that judges’ time is best spent on judicial administration, not space management. However, it recognizes that space and facilities management is central to successful judicial administration and believes the Judicial Conference should be able to revisit this issue if needed. Appendix M provides suggested guidelines for the execution of the memorandum of understanding.

CHAPTER SIX LOOKING FORWARD

It would be a challenge for any organization to develop most of its management system components from a whole cloth, but that is what the Judiciary essentially has done. Systems that work for executive branch agencies might not be appropriate for the Judiciary, a nonhierarchical organization many of whose leaders have lifetime appointments. The Judiciary's work also is very different from that of executive agencies which administer programs or distribute grants. In addition, its systems are geared to the nature of its work and the needs of judges, staff, and litigants.

The Judiciary Salary Plan, the personnel system that covers many employees, is more flexible than most personnel systems used in the executive branch and budget decentralization gives local managers greater control and accountability for resource management than many federal managers have. When it comes to developing and modernizing management systems, however, there are advantages to being part of a larger peer group. The Judiciary has not developed its management system in a total vacuum. It worked with this Academy as it developed the Judiciary Salary Plan and budget decentralization, and it asked for input when considering an approach to long-range planning almost 15 years ago.

The principal function of jurists is to focus on judicial decisions. Judges have been very generous in the time they devote to managing the Judiciary, but the Panel believes a combination of changes could better enable them to obtain and allocate resources by more clearly relating them to organizational priorities and making the relationship clear appropriators, the public, and other stakeholders. Such changes could include:

- a budget process that involves extensive coordination with the executive and legislative branches to ensure that the appropriations process reflects the actions of others that affect the Judiciary's workload. Since neither branch is structured for regular coordination, this will be difficult and may require the Chief Justice to begin a formal dialogue.
- an ongoing strategic planning process directly connected to the budget process that identifies desired outcomes, so that judicial priorities are more easily distinguished in making short-term, annual budgetary decisions.
- a staff group or office empowered to incorporate the Judiciary's long-term goals into its budget planning and execution processes and to relate planning and budgeting to desired results
- a work measurement system with a feedback loop to relate estimated needs with work performed to the actual staffing levels, as well as to document work not accomplished. This will provide the Judiciary and appropriators with systematic evidence on the impact of reduced appropriations and the impact of judicial investments in productivity enhancements on performance outcomes.

- enhanced communication mechanisms to keep staff and judges apprised of changes underway and seek their input at key points⁸⁹

The Panel assumes that all policy decisions rest with the Judicial Conference and that judges would play a principal role in recommending new management systems. However, it also believes that some aspects of planning—especially setting and measuring *operational* objectives—are best left to professional staff who operate within the judges’ overall guidance and oversight and who seek input and relate it to other components of the Judiciary’s management systems.

When the Judiciary developed its budget decentralization process, it created and monitored a pilot program for three years. At the end of that time, it instituted a highly effective program through which individual courts manage to a designated budget, something many executive branch agencies have been unable to accomplish. In more recent years, through similar pilot and phased implementation processes, the Judiciary has achieved significant system-wide administrative improvements, such as the Case Management/Electronic Case Files System and a uniform accounting system. The Judiciary has a track record of developing effective new management systems. With the leadership of the Judicial Conference, it can develop a planning and accomplishment reporting system that is linked to its budget process. And, it can devise better ways to balance the needs of its growing caseload, which requires more judges and staff, as well as the facilities needed to house them and deliver justice to the public.

Deciding on an Approach

The Judiciary may choose a somewhat different approach to planning, budgeting, or integration of the two because judges find it more effective to reach consensus within its culture. The Judiciary’s collaborative approach to decision making could be a model for other organizations that believe it would be beneficial to move from a hierarchical, top-down decision-making structure to one that involves the expertise of talented leaders at all levels. It may be possible for the Judicial Conference to reach consensus on what kind of planning approach would be best for the Judiciary. Or, it may not. Yet it is vitally important for the Judiciary to make a decision on the best way to set priorities for the organization as a whole over the long term, and then to design a process that seeks input in relating the accomplishment of agreed-upon priorities to the budget.

Strong leadership is essential because these types of efforts make some uncomfortable. This is especially important because the Judicial Conference meets only every six months and the federal budget process is continuous. There is growing urgency to ensure that the Judiciary’s needs are met within a climate of austerity. The Panel urges the Judicial Conference to reach a decision quickly on how to proceed and begin implementation. Expertise is available from independent sources that have worked in strategic planning in federal contexts or other court systems.

⁸⁹ For example, the Judiciary could solicit comments through its monthly newsletter, *The Third Branch*, or its intranet. The Judiciary Conference committee structure and the advisory groups of staff always play a prominent role in providing advice and feedback.

PANEL AND STAFF

PANEL

C. William Fischer, *Chair**—Former Senior Vice President for Business and Finance, Northwestern University; Vice President for Budget and Finance, University of Colorado; Executive Vice President, Brandeis University; Vice President for Budget and Finance, University of Colorado; Assistant Secretary for Planning and Budget, U.S. Department of Education; Deputy Administrator, Energy Information Administration, U.S. Department of Energy; Deputy Associate Director for Human Resources, and Deputy Assistant Director for Legislative Reference, U.S. Office of Management and Budget.

Sally T. Hillsman*—Executive Officer, American Sociological Association. Former Deputy Director, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice; Vice President, Research Division, National Center for State Courts. Former positions with the Vera Institute of Justice (New York City): Project Director; Assistant Director of Research; Director of Research; Associate Director.

Sven Erik Holmes—Executive Vice Chair, Legal and Compliance, KPMG. Former U.S. District Judge and Chief Judge for the Northern District of Oklahoma; Partner in the Washington, D.C. law firm Williams & Connolly; General Counsel and Staff Director for the U.S. Senate Select Committee on Intelligence, while simultaneously serving as a member of the staff on the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition; Vice President for the Baltimore Orioles baseball team.

Philip G. Joyce*—Professor of Public Policy and Public Administration, School of Public Policy and Public Administration, George Washington University. Former Assistant Professor of Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University; Principal Analyst, Special Studies Division, Congressional Budget Office; Adjunct Professor, School of Public Affairs, American University; Assistant Professor of Public Administration, Martin School of Public Administration, University of Kentucky; Executive Assistant, Department of Corrections, State of Illinois; Staff, Bureau of the Budget, Executive Office of the Governor, State of Illinois.

Samuel T. Mok*—Chief Financial Officer, U.S. Department of Labor. Former Managing Member, Condor Consulting, LLC; Chief Executive Officer, G.L. Associates; Chief Financial Officer and Comptroller, U.S. Department of the Treasury; Foreign Service Officer, Bureau of East Asian and Pacific Affairs, U.S. Department of State; Corporate Treasurer, U.S. News and World Report; Director of Accounting, Time-Life Books; Commissioned Officer, U.S. Army; Auditor, KPMG Peat Marwick.

Nancy A. Potok*—Managing Associate, McManis & Monsalve Associates. Former Senior Vice President and Director, Economics, Labor and Population Department, National Opinion

* *Academy Fellow*

Research Center (NORC); Principal Associate Director and Chief Financial Officer, Associate Director for Administration/Controller, U.S. Census Bureau; Deputy Assistant Director for Finance and Budget, Administrative Office of the U.S. Courts; Budget Examiner, U.S. Office of Management and Budget; Presidential Management Intern, U.S. Department of Transportation; Staff, Senate Transportation Appropriations Subcommittee.

STAFF

J. William Gadsby,* *Vice President for Academy Studies*—Former Director, Management Studies Program, National Academy of Public Administration. Former positions with U.S. General Accounting Office: Senior Executive Service; Director, Government Business Operations Issues; Director, Federal Management Issues; Director, Intergovernmental and Management Issues. Former Assistant Director, Financial Management Branch, U.S. Office of Management and Budget.

Frank DiGiammarino—*Program Area Director*. Director of the Executive Consortium. Has worked on the Federal Bureau of Investigation Transformation project with specific focus on field structure reorganization. Former positions include Director and DoD Practice Area lead at Touchstone Consulting Group, General Manager and Director of Program Management at Sapien Corporation, and Principal Consultant with the State and Local practice at American Management Systems.

James F. Everitt—*Project Director*. Former team leader for the Internal Revenue Service's (IRS's) Integrated Financial Systems Project. Other IRS positions have included controller for a Wage and Investment Division, Customer Service Field Operations, and the Georgia District; special assistant to the chief financial officer; division chief for resources management in the Omaha District; and budget director for the Midwest Region.

Richard F. Keevey—*Senior Advisor*. Director, Performance Consortium at the National Academy of Public Administration. Former Chief Financial Officer at the US Department of Housing and Urban Development; Director of the Defense Finance and Accounting Agency; Deputy Under Secretary of Defense for Financial Management for the US Department of Defense; and OMB Director and Comptroller for the State of New Jersey. Visiting Professor at the Woodrow Wilson School, Princeton University.

Robert L. Giusti—*Senior Advisor*. Former Executive Assistant to the Director, Internal Revenue Service; Senior Analyst for Tax Policy and Administration Issues, GAO Administration of Justice Issues, Department of Treasury and Census Bureau Issues, D.C. Government and U.S. Postal Issues, Government Accountability Office.

Steve Redburn*—*Senior Advisor*. Former Chief, Housing Branch, U.S. Office of Management and Budget. Former Economist, Special Studies, U.S. Office of Management and Budget;

* *Academy Fellow*

Program Analyst, Office of Policy Development and Research, U.S. Department of Housing and Urban Development; Director, Center for Urban Studies, Youngstown State University.

Gerald (Jake) Barkdoll—*Senior Analyst*. Adjunct Faculty, University of Baltimore Doctoral Program; Founder, Balanced Scorecard Interest Group; Former FDA Associate Commissioner for Planning and Evaluation; Distinguished Practitioner in Residence and Director, University of Southern California Washington Center; Senior Consultant, Public Service of New Mexico; Controller and Chief Financial Officer, The Englander Company. Private Consultant.

Elaine L. Orr—*Senior Analyst*. Management consultant for government and nonprofit organizations, and senior consultant and project director to the Academy for 20 years. Former director of the international audit liaison function at GAO and GAO evaluator for intergovernmental and human resource management programs.

Christine E. Sterling—*Senior Research Analyst*. Project staff on past Academy studies including The 21st Century Federal Manager Series, The Transforming Power of Information Technology: Making the Federal Government an Employer of Choice for IT Employees; Human Resource Management Review of the Goddard Space Flight Center; and a review of NASA human capital programs.

Laura M. Kiesler—*Research Associate*. Former work includes policy analysis and development for various non-profit organizations. Master in Public Administration degree from American University, B.A. in Organizational Studies from the University of Michigan.

Martha S. Ditmeyer, *Senior Administrative Specialist*—Staff for a wide range of Academy studies. Former staff positions at the Massachusetts Institute of Technology and the Communication Satellite Corporation.

INDIVIDUALS CONTACTED

Throughout the 11 months the Academy worked on this project, many AO staff contributed to the knowledge that is the basis for this report. The titles are those the individuals held at the time the Academy worked with them.

The Academy sincerely appreciates the assistance of all those listed here, plus the many others who contributed to this project.

Administrative Office of the U.S. Court

Laura Baber, Chief Program Guidance Branch, Office of Probation and Pretrial Services (OPPS)

James Baugher, Chief, Budget Division, Office of Finance and Budget

Mickey Bork, Chief, Policy, Training and Systems Branch, Office of Finance and Budget

Gary Bowden, Chief, Appellate and Circuit Administration Division, Office of Court Administration

Allen Brown, Work Measurement, Policy and Strategic Initiative Office, Office of Human Resources

Melvin Bryson, Assistant Director, Office of Information Technology

James Duff, Director

Ross Eisenman, Assistant Director, Office of Facilities and Security

Penny Fleming, Chief, Financial Liaison and Analysis Office, Office of Finance and Budget

Nancy Beatty Gregoire, Chief, Program Administration Division, OPPS

Elena Johnson, Chief, Formulation Branch, Office of Finance and Budget

Ronald Kendall, Office of Facilities and Security

Lisa Lavery, Chief, Execution Branch, Office of Finance and Budget

Peter Lee, Deputy Director

Robert (Bob) Lowney, Chief, District Court Administration Division, Office of Court Administration

Brian Lynch, Acting Chief, Long Range Planning Office, Office of Management, Planning and Assessment

Abel Mattos, Court Administration Policy Staff, Office of Court Administration

Christopher Mays, Chief, Business Technology Optimization Division, Office of Human Resources

Peter McCabe, Assistant Director, Office of Judges Programs

Cathy McCarthy, Deputy Associate Director, Management and Operations

Ralph Mecham, Director

Marguerite Mocca, Deputy Assistant Director & Deputy Chief Financial Officer, Office of Finance and Budget

James Oleson, Criminal Law Policy Staff, Office of Probation and Pretrial Staff

Edward O’Kane, Chief, Financial Analysis Staff, Office of Finance and Budget

Glen Palman, Chief, Bankruptcy Court Administration Division, Office of Court Administration

Charlotte Peddicord, Assistant Director, Office of Human Services

George Schafer, Assistant Director & Chief Financial Officer, Office of Finance and Budget

Steven Schlesinger, Statistics Division, Office of Judges Programs

Catherine Whitaker, Assistant Chief, Data Management Reports, Statistics Division, Office of Judges Programs

Debra L. Worley, Space and Facilities Division, Office of Facilities and Security

Leeann Yufanyi, Deputy Chief, Appellate Court and Circuit Administration Division, Office of Court Administration

Judges

Robert Broomfield, Chair, Economy Subcommittee, Committee on the Budget

Paul G. Cassell, Chair, Criminal Law Committee

W. Royal Furgeson, Chair, Judicial Resources Committee

Julia Gibbons, Chair, Committee on the Budget

Ricardo H. Hinojosa, U. S. District Court, Southern District of Texas

Duncan W. Keir, Chief Judge, U.S. Bankruptcy Court, District of Maryland

Jane Roth, Chair, Committee on Space & Facilities

John R. Tunheim, Chair, Court Administration and Case Management Committee

District, Bankruptcy, and Circuit Staff

Millie Adams, Circuit Executive, Eighth Circuit

Lawrence (Larry) Baerman, Clerk, Northern District of New York

Jeanne Brennan, Chief Deputy, U.S. Bankruptcy Court, District of Maryland

Collins T. Fitzpatrick, Circuit Executive, Seventh Circuit

Richard Heltzel, Clerk of Court, California Eastern

James A. Higgins, Circuit Executive, Sixth Circuit

Jan Horbaly, Circuit Executive, Federal Circuit

Karen Greve Milton, Circuit Executive, Second Circuit

Gregory Nussel, Circuit Executive, Fifth Circuit

Samuel W. Phillips, Circuit Executive, Fourth Circuit

Mark D. Sammons, Clerk of Court, U.S. Bankruptcy Court, District of Maryland

Jill Sayenga, Circuit Executive, DC Circuit

Toby D. Slawsky, Circuit Executive, Third Circuit

David J. Tighe, Circuit Executive, Tenth Circuit

Gregory B. Walters, Circuit Executive, Ninth Circuit

Gary Wentz, Circuit Executive, First Circuit

Norman E. Zoller, Circuit Executive, Eleventh Circuit

EXTERNAL STAKEHOLDERS

Federal Judicial Center

Barbara Anderson, Education Division, Federal Judicial Center

James Eaglin, Director, Research Division

Hon. Barbara J. Rothstein, Director of the Federal Judicial Center

Donna Stienstra, Senior Research Associate

Government Accountability Office

Keith Cunningham, Project Manager, Physical Infrastructure Division

Mark Goldstein, Director, Physical Infrastructure Division
David Sausville, Assistant Director, Physical Infrastructure Division

Government Services Administration

Swen Carlson, Office of Portfolio Management, Public Building Services
David Foley, Policy and Analysis Division, Office of Portfolio Management, Public Building Services
Susan Hall, Audit Manager, Real property Audit Office, Office of Inspector General
Beth Lemanski, Space Pricing Specialist, Office of Real Property Asset Management, Public Building Services
William H. Matthews, Assistant Commissioner for Real Property Asset Management, Public Building Services
Nick Nimerla, Realty Specialist, Office of Portfolio Management, Public Building Services
Flavio Peres, Realty Specialist, Office of Portfolio Management, Public Building Services
Robert A. Yevoli, Portfolio Strategy Manager, Real Property Asset Management, Public Building Services, Central Office

Office of Management and Budget

David Haun, Deputy Associate Director, Transportation, Homeland, Justice, and Services
Lisa Ward, Counsel

National Center for State Courts

Richard Schaufler, Director, Research Services
Matt Kleiman, Court Research Associate

Other Agencies

Hans Herderreck, ATF
Mary Colarusso, DEA
Steve Roth, Asset Manager, USPS

State Courts

Kevin Burke, Chief Judge, Hennepin County, Minnesota

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COMPARISON OF THE EXECUTIVE BRANCH AND JUDICIARY BUDGET PROCESS

Months	Executive Branch Agencies	The Judiciary
March		
April	President sets general budget and fiscal policy guidelines for fiscal year beginning October 1st of the following year.	Chair of the Budget Committee of the Judicial Conference provides nine program committees general budget guidance for fiscal year beginning October 1st of the following year and asks them to identify the cost of new initiatives.
May	OMB works with agencies to establish planning levels and specific policy directions.	
June	Agency head issues budget call, indicating planning levels, priorities, and procedures.	Economy Subcommittee works with program committees to refine budget requests and cost-containment initiatives.
July		Chairs of program committees present to the Budget Committee.
August	Agency head conducts internal budget reviews, makes initial budget decisions.	Budget Committee sends proposed budget to the Judicial Conference for approval.
September	Agency head submits proposed budget to OMB for review. OMB conducts hearings, exchanges information with agency on detailed budget proposals and options.	Judicial Conference approves proposed budget.
October	OMB conducts internal reviews, considers options, recommends funding levels and policies.	Judiciary's budget proposals are submitted to OMB for publication without revision as part of the President's Budget.
November	OMB passes back budget marks and policy decisions to agencies.	
December	Agency may appeal to OMB. OMB discusses and resolves appeals. President makes final decisions on major policy and funding issues.	
January	President submits his Budget for all agencies to Congress.	
February		President submits Judiciary's Budget proposals to Congress.

**COMMITTEES OF THE JUDICIAL CONFERENCE
THAT PROVIDE INPUT FOR BUDGET REQUIREMENTS**

(* = Committees that work on budget formulation)

Committee on the Administration of the Bankruptcy System:*

To oversee the bankruptcy system.

Monitor, analyze, and propose legislation affecting bankruptcy operations, including their impact on the entire judiciary, for consideration by the Judicial Conference.

Make recommendations to the Judicial Conference on bankruptcy judicial resource matters, including, but not limited to, matters involving: the number and location of bankruptcy judges; the allocation and management of bankruptcy judicial resources (through intercourt assignments and other techniques); the selection, appointment, and reappointment of bankruptcy judges by the court of appeals; and the recall of retired bankruptcy judges.

Review and make recommendations to the Judicial Conference (or to appropriate Conference committees) regarding issues affecting the office of bankruptcy judge, such as salaries, retirement benefits, and staff and support services.

Monitor, review, and make recommendations to the Judicial Conference (or to appropriate Conference committees) regarding issues affecting the operation of the bankruptcy system, including, but not limited to matters involving: bankruptcy appeals, case management, court governance, proposed federal rules of bankruptcy practice and procedure, statistical workload information and projections, the consolidation of court units, the staffing formula for bankruptcy clerks' offices, and the need for nonjudicial bankruptcy personnel not covered by the staffing formula.

Monitor and, as appropriate, make recommendations to the Judicial Conference and the Director of the Administrative Office regarding matters involving the operation and administration of the bankruptcy administrator program and the relationship with U.S. trustees concerning estate administration.

Propose adequate funding resources when the budget is being formulated to support the programs within the committee's jurisdiction, taking into account the overall fiscal situation of the judiciary, and monitor the condition of the fund held in escrow to pay the chapter 7 trustees.

Committee on the Budget*:

To assemble and present to Congress the budget for the judicial branch.

Consult with Judicial Conference committees on proposals with budgetary implications and their justification, including revenue enhancement proposals such as new fees.

Consult with committee chairs to formulate and present for approval of the Judicial Conference a budget request to Congress for the courts of appeals, district courts, bankruptcy courts, other units of the judicial branch, and the Administrative Office. Propose appropriate funding levels, as necessary, working with the Judicial Conference and relevant committee chairs to arrive at those levels.

Assist the judiciary's efforts to improve fiscal responsibility, accountability, and efficiency in overall operations.

Make recommendations as appropriate on ways to develop and execute the budget of the judiciary in a logical and accountable manner, including specific line-item budgetary reductions.

Present and defend the budget approved by the Judicial Conference to Congress.

Monitor reports of expenditure of appropriated funds.

Committee on Court Administration and Case Management*:

To study and make recommendations on matters affecting case management; the operation of appellate, district and bankruptcy clerks' offices; jury administration; and other court operational matters.

Monitor all case management activity of the appellate and district courts, and make recommendations for changes and improvements.

Make recommendations on proposals (including proposed legislation and proposed federal rules) involving matters including, but not limited to: court administration and organization; alternative dispute resolution; attorney admission and discipline; case management of mass tort litigation; miscellaneous and filing fees; the law book and library program; records management; places of holding court; methods of court reporting and court interpreting; and the operation of grand and petit juries.

Review initiatives on the development of electronic technologies for the courts for their effect on case management and the administration of justice, and make policy recommendations when appropriate.

Review matters affecting the operation of appellate, district and bankruptcy clerks' offices and make recommendations for changes in related administrative practices, federal rules, and legislation.

Review the staffing formulae for the appellate, district, and bankruptcy clerks' offices and recommend any revisions to such formulae to the Committee on Judicial Resources.

Committee on Criminal Law*:

To oversee the federal probation and pretrial services system and review legislation and other issues relating to the administration of the criminal law.

Monitor and analyze for Judicial Conference consideration legislation affecting the administration of criminal justice.

Make recommendations to the Judicial Conference regarding exercise of the Judicial Conference's authority over sentencing institutes under 28 U.S.C. § 334.

Provide oversight of the implementation of sentencing guidelines and make recommendations to the Judicial Conference with regard to proposed amendments to the guidelines, including proposals that would increase their flexibility.

Make recommendations to the Judicial Conference in meeting its and the probation system's responsibilities to submit an annual report to the Sentencing Commission (28 U.S.C. § 994 (o)).

Assure that working relationships are maintained and developed with the Department of Justice, Bureau of Prisons, United States Parole Commission, and United States Sentencing Commission, with respect to issues falling within the Committee's jurisdiction.

Propose to the Judicial Conference or Director of the Administrative Office, as appropriate, policies and standards on issues affecting the probation system, pretrial services, presentence investigation procedures, disclosure of presentence reports, sentencing and sentencing guidelines, supervision of offenders released on probation and parole and on supervised release, drug aftercare services, witness protection, and interdistrict transfer of offenders under supervision.

Recommend to the Committee on Judicial Resources standards of employment for employees in probation and pretrial services.

Monitor the workload and operations of probation and pretrial services offices and when the budget is being formulated, propose adequate funding and resources to support these operations, taking into account the overall fiscal situation of the judiciary. Review the staffing formulae for probation and pretrial services offices and recommend such formulae and any revisions to the Committee on Judicial Resources.

Committee on Defender Services*:

To oversee the provision of legal representation to defendants in criminal cases who cannot afford an adequate defense.

Provide general policy guidance in interpretation and application of the Criminal Justice Act, including approving non-controversial revisions to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, recommending approval for other amendments to

these guidelines, and reviewing and modifying forms used by the courts in administering the Act and Related Statutes.

Review budget and grant requests (including staffing) of Federal Public and Community Defender Organizations, and approve appropriate amounts.

Review the Administrative Office's fiscal reports concerning appointments and payments under the Criminal Justice Act.

Monitor, analyze, and propose for Judicial Conference consideration legislation affecting the appointment and compensation of counsel and where appropriate, make recommendations to other Judicial Conference committees and to the Judicial Conference regarding issues which impact upon the Defender Services program.

Ensure, to the extent possible, adequate and appropriate training of all persons providing representational services under the Criminal Justice Act.

Monitor the expenditure of Criminal Justice Act funds, advise the Judicial Conference of developments in the defender services program which require additional resources, and, when the budget is being formulated, propose adequate funding and resources to support the defender services program taking into account the overall fiscal situation of the judiciary.

Committee on Information Technology*:

To provide general policy recommendations, planning, and oversight of the judiciary information technology program.

Recommend to the Judicial Conference broad information technology goals, objectives, and priorities.

Develop and propose national information resources management (IRM) policies which will promote the effective and efficient use of automation in the courts.

Coordinate the development of, and approve for submission to the Judicial Conference, the Long Range Plan for Information Technology in the Federal Judiciary.

Conduct ongoing evaluations of existing systems and make recommendations for changes, as necessary.

When the budget is being formulated, propose adequate funding and resources to support the information technology programs, including relevant education and training, electronic public access, and voice telecommunications programs, taking into account the overall fiscal situation of the judiciary. Make recommendations on information technology staffing issues to the Committee on Judicial Resources.

Committee on Judicial Resources*:

To consider all issues of human resource administration, including the need for additional Article III judges and support staff, and oversee the operation of statistical systems and the development of methodologies for human resource needs assessment and allocation.

Make recommendations to the Judicial Conference regarding additional Article III judgeships and Court of Federal Claim's judgeships.

Oversee the Judiciary Salary Plan and the Court Personnel System. Coordinate and make recommendations to the Judicial Conference regarding all staffing formulae and requests for personnel not covered by established staffing formulae and methodologies (other than bankruptcy judges, magistrate judges, and personnel of defender services).

Make policy recommendations to the Judicial Conference on non-information technology administrative and operational training needs of court personnel, on funding for such training in the judiciary budget requests to the Congress, on the discharge of specific responsibilities assigned to the Judicial Conference by the Congress for training of court personnel, and on other matters related to employee development policy as the Judicial Conference may direct.

Review and recommend Judicial Conference approval of all other matters of human resource policy and administration such as classification and qualification standards, salary scales, background investigations, leave administration, employment practices and procedures, and all judiciary-wide benefit programs.

Oversee the operation of the statistical systems of the courts (to the extent not done by other committees), focusing in particular on the weighted caseload system and on reports of cases pending or under submission for long periods of time.

When the budget is being formulated, propose adequate funding and resources to support the programs within the committee's jurisdiction, taking into account the overall fiscal situation of the judiciary.

Committee on Judicial Security*:

Review, monitor, and propose to the Judicial Conference policies regarding the security of the federal judiciary, including protection of court facilities and proceedings, and protection for judicial officers, other officers and employees of the judiciary, and any immediate family members of such persons, at federal court facilities and other locations. Make recommendations for changes as appropriate.

Review the provision of security services by the United States Marshals Service and the Department of Homeland Security, and make recommendations for changes where deemed advisable.

Coordinate relations of the United States Marshals Service, the Department of Justice in general, and the Department of Homeland Security with the United States courts and court security committees on security matters.

Analyze or prepare for Judicial Conference consideration proposed legislation affecting the security program.

Initiate studies and surveys concerning security matters.

Monitor the coordination of emergency preparedness in the judiciary, which includes crisis response and continuity-of-operations planning.

Coordinate and maintain a liaison with the Committee on Space and Facilities with respect to security arrangements, including measures for emergency preparedness that involve court facilities.

When the budget is being formulated, propose adequate funding and resources to support the security program, including education and training, taking into account the overall fiscal situation of the judiciary.

Committee on the Administration of the Magistrate Judges System*:

To provide oversight of the federal magistrate judges system.

Review on a regular basis the need for and utilization of existing magistrate judge positions and the need for new positions, and make recommendations to the Judicial Conference for changes in magistrate judge positions, as necessary.

Review qualification standards and selection and appointment procedures for magistrate judges.

Review and make recommendations to the Judicial Conference regarding the office of magistrate judge, including such areas as salaries, retirement benefits, and staff and support services.

Review issues concerning the jurisdiction of magistrate judges.

Review issues concerning magistrate judge participation in court administration and governance.

Review periodically the legal and administrative manuals for magistrate judges.

Maintain liaison with judicial officers regarding the federal magistrates system.

Approve, according to standards set by the Judicial Conference, magistrate judge law clerk positions.

Committee on Space and Facilities*:

Review, monitor, and propose to the Judicial Conference policies regarding the judiciary's space and facilities requirements. Make recommendations for changes as appropriate.

Oversee long range planning for court facilities, including facilities for additional judgeships recommended by the Judicial Conference.

Coordinate and maintain a liaison with the Committee on Judicial Security with respect to security arrangements, including measures for emergency preparedness that involve court facilities.

Review the provision of design, construction, and maintenance services for court facilities by the General Services Administration, and make recommendations for changes where deemed advisable.

Coordinate relations of the General Services Administration, the United States Marshals Service, the Department of Justice in general, and the Department of Homeland Security with the United States courts on space and facilities matters.

Analyze or prepare for Judicial Conference consideration proposed legislation affecting the space and facilities program.

Initiate studies and surveys concerning space and facilities matters.

Monitor use of, and propose revisions to, the U. S. Courts Design Guide and standards governing furniture and furnishings; recommend procedures for granting exceptions thereto.

When the budget is being formulated, propose adequate funding and resources to support the space and facilities program, including education and training, taking into account the overall fiscal situation of the judiciary.

The Executive Committee:

The senior executive arm of the Judicial Conference.

Act on behalf of the Judicial Conference between regular sessions, after consultation with the relevant Judicial Conference committee, on any matter requiring emergency action, and report to the Judicial Conference at its next session or more promptly, as necessary.

Prepare the discussion and consent calendars for meetings of the Judicial Conference. In its review of the report submitted by each Judicial Conference committee in connection with calendar preparation, the Committee may, from time to time, call to the submitting committee's attention aspects of its report that may be problematic so that the submitting committee will have the opportunity to reconsider whether to submit its report to the Judicial Conference with no

change (as is its right), or to modify its report before submission to the Judicial Conference, or to take other action.

Establish and publish procedures for assembling Judicial Conference and committee agendas.

Review, revise, and publish statements of committee jurisdiction, and resolve questions as to whether a given matter falls within the jurisdiction of a particular committee. Assign matters of first impression to the appropriate committee.

Receive every five years a recommendation from each committee as to whether that committee should be maintained or abolished, together with a justification for that recommendation, and make appropriate recommendations to the Judicial Conference.

Make recommendations to the Judicial Conference and its committees with respect to the needs of the judiciary that, in its view, should be addressed or planned for.

Working with the Director of the Administrative Office, fashion spending plans for the federal judiciary's congressionally approved appropriations.

Coordinate legislative liaison on behalf of the Judicial Conference and maintain and improve relationships between the judiciary and the legislative and executive branches. However, each committee will continue to be responsible for developing for Judicial Conference consideration substantive positions on legislative matters within its area of assigned responsibility.

Perform such other duties as may be delegated by the Judicial Conference or the Chief Justice.

Confer from time to time with the Chief Justice.

Facilitate and coordinate the federal judiciary's planning activities.

Committee on the Administrative Office:

To oversee generally the operations of the Administrative Office.

Perform general oversight of Administrative Office operations, recognizing that the Director is responsible for day-to-day managerial and administrative matters.

Receive, consider, and respond to complaints and suggestions concerning operations of the Administrative Office and recommend appropriate action to the Director.

Oversee the audit, review, and investigative assistance activities of the Administrative Office and recommend actions by the Administrative Office to address recurring issues.

Conduct studies of the operations of the Administrative Office as requested by the Judicial Conference.

Assist the Administrative Office in achieving an optimum working relationship with all components of the Judicial Branch.

Committee on Codes of Conduct:

To provide advice on the application of the Code of Conduct for United States Judges and other judicial branch codes of conduct and Titles III (relating to gifts to federal employees) and VI (relating to limitations on outside earned income, honoraria, and outside employment) of the Ethics Reform Act of 1989, as amended.

Render confidential advisory opinions on the application of the codes in response to confidential inquiries from persons bound by a code adopted by the Judicial Conference.

Render confidential advisory opinions, in response to confidential inquiries, concerning the application of other codes of conduct binding on officers and employees of the Tax Court, the Court of Veterans Appeals, and other entities of the judicial branch so long as (1) the relevant code is substantially identical in all material respects to a code adopted by the Judicial Conference, and (2) the judicial branch entity served by the inquirer has requested that the Committee render confidential advisory opinions to its officers and employees concerning the relevant code.

Render confidential advisory opinions interpreting Titles III and VI of the Ethics Reform Act of 1989, as amended, in response to confidential inquiries from judicial officers and employees of the judicial branch, except those of the Supreme Court and the Federal Judicial Center.

Publish such advisory opinions, after appropriate redaction to preserve privacy interests, on issues frequently raised or of broad application.

Recommend code and statutory modifications to the Judicial Conference.

Committee on Federal-State Jurisdiction:

To analyze proposed changes in federal jurisdiction and to serve as liaison with state courts.

Make recommendations on proposals regarding elimination, modification or creation of new federal jurisdiction (including diversity), creation of new courts, territorial issues, and revision of venue provisions.

Serve as the conduit for communication on matters of mutual concern between the federal judiciary and state courts and their support organizations such as the National Center for State Courts, the Conference of Chief Justices, and the State Justice Institute.

Committee on Financial Disclosure:

To supervise the filing of financial disclosure reports by judicial officers and employees.

Review financial disclosure reports filed by judges and other judicial branch officers and employees, as required by the Ethics in Government Act, and respond to requests for redaction of such reports, consistent with the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended.

Approve and modify reporting forms and instructions, as necessary.

Respond to inquiries regarding financial disclosure matters from judges, employees, and the public.

Committee on International Judicial Relations:

To coordinate the federal judiciary's relationship with foreign judiciaries and with official and unofficial agencies and organizations interested in international judicial relations, and the establishment and expansion of the rule of law and the administration of justice, and to make recommendations as appropriate to the Chief Justice, Judicial Conference of the United States, and other judicial entities.

Serve as a conduit for communication on matters of mutual concern between the Chief Justice, the Judicial Conference, the federal judiciary, and foreign courts and international judicial organizations.

Coordinate and respond to requests from foreign judges and court managers, and agencies representing their interests, and international organizations concerned with the rule of law and the administration of justice.

In cooperation with executive branch and private agencies, facilitate the development and administration of programs designed to assist foreign judges and court managers such as the translation and dissemination of materials about the United States and its judicial system.

Committee on the Judicial Branch:

To address problems affecting the judiciary as an institution and affecting the status of federal judicial officers.

Advise and make recommendations to the Judicial Conference on matters relating to judges' salaries, benefits, and other perquisites.

Review and advise the Judicial Conference on appropriate changes to the Travel Regulations for United States Justices and Judges.

Disseminate information and promote interest throughout the judiciary regarding the financial status of judges and the viability of the judicial office as a lifetime calling.

Study and report to the Judicial Conference on past, present, and possible future relationships with Congress, the executive branch, media, bar, and the general public.

Committee to Review Circuit Council Conduct and Disability Orders:

To consider petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges, and to review legislative proposals on judicial discipline and removal.

Consider petitions addressed to the Judicial Conference for review of circuit council actions on judicial conduct or disability complaints under 28 U.S.C. §§ 354(b) and 357(a).

Monitor and report to the Judicial Conference on legislation in the area of judicial discipline, impeachment, and removal (excluding matters pertinent to the Code of Conduct for United States Judges).

Serve as a liaison and clearinghouse for the circuits on their experiences with the illustrative rules governing judicial conduct complaints.

Report and make recommendations to the Judicial Conference, including desirable legislative and rules changes, on developments and experiences of the circuits regarding judicial conduct and disability complaints.

Study and periodically evaluate the experience of the circuits accumulated under chapter 16 of title 28, U.S. Code, and related matters, coordinate the collection and analysis of relevant data incident to such studies, and develop appropriate policy proposals for the consideration of the Judicial Conference.

Committee on Rules of Practice and Procedure:

To carry on a continuous study of the operation and effect of the general rules of practice and procedure.

Review reports and recommendations submitted by the five Advisory Committees and approve, modify, disapprove or return those recommendations to the Advisory Committees, as appropriate.

Transmit to the Judicial Conference proposed rules changes, together with Committee Notes relating thereto, and a summary indicating which proposed changes were the subject of substantial controversy.

Review and make recommendations to the Judicial Conference with regard to legislation affecting rules of practice and procedure.

Coordinate the work of the Advisory Committees, and make suggestions of proposals to be studied by them.

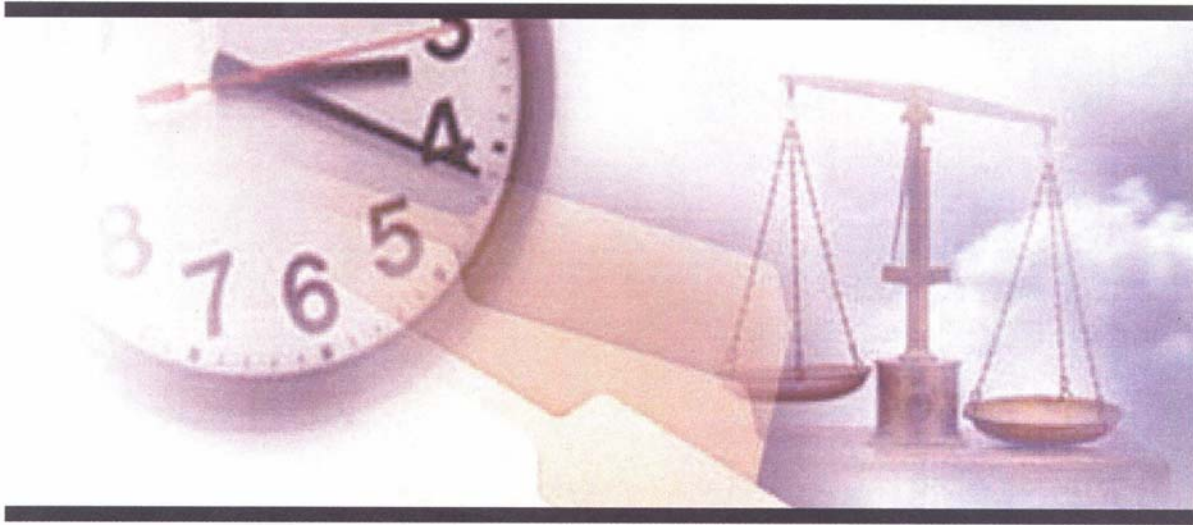
Rules Advisory Committees:

To study the rules of practice and procedure in each Advisory Committee's field.

Consider suggestions and recommendations from bench and bar for changes in the rules.

Draft and publish proposed rules changes and Committee Notes and, when necessary, conduct public hearings thereon.

Submit to the Rules Committee those rule changes and Committee Notes finally agreed upon, a summary indicating which proposed rules changes were the subject of substantial controversy, the reports of the comments received in writing or during public hearings, and an explanation of any changes made subsequent to the original publication.



**Strategic Planning Issues of the
Committees of the Judicial Conference
of the United States**

September 2006

Administrative Office of the U.S. Courts
Long-Range Planning Office

Key Crosscutting Strategic Goals and Issues

- Preserving the quality of justice
- Preserving judicial independence
- Maintaining appropriate federal jurisdiction
- Ensuring judicial security
- Enhancing relations with Congress
- Maintaining high standards of ethics and conduct
- Maintaining effective judicial governance, internal controls and oversight systems
- Obtaining needed resources from Congress
- Controlling costs while assuring operational effectiveness and quality
- Coping with changing work
- Attracting and retaining a highly competent and diverse workforce
- Providing fair and reasonable compensation for judges and staff
- Enhancing productivity and service through innovation and investment in information technology
- Sustaining public trust through open access to the courts and to case information

Committee Strategic Goals and Issues

Committee on the Administrative Office

- Enhancing internal controls and oversight systems to maintain congressional and public confidence in the judiciary
- Supporting AO efforts to identify and analyze critical long-range trends, issues and developments impacting the judiciary and its programs
- Ensuring the AO is appropriately organized and prepared to address the current and future needs of the courts and the Judicial Conference

Committee on the Administration of the Bankruptcy System

- Ensuring the continuity of operations in the event of a disaster
- Enhancing the security of bankruptcy proceedings (including such activities as meetings of creditors that take place away from the courthouse) and the effect of increased security on the operation of the courts
- Mitigating the impact on the quality of justice in the event that the judiciary's budget is not increased, or is actually decreased, in the future
- Providing flexibility in the deployment of judge resources in light of the volatility of bankruptcy case filings
- Considering the impact of the Bankruptcy Act of 2005, including such matters as staffing, fee income, and expectations concerning the eventual steady-state caseload
- Identifying and obtaining the appropriate number of bankruptcy judgeships
- Meeting the need for more statistical information on the bankruptcy system
- Managing changes in bankruptcy judges' work due to the advent of electronic case files in the bankruptcy courts
- Focusing automation applications, training and practices on the needs of judges

Committee on the Budget

- Addressing long-term funding challenges posed by the fiscal environment by obtaining needed resources from Congress and by containing growth in judiciary costs
- Assessing security concerns and their impact on future budgets, especially in view of terrorism

Committee on Court Administration and Case Management

The Committee's subcommittee on long-range planning has been asked to identify strategic issues and report to the full Committee in December 2006.

2003 strategic issues:

- Providing court information in languages other than English and addressing cultural and language differences to ensure accurate translations and meaningful access to the federal courts for all citizens
- Determining the impact of an aging society on the federal court system
- Determining if and whether the court system can alter its structure to address the projected population shift to western and southern states
- Preserving respect for an independent judiciary and its importance in a democratic government
- Preparing for a more stringent budget environment and developing a plan to operate with reduced funds
- Explaining to Congress and others the budgetary needs of the courts and developing ways to stem the growth of the federal judiciary's budget (i.e., shared administrative services)
- Preserving the human face of the judiciary while also using technology in the most efficient and effective means in all areas of court operations

Committee on Criminal Law

- Containing costs while effectively investigating defendants and supervising offenders
- Making the probation and pretrial services system more results-based through the implementation of an outcome-based case tracking system and the use of evidence-based practice
- Assessing the potential for the electronic transmission of sentencing documentation

- Centralizing the delivery of the Probation and Pretrial Services Automated Case Tracking System (PACFS) to control costs and improve continuity of operations capabilities
- Enhancing continuity of operations planning for probation and pretrial services offices
- Considering the impact of the increasing federalization of criminal law
- Supporting the workload of the district courts along the southwest border
- Supporting the Article III judges who will be taking senior status over the next several years

Committee on Defender Services

Mission: *To ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act, and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services.*

Goals

- Providing assigned counsel services to all eligible persons in a timely manner
- Providing appointed counsel services that are consistent with the best practices of the legal profession
- Providing cost-effective services
- Protecting the independence of the defense function performed by assigned counsel so that the rights of individual defendants are safeguarded and enforced

Strategic Issues

- Ensuring the availability and quality of Criminal Justice Act services
- Considering the impact of technology on Criminal Justice Act services
- Developing and sustaining a diverse workforce for the future
- Maintaining the independence of the defense function
- Supporting death penalty representation under the Criminal Justice Act and related statutes

Committee on Federal-State Jurisdiction

- Guarding against expansion of federal jurisdiction that would be inconsistent with principles of judicial federalism
- Identifying problem areas in federal jurisdiction that could be addressed through legislation
- Fostering communication between state and federal judiciaries

Committee on Information Technology

- Meeting the needs of judges and chambers
- Improving service while containing costs
- Preparing for the future to take advantage of technical innovations
- Leveraging the existing base of talent to improve the information technology tools used within the judiciary
- Meeting the demands of increased data communications
- Ensuring security and privacy

Committee on the Judicial Branch

- Increasing judicial compensation to continue to ensure quality of justice
- Advocating other matters for the well-being of judges, including enhanced benefits
- Ensuring that the judiciary has a strong public image
- Maintaining good relations with Congress
- Maintaining judicial independence

Committee on Judicial Resources

- Attracting and maintaining a well-qualified, diverse workforce
- Managing long-term personnel costs

- Addressing workforce succession planning, including assessing retirement trends, attrition and training needs
- Investing wisely in information technology to enhance productivity and service
- Measuring accurately requirements for judgeships and staff

Committee on Judicial Security

The Committee's strategic and long-range planning subcommittee, which began its work in May 2006, is in the process of identifying strategic issues for consideration by the full Committee. Also, it is hoped that committee participation in the US Marshals Service's Institute on Judicial Security, a newly formed "think tank" on judicial security, will be helpful in the Committee's long-range planning efforts.

2003 strategic issues of the former Committee on Security and Facilities relating to judicial security:

- Planning for security resources effectively
- Assessing the impact of technology on the security and facilities programs

Committee on the Administration of the Magistrate Judges System

The Committee has asked staff to prepare background materials on a number of specific issues for a long-range planning discussion at its December 2006 meeting.

2003 strategic issues:

- Maintaining appropriate limits on magistrate judge numbers and authority
- Identifying appropriate roles for magistrate judges in court governance
- Maintaining appropriate chambers staffing for magistrate judges
- Identifying the contributions of magistrate judges to the quality of justice
- Promoting the evaluation of MI, fair, and effective utilization of magistrate judges
- Helping courts obtain the greatest benefit from their magistrate judges

Committee on Rules of Practice and Procedure

- Restyling rules for consistency and readability

- Assessing the impact of technology on rules
- Analyzing local rules of court for consistency with national rules
- Upholding the integrity of the rules process
- Seeking greater participation in the rulemaking process by bench, bar, and public

Committee on Space and Facilities

The Committee discussed several issues relating to cost-containment and long-range planning at its June 2006 meeting. Several initiatives underway will have a significant impact on the Committee's long-range strategic plan. The Committee plans to have a discussion of the plan at its December 2006 meeting.

2003 strategic issues of the former Committee on Security and Facilities relating to space and facilities:

- Planning comprehensively for housing the federal courts
- Dealing with GSA restructuring and downsizing
- Assessing the impact of technology on the security and facilities programs

NATIONAL CENTER FOR STATE COURTS

The federal Judiciary may see information it can adapt in the performance measurement efforts underway in state courts. However, it is not likely that state experiences could be adopted en masse in the federal setting. In 1987, The National Center for State Courts (NCSC) and the Bureau of Justice Assistance (BJA) initiated the Trial Court Performance Standards Project under the auspices of the Conference of Chief Judges and the Conference of State Court Administrators. Over the course of an eight-year period, project participants strived to develop a common language for describing, classifying, and measuring the performance of trial courts.⁹⁰ Together they determined performance measures for courts were important for the following reasons:

- Perceptions and beliefs (positive and negative) about how work is getting done are not always accurate. Performance data allows everyone to test the reality of how well things are going.
- They allow courts to identify and focus on areas of importance to a variety of constituents.
- Standardizing a clear set of end goals instead of the ways to get there allows for greater creativity among court staff.
- Performance data helps prepare, justify, and present budgetary requests.
- The data preserve judicial branch independence through effective governance and accountability.

As a part of the project, a commission of judges, court managers, and scholars created what is now titled “The Trial Courts Performance Standards and Measurement System” that major national associations of judges and court administrators endorsed. This system lays out standards of performance for trial courts in five broad mission areas:

- Access to Justice
- Expedition and Timeliness
- Equality, Fairness, and Integrity
- Independence and Accountability
- Public Trust and Confidence

While these standards set goals for trial courts, the commission also wanted to provide trial courts with a way to examine how well they perform in these standards. They went on to create a set of performance standards that measured these broad goals. Twelve courts in the states of Ohio, New Jersey, Virginia, and Washington tested the measures over four years to make sure that the process was reasonable and operable in an actual court setting and to ensure that the information was useful.

As a way to make these performance measures accessible to the state courts, NCSC created *CourTools*, which provides all courts a common set of ten indicators and clear methods to

⁹⁰ www.ncsconline.org

measure performance in a meaningful and manageable way. They condensed the years of research behind the Trial Courts Performance Standards and Measurement System into ten, easy-to-understand standards and attached easy-to-measure indicators to evaluate those standards. These ten standards are not the only ways to measure court performance, but are meant to serve as a guide to begin the process and measure effectiveness and efficiency.

The ten measures highlighted in *CourTools* are:

1. **Access and fairness:** Ratings of court users on the court's accessibility and its treatment of customer in terms of fairness, equality, and respect.
2. **Clearance rates:** The number of outgoing cases as a percentage of the number of incoming cases.
3. **Time to disposition:** The percentage of cases disposed or otherwise resolved within established time frames.
4. **Age of active pending caseload:** The age of active cases pending before the court, measured as the number of days from filing until the time of measurement.
5. **Trial date certainty:** The number of times cases disposed by trial are scheduled for trial.
6. **Reliability and integrity of case files:** The percentage of filed that can be retrieved within established time standards and that meet established standards for completeness and accuracy of contents.
7. **Collection of monetary penalties:** Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.
8. **Effective use of jurors:** Juror Yield is the number of citizens selected for jury duty who are qualified and report to serve, expressed as a percentage of the total number of prospective jurors available. Juror Utilization is the rate at which prospective jurors are used at least once in trial or voir dire.
9. **Court employee satisfaction:** Ratings of court employees assessing the quality of the work environment and relations between staff and management.
10. **Cost per case:** The average cost of processing a single case, by case type.⁹¹

Performance Measures in State Courts

Several state and local courts use NCSC's *CourTools*; however each is at a different point in the implementation process. The following courts range in size and location and are a sample of the courts implementing *CourTools*. At this time, only Minnesota courts link performance measures to their budget process.

- Maricopa County Superior Court (Phoenix)
- 19th Judicial Circuit (IL)
- North Carolina Courts
- Utah Courts

⁹¹ More detailed information on *CourTools* can be found on the National Center for State Courts website at http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm

- Morrow County Court of Common Pleas, Ohio
- Washington Courts
- Superior Courts of California
- District Courts of Minnesota
- District of Columbia

The Minnesota Experience

A judge in Minnesota, who has worked with performance measures since the early 1990s, said that at that time, Minnesota had shifted to total state funding and anticipated that budget analysts would be interested in how court districts spent their funds. It took time to introduce performance measures, since judges resisted what they saw as a private sector methodology to the courts; judges especially did not like the term ‘customer.’

Overtime certain types of measurements fall out of favor, so the Minnesota court has revised them. Recently, it has looked into categories similar to the Baldrige Award⁹²:

- Leadership
- Customers
- Human resources
- Strategic Plan
- Information technology
- Results

The almost instinctive reaction of judges is often to be opposed to performance measurement, especially if the topic is broached by someone other than another judge. However, to get judges on board with measurement, the Minnesota judge said it would be easier to discuss performance than have to explain their views on controversial opinions such as the death penalty or abortion. In addition, court measures have to look beyond administration; if not, the judges quickly lose interest and support.

The Minnesota chief judge is familiar with CourTools and believed that one drawback is that it is prepackaged. The most valuable part of the process takes place in deciding what the measures should be. This is where the court executives and judges discuss how to define the mission of the court. The debate is as important as the end result.

⁹² Named for the late Commerce Secretary Malcolm Baldrige, this award focuses on organizational excellence in government.

GSA RENT COMPONENTS

1. Shell Rental Rate: amount of payment due for occupancy of the building shell. The building shell is a structure in which the house systems are present and operational; however, only perimeter walls are present. It does not include services or alterations. The shell rental rate reflects the amount stated in the occupancy agreement.

a. **Space type:** predominate use of the building or lease. There are three possible space types. a. General, b. Warehouse, c. Unique.

2. Amortized Tenant Improvement Used/General: amount of general tenant improvements provided for the tenant. This rate is the same for all agencies is normally amortized over terms set in the occupancy agreement.

3. Operating Costs: the cost of operating a property at a standard level of service, including both the cost in the lease and any separate contract costs for providing operating services to the premises. This cost will be adjusted annually for escalation if the lease reflects that provision.

4. Real Estate Taxes: reflects real estate taxes due in the current year, based on the terms of the lease as specified in the occupancy agreement.

A. Market Rent SubTotal: used by agencies and others to compare with commercial rents, as it is intended to reflect only market comparable standards charges and uses.

5. Amortized Tenant Improvement Used/Customization: actual cost of tenant improvements as amortized in the lease, less the line item for Amortization of General Component of Tenant improvement allowance used. It is added after market rent as it is a reflection of special needs of the agency, is not part of market comparable space and, is normally amortized over terms set in the occupancy agreement.

6. GSA Installed Building Improvements: Agency share of amortized costs for building improvements installed by GSA (e.g. Heating, Ventilation and Air Conditioning upgrades) over and above what is stated in the lease contract.

7. Building Security Features:

Building Specific Amortized Capital: amortized capital costs for building specific furniture, fixtures and equipment (e.g. magnetometers, x-ray machines, closed circuit cameras and monitors, etc.)

8. Extra Services: No longer applicable under OA Billing

9. Parking: charges for available parking, if not already included as part of Shell Rental Rate. The annual rate reflects rate per space.

a. Structured (number of spaces): number of parking spaces under cover (e.g. garage)

b. Surface (number of spaces) number of parking spaces without cover (e.g. parking lot)

10. Rent Charges for Other Space: charges for other types of space, such as wareyards, bridges, helipads, etc. This line item will be itemized by category.

11. PBS Fee: amount charged to an agency to cover GSA costs associated with lease acquisition, property management services, and indemnification from risks that GSA assumes, most notably the risk of vacancy. This item will be automatically recalculated by the OA Tool system, if square footage changes are made.

B. Agency Rent Subtotal: Subtotal of lines 5 – 11.

12. Pro Rata Joint Use Charges: reflects the agency’s proportionate share of building, facility or community space available for the use of all tenants. Joint use charges are calculated based on the percentage of space the agency occupies in the building, facility or community compared to the total space available for occupancy on the building, facility or community.

a. Building amenities: charge for joint-use space such as cafeteria, health units, etc.

b. Structured parking: charge for spaces under cover that are available for use by building tenants, such as visitor parking.

c. Surface parking: charge for spaces without cover that are available for use by all building tenants, such as visitor parking.

C. Joint-Use Subtotal: total charges for joint-use building amenities space, surface parking, and structured parking.

D. Total Monthly Rent (A+B+C): total or market rent charges, agency rent charges (or credits), and joint use space. (Object class 23.1 relates to OMB Cir., A-11, Sec 54,)

13. One-time Payments: charge for one-time services

a. **Rent Rebate:** see 41 CFR 102.85.160

14. Billing Adjustments & Corrections: modifications to the bill to either correct errors in the previous billing cycles, or to reconcile total rent billed because of rent exemptions, caps, or trust fund adjustments, lump sum tax adjustments.

a. **Current year xx-**Explanation from OA bill adjustment: credit or charge from OA errors that took place in the current fiscal year.

b. **Prior year xx-**Explanation from OA bill adjustment: credit or charge from OA errors that took place in the prior fiscal year.

c. **Rent Exemption Expires:** xx/xx/xx: credit for agencies exempt from paying rent, and the date the exemption will expire.

d. **Administrative Adjustment:** adjustments given to agencies for specific rent charges. The adjustment is posted as a percentage of specific rent charges for an OA.

e. **Trust Fund Agency Adjustment:** Credit or debit for trust fund agency. These adjustments are posted as the percentage of specific rent charges for an OA. These adjustments are posted only OA’s in Federal Buildings (occup. right 1, 4, and 5).

E. Adjustment SubTotal:

F. Total Rent Bill (D+E)

15. Antenna: license fees for rooftop antennas. Itemized by category.

a. Antenna Charges

b. Adjustments – Current Year: OA adjustment for current year antenna charge

c. Adjustments- Prior Year: OA adjustment for prior year antenna charge

G. Total Antenna Bill: (Object class 25.3 - relates to OMB Cir., A-11, Sec 54,)

16. Reimbursable Services: costs for extra services: (e.g. 24-hour operation of a computer room) Itemized by Services

- a. Overtime Utilities: charges for (e.g. gas, electricity, steam, coal, oil & chilled water)
- b. Enhanced Custodial Services (e.g. daytime or special cleaning)
- c. Mechanical O&M – HVAC
- d. Mechanical O&M – Others
- e. Adjustments – Current Year: bill adjustments for reimbursable services
- f. Adjustments – Prior Year: bill adjustment for reimbursable services.

H. Total Reimbursable Services Bill: (Object class 25.3 relates to OMB Cir., A-11, Sect 54,)

I. Total PBS Bill: (F+G+H)



Office of Real Property
Asset Management



ROI Pricing

September 2006

ROI Pricing: When Do We Use It?



-New Construction; -Substantial Building Rehabilitation;
-Newly Acquired Assets; -Underperforming Assets, where
either of the following criteria is met:

Criteria One:

- Appraisal-generated rental rate does not provide for a fair return on capital investment
- Conduct hurdle analysis
 - The current hurdle rate is 6 percent.

Criteria Two:

- It is infeasible or impractical to appraise the fair annual Rent
 - Few or no market comparables of similar size and age.
 - May be due to remoteness of location.

Changes to ROI Pricing Policy

Previous ROI Pricing

I. Shell Rent

- Shell Improvements; “Return on and of”:
Total cost to design and construct building shell amortized over 25 years at the 25-year OMB Discount Rate + 2%; currently $5.15\% + 2\% = 7.15\%$.

- Land:
Land Fair Market Value X 25-year OMB Discount Rate + 2%; currently $5.15\% + 2\% = 7.15\%$.

II. Amortized Tenant Improvements

- General and Customization TIs
Amortized over 10 or 20 year terms at the corresponding OMB Discount Rate + 2%;
10-year rate currently $5\% + 2\% = 7.00\%$

III. Cost of Services

- Estimated Actual or Appraised Operating Expenses
- National and Region G&A capped at 10% of Fully Serviced Shell Rent

IV. Cost of Security

- Building-specific Capital Security Charges

V. Joint Use Space

- Apportioned among tenants based on assigned space, if applicable
- Parking, antennae sites and ancillary spaces not included

Approved ROI Pricing

I. Shell Rent

- Shell Improvements; “Return on”:
Estimated Shell Construction X 25-year OMB Discount Rate + 1%; currently $5.15\% + 1\% = 6.15\%$.

- Land
Land Fair Market Value X 25-year OMB Discount Rate + 1%; currently $5.15\% + 1\% = 6.15\%$.

(6% is GSA Hurdle Rate)

II. Amortized Tenant Improvements

- General and Customization TI’s amortized over 10 or 20 year terms at the Treasury rate plus 12.5 basis points; currently $4.69\% + .125\% = 4.82\%$
(Same as Market Pricing)

III. Cost of Services

- Estimated Actual Costs reconciled to Actual Costs
- National and Region G&A capped at 10% of Fully Serviced Shell Rent

IV. Cost of Security

- Same as current

V. Joint Use Space

- Same as current

El Paso Courthouse (New Construction) - ROI Pricing (as of 12/2005)



ROI Pricing using Previous Model

Building Size	
RSF	215,480
USF	150,904
R/U Factor	1.4279269
Project Cost	
Shell Cost	\$64,827,070
Land Cost	<u>\$8,200,000</u>
Shell + Land	\$73,027,070
Capital Security Improvements	\$0
Total TIs	\$19,363,930
Fair Market Value = Total Capital Investment	\$92,391,000

Shell Rent	\$28.58/RSF
+ Operating Expenses	\$ 5.21
+ Field Office G&A	\$ 1.75
+ National & Regional G&A	<u>\$ 3.35</u>
(Capped at 10% of Net ROI & Operating Expense)	

Total Rent \$38.89/RSF
 (excludes security, TI Amort., Joint Use)
RETURN on Shell Rent (\$28.58/rsf) @ 90% occupancy = 7.59%
 (Net of Operating Expenses and G&A)

+TI Amortized @10yr Disc Rate + 2%	\$1.25
+TI Amortized @20yr Disc Rate + 2%	<u>\$7.58</u>
Total TI Amortized	\$8.83/RSF

Gross Rent (incl. TI Amortization) \$47.73/RSF
RETURN on Shell + TI Rent (\$37.42/rsf) @ 90% occupancy = 7.85%
 (Net of Operating Expense, G&A, & Security)

ROI Pricing using Approved Model capped at OMB 25 year discount rate + 1% Return on Shell

Building Size	RSF	215,480
USF	150,904	
R/U Factor	1.4279269	
Project Cost		
Shell Cost	\$64,827,070	
Land Cost	<u>\$8,200,000</u>	
Shell + Land	\$73,027,070	
Capital Security Improvements	\$0	
Total TIs	\$19,363,930	
Fair Market Value = Total Capital Investment	\$92,391,000	

Shell Rent	\$22.41/RSF
+ Operating Expenses	\$ 5.21
+ Field Office G&A	\$ 1.75
+ National & Regional G&A	<u>\$ 2.76</u>
(Capped at 10% of Net ROI & Operating Expenses)	

Total Rent \$32.13/RSF
 (excludes security, TI Amort., Joint Use)
RETURN on Shell Rent (\$22.41/rsf) @ 93% occupancy = 6.15%
 (Net of Operating Expenses and G&A)

+TI Amortized 10yr @Treasury Rate + 12.5 BPs	\$0.57
+TI Amortized 20yr @Treasury Rate + 12.5 BPs	<u>\$6.66</u>
Total TI Amortized	\$7.22/RSF

Gross Rent (incl. TI Amortization) \$39.36/RSF
RETURN on Shell + TI Rent (\$29.64/rsf) @ 93% occupancy = 6.43%
 (Net of Operating Expense, G&A, & Security)

PBS RENT BILL MANAGEMENT PROGRAM OVERVIEW

The Rent Bill Management program was developed from a commitment to our customers that through a nationally standardized billing process GSA PBS will:

- Bill the right amount
- Reflect all changes within one billing cycle
- Notify customers of changes before they are billed

The New Business Process

- PBS retains ownership of the data
- PBS remains accountable to our customers and stakeholders for the accuracy of the data
- Consistency and Implements Standardization
 - National Standardized Process
- Document Based Process
 - No Supporting Document (lease/appraisal) - No Input
 - Communication with Contractor via Communication Tool
- Contractor will NOT have any Contact with Customer
- Exception Process
 - Must come from Central Office via Contracting Officer Representative

Key Dates

- **March – December 2006**
 - Getting Ready for Transition
 - File review, tagging, scanning and corrections
- **April 6, 2006**
 - Contract Awarded to UNISYS
- **May 17- June 14, 2006**
 - Data Accuracy Self Assessment & Regional Readiness Site Visits
- **August 21 – September 29, 2006**
 - Data Accuracy Sampling
- **February 16, 2007**
 - Contractor Takes over Input into STAR & OA Tool
 - Contractor Responsible for all Inputs
 - Accountable for New Actions and Validated Files
- **February 2007 – February 2008**
 - Validation of Inventory
- **March 2008**
 - Contractor Responsible and Accountable for STAR and OA Tool inputs

The Outcome

- All OAs/Bills Will be Validated February 2008
- Consistent National Standardized Process
- Re-establish Credibility with Customer
- Move from Transactional to Strategic Discussions/Relationship with our Customers
- Increased accuracy of Rent Bill

**GSA REFORMS FOR APPRAISAL AND RENT RATE-SETTING
CONTAINED IN A JUNE 9, 2006 MEMO FROM ASSISTANT
COMMISSIONER, PBS TO ASSISTANT REGIONAL
ADMINISTRATORS, PBS**

For Immediate Implementation

- Only state-certified contract appraisers will perform, modify, or update FAR appraisals in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- Regional Appraisers cannot update appraisals. Any circumstance requiring correction or modification in fair annual rental (FAR) reports must be brought to the attention of the original contract appraisers. Only the contract appraiser can make corrections, changes, or revisions to his or her original FAR report. After presenting all issues of concern to the contract appraiser, if a Regional Appraiser finds that a FAR appraisal report is still technically incorrect or includes unsupported conclusions, the appraiser must reject the appraisal and procure another FAR appraisal
- Regional Appraisers are now limited only to providing changes in FAR rates due to changes in Rentable/Usable (R/U) factors from a new or re-measurement of a building through the Spatial Data Management (SDM) process. Regional Appraisers will conduct these adjustments using the Review Appraiser's Summary of FAR Rates spreadsheet prescribed in the FAR Appraisal Instructions
- The regional Portfolio Manager/Director will now perform a FAR appraisal program concurrence and recommend use of the appraised rates. The Portfolio Manager/Director will provide written concurrence to be included in the appraisal file. The program concurrence will ensure that:
 - o The FAR report was conducted by a qualified contract appraiser and reviewed by a qualified regional staff appraiser in accordance with Rent appraisal policy and guidance;
 - o The Portfolio Manager/Director has reviewed and understands the degree of change from prior FAR appraisals;
 - o The Portfolio Manager/Director has considered and evaluated market trends; and
 - o The Portfolio Manager/Director has examined the comparables used in the appraisal.
- Disagreements between the Portfolio Manager/Director and Regional Appraiser regarding the rate-setting process or FAR appraisal reports must be escalated to the ARA for resolution. The Assistant Regional Administrators (ARA) can forward cases requiring technical review or arbitration to the Office of Real Property Asset Management (ORPAM) for resolution.

- Central Office appraisal staff will review and approve FAR appraisals for technical sufficiency and conformance to appraisal specifications. Rates from FAR appraisals cannot be used for Rent estimates, rate setting, Occupancy Agreements (OAs), or billing until approved by ORPAM staff.
- For any OA requiring an appraised FAR, the Regional Appraiser will select and certify the appropriate shell rate, operating expense rate base, parking rate, and any other rate based on a FAR appraisal.
- The Regional Appraiser will report directly to the Portfolio Director/Manager in the region and will not be assigned additional or collateral duties that create the appearance of a conflict of interest in rate setting. An appraiser cannot be an asset manager without creating a conflict. Examples of complimentary duties that do not create a conflict include: (1) conducting market value appraisals or providing appraisal support for site acquisition, asset management, and/or disposal programs; (2) providing data and consulting for leasing activity; or, (3) providing expertise in pricing policy.
- All PBS staff appraisers must demonstrate completion of an educational program, which includes receipt of a passing grade on all courses taken based on the General Certified Appraiser certification as prescribed by the Appraiser Qualifications Board of the Appraisal Foundation (AQB) and implemented in their state of residence.

Reiteration or Clarification of Existing Policy and Management Controls

- When an appraised rate is required for OAs and/or billing in accordance with GSA's Pricing Policy, this rate must be established through a FAR appraisal. Rates cannot be established through other means selected by the region.
- Return on Investment (ROI) pricing, including estimating rent or drafting preliminary occupancy agreements, cannot be presented to the customer until ORPAM has reviewed and concurred. Rates based on ROI pricing may not be used for billing purposes until concurrence has been obtained from the Office of Management and Budget (OMB).
- State-certified GS-1171 Regional Appraisers or state-certified contract appraisers will:
 1. Conduct technical reviews of FAR appraisals;
 2. Certify their review by signing as reviewer on the FAR appraisal reports;
 3. Provide a documented and signed review report
- The Regional Appraiser is responsible for all data entered into the Appraisal Data System (ADS) and must verify that all data in ADS is correct.
- Reappraisal of any building or asset is limited to once every fiscal year. In accordance with current policy, buildings or assets must be appraised at least once every five years. New client billing records (CBRs) must use the most current appraisal rates.

- Each region will have at least one designated associate to serve as Regional Appraiser who will conduct a review of FAR appraisals and perform other appraisal duties. The Regional Appraiser should hold a position in the GS-1171 job series and have a state certified general appraiser's license in their state of residence. ORPAM will develop and provide a draft position description within 30 days.

Immediate Actions to Take to Ensure that Regional Portfolio Directors and Appraisers are Current on Business Practice and Appraisal Standards and Ethics

- All Regional Appraisers and Portfolio Directors will attend a conference in Washington, DC, to review current rate-setting policy and business practice. We anticipate scheduling this conference in July 2006.
- Immediately, all PBS staff appraisers will be required to complete a 15-hour national course in the Uniform Standards of Professional Appraisal Practice that meets qualifications described by the Appraisal Qualifications Board. This training should be completed by September 30, 2006. Completion of the course within the past year will be accepted. Online training is available through the Appraisal Institute.

THE REAL PROPERTY AUTHORITY OPTION

The Judiciary has made the point that some other agencies (the Bureau of Prisons, Department of Defense, and Federal Reserve) which have a lot of special-use space do not pay rent to GSA because they have independent authority for real property and thus request appropriations directly from Congress to build or renovate space or maintain facilities. Many factors should be considered in deciding whether the Judiciary should work with Congress to secure independent real property authority that would require it to deal directly with congressional appropriators on space needs rather than continue as a GSA tenant. . Some of the pros and cons to having real property authority are discussed below.

Advantages of real property authority

- 1) More control over agency resources. The Judiciary would request funds from Congress for the level of maintenance and projects (new construction and renovation) that it believes most important.
- 2) Direct guidance to those who maintain Judiciary buildings. The Judiciary can determine whether to hire its own employees or contract with firms to provide daily cleaning and other needed maintenance.
- 3) Increased flexibility. If there is an unexpected workload increase in one part of the country, resulting in additional judgeships or an increased use of visiting judges, the Judiciary could more easily redirect funds (within appropriation guidelines).

Disadvantages or challenges of real property authority

- 1) When needed appropriation amounts are not forthcoming, the Judiciary will have to make trade-offs internally. Judges could be pitted against one another rather than dealing with a third party (GSA).
- 2) Even if the Judiciary contracts for routine cleaning and maintenance, there will probably still be some need to oversee such operations at each site. This may or may not take more time than dealing with GSA contractors. In addition, there will be time and expertise required for contract management.
- 3) In the event of an emergency or natural disaster, there will not be a large cadre of workers or funds to be redirected. The Judiciary and GSA worked hard together to repair space damaged by 2005 hurricanes. Just as utility companies do, GSA pulled staff from other regions. The Judiciary could have some back-up contracts for this purpose or could choose to use national building contractors who promise to redirect resources. However, this could prove more of a challenge than relying on GSA.
- 4) The Judiciary would become the landlord for other agencies just as GAO is the landlord for the Corps of Engineers, to whom it rents space in the GAO building (for which the comptroller general exercises real property authority). This may not be an inherent disadvantage, but could mean that staff and judges will need to deal with issues that arise from being a landlord.

If the Judiciary's goal is to better control its resources and thus manage its priorities more effectively, having real property authority can do that. However, it would be a major

undertaking. As a matter of good business, the buildings that would be transferred to the Judiciary would not come as free goods. As a matter of good business, the buildings that would be transferred to the Judiciary would not come as free goods. A 100-year old courthouse that is no longer mortgaged and in which the Judiciary and those who serve it are the only tenants might come without cost. Newer buildings with multiple tenants (from whom GSA collects rent) would probably come with a mortgage of sorts.

If the Judiciary were the relatively small organization it was in the 1980s, it might make sense to ask for real property authority. As the volume of work – and thus buildings in which to perform it – grew, the Judiciary’s capabilities would expand concurrently. The Judiciary might have chosen to construct its courthouses of the 1990s and early 20th century to predominantly house Judiciary employees or those who work directly with the Judiciary. Its long-rang planning process would have perhaps included additional space – to be leased to other tenants over an initial period – that could absorb growth in judicial workload.

In 2006, it would be a massive effort to assume real property authority for its buildings, many of which contain tenants besides the Judiciary. The mix of very old and very new buildings would require different skills to manage, and the Judiciary would have to become a landlord for many other federal agencies. As workload continued to grow, the Judiciary could find itself asking Congress for more new staff for property management than caseload management.

The Panel does not question the Judicial Conference’s decision to pursue real property authority. However, it believes that the Judiciary’s resources would be better focused on its direct mission than on real property management. If effective asset management can be achieved, at a reasonable cost, through other mechanisms, then this may produce a better long-term outcome for the Judiciary.

**SUGGESTED LANGUAGE AND GUIDANCE FOR A
MEMORANDUM OF UNDERSTANDING
BETWEEN GSA AND THE JUDICIARY**

The Panel recommends that the Judiciary develop a memorandum of understanding (MOU) with GSA to establish a process that is:

- collaborative, fact-based, transparent, and non-adversarial and then includes agreed-upon time limits on the analysis and resolution of specific issues
- impartial in the methods identified to addresses and resolve problems and issues regarding facilities design, rent determination, service delivery, and space utilization

The panel recognizes that the FJC study will not be complete until mid-2008, and does not suggest that the Judiciary and GSA wait until that time to prepare the MOU. It could note the need to include study results and be revised as results are available. In addition, the Panel recognizes that OMB sets rent policies for the federal government, and any work of the joint task force would have to comply with federal rent policies.

This process could include the establishment of a joint task force with equal representation from the Judiciary and GSA. That task force could have sub-groups as needed, if it makes sense to divide portions of the work and bring products to the task force for discussion and resolution.

The MOU should identify an agreed-upon initial list of specific issues or problems to be analyzed. Examples of such issues could include but not be limited to: service levels of maintenance, repairs and renovation of courtroom buildings; commercially equivalent rent and ROI methodology, etc. New issues could be added by either GSA or Judiciary, as they arise.

Analysis by the Joint Task Force should:

- define the issue
- cite all relevant facts bearing upon a solution
- identify alternatives
- form recommendations to the director of the AO and the commissioner of the PBS for decision and corrective action.

In the event that the director of the AO and the commissioner of the PBS cannot reach agreement then the issue could be referred to a mediation body that might be appropriate or set up a mediation panel. In suggesting potential ‘mediators,’ the Panel hopes this serves as an added incentive for the Judiciary and GSA to bring resolution to any dispute themselves.