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L.A. COURTHOUSE: GSA'S PLAN TO SPEND $400 MILLION TO CREATE VACANT SPACE

(112–100)

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

AUGUST 17, 2012 (Los Angeles, California)

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U.S. House of Representatives
Committee on Transportation and Infrastructure

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Washington, DC 20515

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Ranking Member

August 10, 2012

James W. Coon II, Chief of Staff

James H. Zoia, Democrat Chief of Staff

BRIEFING MEMORANDUM

TO: Members of the Subcommittee on Economic Development, Public Buildings and Emergency Management

FROM: Subcommittee on Economic Development, Public Buildings and Emergency Management Staff

SUBJECT: Oversight Hearing on "LA Courthouse: GSA's Plan to Spend $400 Million to Create Vacant Space"

PURPOSE

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Friday, August 17, 2012, at 10:00 a.m., in the Edward R. Roybal Federal Building and U.S. Courthouse at 255 East Temple Street in Los Angeles, California to receive testimony from the General Services Administration (GSA) and the Government Accountability Office (GAO). The hearing will focus on the justification of a third courthouse in Los Angeles, California, the cost implications of the entire courthouse complex in Los Angeles, and a review of the viability of GSA's proposal to exchange the Spring Street Courthouse for construction of a new federal office building.

BACKGROUND

General Services Administration

The Subcommittee has jurisdiction over all of GSA's real property activity through the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. These three Acts are now codified as title 40 of the United States Code. The Public Buildings Service (PBS) is responsible for the construction, repair, maintenance, alteration, and operation of United States courthouses and public buildings of the Federal Government.

GSA's Capital Investment and Leasing Program and the Approval Process

PBS activities are funded primarily through the Federal Building Fund (FBF), an intra-governmental fund into which agencies pay rent for the properties they occupy. Any excess

funds generated by the rental system are used for building repairs and new construction. Each year, GSA submits to the House Committee on Transportation and Infrastructure and the Senate Environment and Public Works Committee its Capital Investment and Leasing Program (CILP) for the subsequent fiscal year. The CILP submission includes what are known as prospectuses for each project, detailing the project scope, need, and estimated costs. For FY 2012, a prospectus is required for any project in excess of $2.79 million.

Pursuant to the prospectus process (40 U.S.C. 3307), capital projects exceeding the prospectus threshold, including construction of new courthouses, must be authorized through a Committee resolution by the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works. The Committee approves the project by adopting a Committee resolution. Typically, the Committee resolutions will include limitations and guidelines GSA must follow in proceeding with the approved project.

In addition to the approvals through Committee resolutions, the Appropriations Committees appropriate funds each year from the FBF. Typically, major capital projects are specifically detailed in the appropriations bills. However, in the past two fiscal years the appropriators have not appropriated any funds for new construction projects.

Federal Courthouse Construction Program

The Subcommittee has had ongoing oversight over the years on the federal courthouse construction program. Last Congress, at the request of the Subcommittee, the GAO completed a study entitled, "*Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs.*"[1] The GAO provided testimony to the Subcommittee on May 25, 2010, on its findings. Specifically, the GAO examined 33 courthouses that were constructed during the ten-year period from 2000 to 2010. The GAO found that 3.56 million square feet of *extra* space was built because of the following reasons:

- The Judiciary grossly overestimated its 10-year projection of future judges assigned to courthouses;
- New courthouses did not incorporate courtroom sharing; and
- GSA constructed courthouses above the congressionally-approved size.

Over Estimating the Future Number of Judges

A primary reason for the overbuilding of recent courthouses has been the Judiciary's inaccurate 10-year projections for future judgeships. Because courthouses are designed to house judges and their staffs, the overall size of a courthouse is largely determined by the number of judges expected to be housed in the building and whether or not judges will share courtrooms. However, even as far back as 1993, the GAO questioned the basis on which the U.S. Courts calculated their projections for new judges. In particular, at that time, the courts based their calculations on a caseload projection method. In 1993, GAO found that the courts consistently over-projected the number of judges that Congress would authorize.[2]

[1] GAO-10-417.
[2] *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GGD-93-132).

The problem of over-projecting the number of judges has not been resolved. In the 2010 GAO report on courthouses, the GAO found:

- GSA constructed 887,000 extra square feet of space due to over-estimating the number of judges;
- 28 of the 33 courthouses had reached or passed their 10-year planning projection period and 24 of the 28 courthouses had fewer judges than estimated; and
- The judiciary over-estimated the number of judges by 35% (342 actual judges vs. a total projected judge population of 461).

Lack of Courtroom Sharing

The lack of courtroom sharing has also been an ongoing issue. Using information provided in a study completed in 2008 issued by the Federal Judicial Center (FJC)[3], the GAO created a model for courtroom sharing that showed significant amounts of unscheduled time in courtrooms for judges such that the sharing of courtrooms could be at significantly higher levels than were in practice.

Congress has consistently questioned the need for every judge to have a courtroom, particularly in the case of a large courthouse with 20 or more courtrooms. However, the courts have consistently requested a courtroom for every active judge. The Judicial Conference has adopted policies with respect to Senior Judges, Magistrate Judges and Bankruptcy Judges sharing courtrooms. However, there is no indication that these sharing policies are being applied in existing courthouses.

In addition, the 2010 GAO report shows that there could be significantly more sharing than proposed in the U.S. Courts' revised policies. Using information provided by the Administrative Office of the U.S. Courts (AOUSC) and FJC, GAO found that three district judges could share two courtrooms, three senior judges could share one courtroom, and two magistrate judges could share one courtroom all while still providing approximately 20 percent of unused time.

The GAO used conservative assumptions in making its judicial sharing model, because it considered a courtroom unavailable for use even when it was being used for non-judicial activities and when the scheduled event was cancelled within a week of the event.[4] The FJC study shows that approximately 50 percent of all scheduled events do not take place.

Overall, in its report, GAO's analysis of courtroom usage indicates that if sharing had been required in all courthouses constructed since 2000 there would have been significant savings including:

---

[3] The FJC is the Judiciary's research and educational arm, which conducted an in-depth study involving six months' worth of daily scheduled and actual use for 602 courtrooms in 26 of the nation's 94 Federal district courts.
[4] The GAO included times used for public tours, law school moot courts, local bar associations, and other civic organization activities.

- 946,000 extra square feet was constructed because of a lack of sharing;
- The number of courtrooms needed in 27 of the 33 courthouses would have been reduced by a total of 126 if sharing was done; and
- 40 percent of district and magistrate courtrooms constructed would not have been needed.

Construction Exceeded Authorized Limits

GAO estimated that the cost of constructing the 3.56 million square feet of extra space was $835 million and that the estimated cost to rent, operate, and maintain the extra space was $51 million annually.

More specifically, the GAO found that:

- 27 of the 33 courthouses completed since 2000 exceeded their congressionally-authorized size by 1.7 million square feet;
- 15 of the 33 courthouses exceeded their congressional authorization for square footage by 10 percent; and
- Three courthouses exceeded their authorized square footage by 50 percent.

The GAO criticized GSA's inability to ensure courthouse projects stayed within the authorized limits and noted that GSA consistently built courthouses that exceeded the scope of congressional authorizations.

Los Angeles, CA (LA) Courthouse

Background

At the time of the prospectus for a new courthouse in Los Angeles, California, submitted to the Committee as part of GSA's FY 2001 Capital Investment Program, the federal courts in LA occupied and still occupy two buildings – the Roybal Courthouse and Federal Building and the Spring Street Courthouse.

For many years, the Judicial Conference declared the LA courthouse complex as its number one space emergency. It made this determination based on these reasons:

- A lack of capacity;
- Security concerns; and
- Some of the courtrooms are smaller than the standards in the *U.S. Courts Design Guide*.

Lack of Capacity

The LA courthouses currently house 59 judges, fewer judges than it had in 2000 and 22 fewer than last projected. Below is a history of the projected number of judges versus the actual number:

Year	Actual	10 Year Projection
2000	60	72
2004	67	81
2011	59	73

At the same time, the U.S. Courts have adopted a sharing policy for magistrate judges, senior judges, and bankruptcy judges. Only 21 of the 59 judges are active district judges, meaning the remaining 38 would be covered under the sharing policy, resulting in the need for 42 courtrooms. There are 61 existing courtrooms without a new courthouse.

If GSA spends the available funds to construct a 24 courtroom courthouse as proposed, the LA courthouse complex would have three buildings with 85 courtrooms and 59 judges. **[See Attachments 1 and 2]**

Security

Another justification the U.S. Courts have raised is security. In particular, the courts maintain the Spring Street Courthouse (constructed in 1938) lacks the proper circulation for prisoners to ensure adequate safety. Generally, courthouses built in the last twenty years include separate circulation (apart from the public) for the judges and also for criminal defendants brought into the court. However, while GSA installed a separate circulation for prisoners in the Spring Street Courthouse, it does not meet current design standards, and the U.S. Marshals no longer utilize it. As a result, the U.S. Marshals conduct prisoner movements in the Spring Street Courthouse in the same manner they are conducted in the majority of U.S. Courthouses. Prisoners are shackled and moved through the public corridors. In addition, the U.S. Marshals informed the committee if they have security concerns about a particular trial then the trial is conducted in the Roybal Courthouse, which was constructed in 1993 and has state of the art security systems.

According to the U.S. Marshals' review of their records since 2008, there have been no major security incidents other than routine incidents such as the attempted introduction of contraband or disruptive individuals. In addition, following a thorough review of security by the U.S. Marshals, the U.S. Marshals have taken the following actions to address any security concerns: (1) in 2010, the U.S. Marshal Service funded a project to secure hallway space on the ground floor for judges to access their garage (the hardware schedule has been approved and GSA is working with the contractor to begin installation in August); and (2) in 2011, GSA

installed vehicle barriers at the ramp to secure parking from Main Street and at the loading dock entrance on Spring Street.

In addition, in 2008, despite continued assertions by the U.S. Courts about ongoing security concerns in the Spring Street Courthouse, the judges of the Central District of California unanimously opposed GSA's then housing solution in a letter to then-GSA Administrator Lurita Doan. GSA's solution at the time would have called for a smaller new courthouse, abandonment of the Spring Street Courthouse and reuse of the Roybal Courthouse. GSA's solution would have eliminated the security concerns at Spring Street, yet the Central District unanimously opposed it. The vast majority of existing U.S. Courthouses were built prior to 1990 and do not meet the security recommendations of the 2007 *Design Guide.*

Existing Courtrooms Are Small

Generally, courthouses are built to what is known as the *U.S. Courts Design Guide*. The 2007 *Design Guide* recommends 2400 square feet for district courtrooms, which is larger than the size of older courtrooms in use today. Information received by the Committee indicates that district courtrooms in the Roybal and Spring Street courthouses vary in size from 1750 square feet to over 2500. Of the 32 courtrooms in Spring Street, 11 do not meet current design standards and 28 are in use. Under the most recent proposal, the U.S. Courts would continue to utilize many of the courtrooms in the Roybal building even though they are smaller than recommended in the *Design Guide*. The vast majority of existing U.S. Courthouses were built prior to 1990 and do not meet the size recommendations of the 2007 *Design Guide.*

History of Project Authorizations

At the time of the 2000 prospectus for the new courthouse in Los Angeles, California, the courts and GSA proposed a 712,102 gross square foot courthouse be built to meet the 10-year requirements of the District Court and court-related agencies at a total project cost of $266 million.

Subsequently, GSA revised the request to more than 1 million square feet. The proposed plan was to consolidate all district judges into the new courthouse, with the bankruptcy and magistrate judges consolidated into the Roybal Courthouse. The Committee approved site acquisition and design of a 1,016,300 gross square foot courthouse at a combined cost of $35 million in July of 2000, with a requirement that GSA design for and configure for utilization of a courtroom sharing model and that to the maximum extent possible ensure continued use of all courtrooms in the Roybal Courthouse.

Subsequently, GSA submitted a prospectus in its FY 2005 Capital Investment Program to the Committee requesting approval for the construction of the new courthouse. The total cost of the project had increased by more than $100 million from $266 million to $399 million. In addition, the U.S. Courts and GSA estimated there would be 81 judges in the following 10-years. The Committee approved construction in July of 2004 and again reiterated the requirement for courtroom sharing and the maximum continued use of the Roybal Courthouse. GSA also submitted a prospectus in 2008 that proposed construction of a new courthouse and alterations to

the Roybal Courthouse for a total of 66 courtrooms and 75 chambers. Neither the House nor the Senate took action on that prospectus.

Since 2001, Congress has appropriated $400 million for the new courthouse in Los Angeles and the last appropriated funds were in 2005. While funds have been spent for site acquisition and design, approximately $360 million remains unspent and no new courthouse has been constructed. During this time, costs continued to escalate and the U.S. Courts' and GSA believed more funding was needed to proceed with the project. No additional authorizations or appropriations were provided.

Without additional funds, the Committee understands that now the U.S. Courts and GSA plan to proceed with the existing funding, despite the fact that the LA courthouses currently house fewer judges than they did in 2000. It is also clear GSA would proceed with a design and scope significantly different than what was submitted and approved by the Committee. In light of this, Subcommittee Chairman Denham included provisions in H.R. 1734, the Civilian Property Realignment Act, reported by the Committee on October 13, 2011, that would cut funding for the new courthouse and sell the vacant property acquired for the building. In addition, on October 21, 2011, Subcommittee Chairman Denham and Ranking Member Norton co-signed a letter to GSA urging GSA not to proceed with construction pending submission of a new prospectus to the Committee and new authorization.

Spring Street Courthouse Exchange Proposal

In response to questions raised by the Committee about GSA abandoning the Spring Street Courthouse with no plans to sell it or reuse it, on June 21, 2012, GSA issued a one-page factsheet proposing exchanging the Spring Street Courthouse for a new federal office building. Specifically, GSA noted that it would cost the taxpayer $250 million to "realign" the Spring Street Courthouse (once abandoned after a new LA courthouse is built) for other uses. As such, GSA proposed using its authority to exchange properties to dispose of the Spring Street Courthouse by exchanging it for a new federal building of about 150,000 to 175,000 square feet. The exchange would involve a developer selected on a competitive basis who would construct a federal office building on the same site as the proposed new courthouse. GSA estimated that the cost to construct the new federal building would be approximately $50 million.

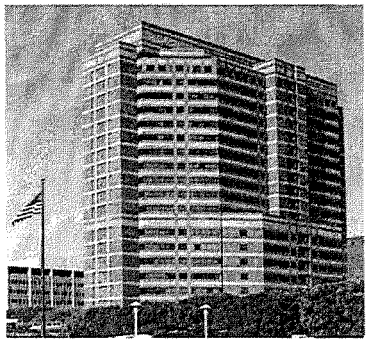
Subsequent to this announcement, Committee staff was briefed by GSA. While the Committee has encouraged GSA to fully use its existing authorities to address space needs, such as its exchange authority, in the case of LA it is unclear whether such an exchange is viable. The Spring Street Courthouse, while over 700,000 square feet, is historic, impacting its potential value. GSA was unable to provide Committee staff with details of a current analysis on the building or other relevant information that would suggest the exchange proposal is realistic given the current market.

WITNESSES

The Honorable Daniel Tangherlini (Invited)
Acting Administrator
U.S. General Services Administration

Mr. Mark L. Goldstein
Director, Physical Infrastructure
U.S. Government Accountability Office

Current Los Angeles Federal Courthouses



Edward R. Roybal Federal Building and U.S. Courthouse

Opened: 1992
Major Tenants: U.S. District and Bankruptcy Courts, USMS, DEA, U.S. EEOC

	District	Magistrate	Bankruptcy	Total
Judges	10	6	12	28
Court Rooms	10	6	16	32 (4 unused)

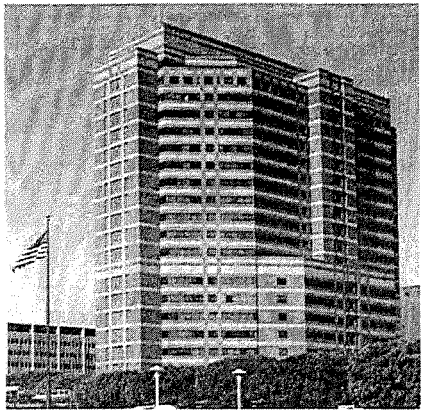
312 N. Spring Street Courthouse

Opened: 1938
Major Tenants: U.S. District Court, U.S. Attorneys, USMS

	District	Magistrate	Bankruptcy	Total
Judges	20	11	0	31
Court Rooms	19	10	0	29 (3 shared)

Total: **59** Judges **61** Courtrooms

Pending $400 Million GSA Proposal



Edward R. Roybal Federal Building
and U.S. Courthouse

32 Current Courtrooms

32 Courtrooms

Proposed L.A. Courthouse
($400 million construction)

0 Current Courtrooms
+24 July 2011 Proposal

24 Courtrooms

312 N. Spring Street Courthouse
(Discontinue use for federal court)

29 Current Courtrooms

29 Courtrooms

Total: **59** Judges **85** Courtrooms

L.A. COURTHOUSE: GSA'S PLAN TO SPEND $400 MILLION TO CREATE VACANT SPACE

FRIDAY, AUGUST 17, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:58 a.m., in room 809, Edward R. Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Los Angeles, California, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Present: Representatives Denham and Shuster.

Mr. DENHAM. The subcommittee will come to order. I want to welcome, first of all, Chairman Shuster of the Subcommittee on Railroads, Pipelines and Hazardous Materials, and the former chairman of this subcommittee, to this hearing today.

I ask unanimous consent that Representative Shuster be permitted to sit with the subcommittee at today's hearing. Without objection, so ordered.

The purpose of today's hearing is to continue our investigation into billions of dollars wasted on vacant and mismanaged properties, and to highlight the waste we can avoid here today by halting the construction of an unneeded courthouse in L.A.

While we have received a statement for the record from the courts, I am extremely disappointed that there is no representation from the courts here today. The invitation letter was sent to the chief judge, and we followed up directly with the courts to identify a witness. We were told that there were no judges available to testify today. It seems outrageous that we are here in L.A., physically inside the Roybal Courthouse, inside a courtroom, yet there are no judges available to come to the hearing and testify.

It is even more troubling that many of them found time to attend a conference in Maui this week but are not available to testify today to justify spending $340 million of taxpayer funds. After all the waste this committee has exposed on lavish conferences and training sessions, it is mind-boggling that the courts would host yet another conference in Maui, a conference that reportedly is costing the taxpayer more than $1.1 million, significantly more than the lavish Las Vegas vacation that was hosted by GSA, with a total of 2,760 room nights in ocean-view suites, including several suites and the large Palace Presidential Suite.

In addition, it appears the special rates the hotel is providing for this conference extended 3 days prior and 3 days after the con-

ference. So it wouldn't be surprising if today judges aren't still in Maui even though the conference ended yesterday.

I am also disappointed that GSA's acting administrator has yet again chosen to not appear at today's hearing. Neither Mr. Tangherlini nor anyone from GSA's headquarters showed up at the committee's hearing on the wasteful spending unearthed, and yet more conferences and exorbitant bonuses.

No one from GSA's headquarters showed up last week in Miami, and today Mr. Tangherlini has chosen not to show up today to explain $400 million for a courthouse that is not needed. It is amazing on one hand that Mr. Tangherlini has removed from GSA's regional offices the authority to approve conferences, yet he defers to the regions on spending hundreds of millions of dollars in taxpayer money here in L.A., and also more recently signing a $351 million lease at the World Trade Center.

So today we continue our oversight of GSA. Just last week we held a hearing in the vacant Dyer Courthouse in Miami, Florida, which sat vacant for 4 years. The judges in Miami justified the need for a new courthouse, telling us that by now they would have had 42 judges, and yet they only have 31. Those projections never materialized, and now we have a vacant courthouse sitting in the middle of downtown Miami, vacant space in a new courthouse, and an abandoned court space in a nearby Federal building. And 4 years later, the Dyer Courthouse is sitting vacant, with GSA claiming, despite receiving $5.5 billion in stimulus, it had no money to renovate the building for re-use, and GSA only announcing it is seeking ideas from the private sector a week before the committee hearing. This was the same thing that we saw in Georgetown with the 2.5-acre piece of property. The day before we held a hearing, it went up for sale.

So we will continue to hold hearings and hopefully continue to sell property.

Miami is an example of what will happen here in L.A. if a new courthouse is built. Over the last 11 years, the judiciary projected there would be somewhere between 72 and 81 judges in Los Angeles by 2011 or 2014. The judiciary claimed Los Angeles the number-one judicial space emergency in the United States and proposed a massive new courthouse. However, today we know the primary justification for a new L.A. courthouse is wrong. There are fewer judges in L.A. now than there were in 1997. Today we have two buildings with 61 courtrooms and 59 judges. In 2004, they projected 81 judges and today have only 59.

If a new courthouse is built, the courts will abandon the Spring Street Courthouse and space in Roybal, yet there is no budget to renovate those spaces for use by other agencies, and questionable plans to dispose of Spring Street.

In the end there will be, in effect, 85 courtrooms for just 59 judges, half of which should be sharing courtrooms under the judiciary's own sharing policy. The result? Like Miami, we will see hundreds of millions of dollars wasted on a new courthouse while vacant space lingers for years, all paid for by the taxpayer.

Last Congress, at the request of the subcommittee, the GAO completed a review of the 33 courthouses constructed between 2000 and 2010. What the GAO found was incredible. GSA built over 3.5

million square feet of courthouse space that we just didn't need, at a cost of over $800 million. As a result, the judiciary abandoned existing courthouses across the country and severely underutilizes new courthouses.

In response to the committee's concerns, GSA issued a 1-page fact sheet in June proposing disposing of the Spring Street Courthouse by exchanging it for a $50 million new Federal Building. While we have encouraged GSA to use its existing authorities to address Federal space needs, questions have been raised regarding the viability of GSA's proposal. In sum, it is unclear how these numbers actually add up. The fact that GSA has a history of selling prime real estate for pennies on the dollar, such as the examples in Bethesda, Maryland, and Jackson, Mississippi, makes us skeptical about this new proposal and how it will work.

It is unclear why GSA spends $340 million on a new courthouse if it has not taken any steps to verify the viability of this new proposal. It is almost as if GSA cobbled together its 1-page proposal to try and justify the $340 million spending on an unneeded courthouse. We expect to hear from GSA today, giving more details on the latest proposal, and I look forward to getting those answers from the witnesses with us today.

At this time, I would like to recognize Chairman Shuster for any opening statement he may have.

Mr. SHUSTER. Well, thank you, Chairman Denham. I appreciate your leadership on this issue.

This is an extremely important issue. We have, as Chairman Denham has been talking about, and Chairman Mica for the last couple of years, about the overbuilding, not just in the courtrooms but the vast square footage that we have available not being used by the Federal Government. We need to do something about it, either sell it off, we need to utilize it, and again, as a former chairman of this subcommittee, 4 or 5 years ago I initially started to look at the overbuilding of the courthouses, and with the help of the GAO, they have done a study and have found that we have millions and millions of square footage that has been built, and we are not utilizing it.

The judiciary has consistently grossly overestimated its 10-year projection of future judges assigned to courthouses, as Chairman Denham pointed out. New courthouses did not incorporate courtroom sharing, which is outrageous that the judges insist upon having their own courtrooms when they don't use them, when they spend much of the time vacant. In fact, the GAO study found that three district judges could share two courtrooms, three senior judges could share one courtroom, two magistrate judges could share one courtroom while still providing approximately 20 percent of unused space not being used.

Also, the GAO used conservative estimates in their assumptions in making these judicial sharing models.

It is just outrageous, especially in the times we face today, that the judiciary, along with the GSA, has not put these kinds of practices in place to save the taxpayers money. The GSA, again in conjunction with the judiciary, has constructed courthouses above congressionally approved sizes and beyond what we have appropriated, what we have authorized them to build. That seems to me to be

a violation of the law, and the judiciary is going along with this, as GSA is, and they are blatantly ignoring the will of Congress, and that is something that we really need to look into.

Again, if Congress were to blatantly ignore a law we put in on ourselves, you would have the media up in arms, you would have everybody in this country up in arms.

So this is something that I appreciate that Chairman Denham is taking a very strong and hard look at because we have got to get to the bottom of this. We have got to call it like we see it. Again, if the judiciary is pushing the GSA to just do things over and above what Congress has put into law, then we have got to take some serious, serious action here, and today is one of those hearings where we have got to get some answers.

It has been very disappointing that we don't have one of the judges here today to answer for this, as well as the head of the GSA.

So again, I appreciate, Chairman Denham, your leadership on these issues, and I look forward to an exchange of questions and answers here today.

So, thank you. I yield back.

Mr. DENHAM. Thank you.

I would like to welcome our witnesses here today. We have one panel and only one panel: Mr. Mark Goldstein, director of physical infrastructure issues, Government Accountability Office, the GAO; and Mr. Kevin Richards, acting regional commissioner, Public Buildings Service, General Services Administration.

I ask unanimous consent that our witnesses' full statements be included in the record. Without objection, so ordered.

Since your written testimony has been made a part of the record, the subcommittee would request that you limit your oral testimony to 5 minutes.

Mr. Goldstein, you may proceed.

TESTIMONY OF MARK L. GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; KEVIN RICHARDS, ACTING REGIONAL COMMISSIONER, PACIFIC RIM REGION, PUBLIC BUILDINGS SERVICE, U.S. GENERAL SERVICES ADMINISTRATION

Mr. GOLDSTEIN. Thank you, Mr. Chairman. I am pleased to be here to discuss our recent work on Federal courthouse construction issues, and on the L.A. Courthouse in particular.

Since the early 1990s, GSA and the Federal Judiciary have undertaken a multibillion-dollar courthouse construction initiative. By July 2012, that initiative had resulted in 76 new courthouses or annexes, and 18 additional courthouses in various stages of development. However, in 2010, as you mentioned, both of you sirs, we reported that more than a quarter of this new courthouse space, then costing $835 million to construct and $51 million annually to operate, was unneeded. We found that new extra courthouse space was the result of poor oversight and planning. Meanwhile, construction has not yet begun on the L.A. Courthouse project, ranked by the judiciary as its top priority since fiscal year 2000.

In 2009, the judiciary began applying a new process for prioritizing courthouse projects that will apply to future plans. The

judiciary says that the new process was developed in part to address concerns about growing costs and incorporate industry standards. However, this new process does not include the L.A. Courthouse, which has been grandfathered under the old process.

Regarding the L.A. project, in 1996 the judiciary concluded that having the L.A. court split between two courthouses created security and operational problems, that the judiciary needed additional space in downtown L.A., and that the Spring Street Courthouse had obsolete building systems and poor security conditions. One of the security challenges created by the split court is that prisoners must be transported from the Metropolitan Detention Center along surface streets to the Spring Street Courthouse, which was built in 1938. The Roybal Courthouse, which we are in now, built in the 1990s, is connected to the detention center by a secure tunnel.

In fiscal year 2000, the judiciary requested and GSA proposed building a new courthouse in downtown L.A. As we reported in 2008, GSA has spent $16.3 million designing a new courthouse for L.A., and $16.9 million acquiring and preparing the new site for development, which leaves about $366 million available for the construction of a courthouse.

The project stands in the following way today. In 2012, with the judiciary's support, GSA issued a request for proposal for contractors to design and build a 600,000-square-foot courthouse with 24 courtrooms and 32 chambers, which would be used in conjunction with 25 of the existing courtrooms in Roybal. However, the new plan does not address several of the principal justifications for the original project, that the L.A. court be centralized into one site. Instead, it increases the distance between Roybal and the planned second court location, as well as the distance to the Metropolitan Detention Center from where prisoners must be transported.

Briefly, as you also mentioned, I wish to address the issues of overbuilding courthouses, the three causes of extra space that we found in courthouses, and the associated cost that we identified in 2010 also applied to the L.A. Courthouse project.

These include exceeding the congressionally authorized size, overestimating the number of judges a courthouse would have, and not planning for courtroom sharing among judges. The initial design of the L.A. courthouse exceeded the congressionally authorized size by 13 courtrooms and more than 260,000 square feet. In addition, we found in 2010 that large atriums, like the one in the L.A. courthouse design, contributed to size overages in several courthouses completed since 2000.

The judiciary overestimated how many judges the L.A. court would need and therefore designed a courthouse with more courtrooms than necessary. Specifically, we reported in 2004 that the proposed L.A. courthouse was designed to include courtrooms for 61 judges, the 47 existing district and magistrate judges and 14 additional judges expected or authorized. However, in 2012, rather than having an additional 14 judges, the L.A. Courthouse has just 45 district and magistrate judges, and none of the additional judges. This is consistent with what we have found elsewhere and calls into question the assumptions made in the original proposals.

Third, the judiciary did not fully take advantage of courtroom sharing by judges, which led to building more courtrooms than nec-

essary. Our 2010 analysis indicated that the judiciary could reduce the number of courtrooms it needs by having judges share courtrooms.

Applying the courtroom-sharing model that we developed, the 45 current district judges would need 25 courtrooms to adequately address all scheduled courtroom time, which is the number the district court has planned for the Roybal Courthouse. Even this model leaves the courtrooms unused much of the time, since 60 percent of scheduled court events are canceled or postponed within 1 week.

Finally, judiciary officials said they had not applied the new process for prioritizing projects to the L.A. courthouse because it has been grandfathered. If the L.A. courthouse project were to be reevaluated, it is not clear that it would retain the same priority status from when it was first justified.

Mr. DENHAM. Mr. Goldstein, I will allow you another minute to wrap up.

Mr. GOLDSTEIN. I am just finishing out, sir.

Judiciary's projected increase in judges has not occurred. This suggests that the previous space projections are outdated and flawed. The original security assessment did not include the Roybal Courthouse, and the old prioritization process did not consider the potential for reducing the number of needed courtrooms by having judges share courtrooms.

This concludes my testimony, sir. Thank you for your time.

Mr. DENHAM. Thank you, Mr. Goldstein.

Mr. Richards, you may proceed.

Mr. RICHARDS. Good morning, Chairman Denham, Congressman Shuster. My name is Kevin Richards, and I am the acting regional commissioner for the Public Buildings Service, General Services Administration, Pacific Rim Region.

I appreciate the opportunity to join you here today at the Los Angeles Courthouse complex where GSA, at Congress' direction and with existing appropriations, is moving forward to construct a courthouse to meet the courts' number-one priority for new construction. The long-delayed project is proceeding in an efficient manner, with a significantly reduced scope from what was originally planned and at a size that meets the courts' new sharing requirements for judges.

Due to security deficiencies in the existing building and courtrooms that do not meet the courts' space needs or functional requirements, the Los Angeles Courthouse is the courts' number-one priority for new construction. Between fiscal year 2001 and fiscal year 2005, the project received appropriations and was fully authorized, but for a variety of reasons, including scope and cost, was unable to move forward.

Congress made it clear on several occasions during the life cycle of the Los Angeles Courthouse project that GSA should work with the courts to develop a viable solution for the project within the funding already appropriated. In November 2011, the courts and GSA announced a plan to deliver this facility with the current appropriation and authorization, eliminating future projected judgeships from the requirements and incorporating courtroom sharing policies. Originally planned for 41 courtrooms and nearly 1 million

gross square feet, the project has been downsized to 24 courtrooms and between 600,000 and 650,000 gross square feet.

Since the announcement, GSA has been proceeding with a two-phase solicitation to select a firm to design and construct the new courthouse, with completion and occupancy planned for the second quarter of fiscal year 2016.

The project will allow a more effective use of space, consolidating the court functions currently housed in 312 North Spring Street and the Roybal Building to the new courthouse. The District Court will fully occupy the new courthouse, as well as the District Clerk and the accompanying Marshals Service. A number of senior district judges, the magistrate judges, as well as Pretrial Services and Probation, will consolidate in the Roybal Building with the Bankruptcy Court. These two buildings will meet the security needs and functional requirements of the courts, while satisfying the updated court requirements.

This will allow the GSA to improve the security of the Los Angeles Federal District Court and meet the functional needs of the court, taking advantage of an unfortunate downturn in the market to deliver the project within the current appropriation.

The consolidation of the judiciary in the new courthouse and the Roybal Building, however, will result in a large vacancy at the historic courthouse at 312 North Spring Street. This circa-1930s building does not meet current seismic, fire safety, or security requirements.

Given the administration's strong push to aggressively dispose of unneeded property, on June 22, GSA announced we would begin pursuing the exchange of the property. In return for the historic courthouse, a private-sector partner will be asked to provide a new, highly efficient Federal building to accompany the new courthouse at the site bounded by 1st Street, 2nd Street, Hill and Broadway. This new building would allow GSA to backfill Federal tenants out of costly leased space, saving taxpayers over $10 million per year in lease costs.

Since the announcement of the exchange, GSA has been conducting due diligence on the property and will begin the Section 106 historic consultation process shortly. This process will determine what a developer will be allowed to do with the property, thus affecting its value. Once that process is complete, we will begin developing a program of requirements for the new Federal building and engage the private sector to solicit proposals.

GSA and the courts are well underway with the plan to complete the new courthouse in Los Angeles within the current appropriation to help the courts meet their mission needs, with an award anticipated later this year. Los Angeles will have a secure, state-of-the-art courthouse, helping improve court functions and services, while keeping tenants and the visiting public safe. Additionally, we look forward to the disposal through exchange of the historic courthouse at 312 North Spring Street, allowing for the backfill of costly leases and avoidance of ongoing maintenance and renovation costs. Both actions will result in a more efficient real estate footprint in the Los Angeles area.

I welcome the opportunity to be here, and I'd be happy to answer any questions.

Mr. DENHAM. Thank you.

While I can appreciate the fact that after several different hearings and several different requests that GSA is taking the position of disposal of Spring Street, it has taken a number of hearings, and every time we have a hearing, a new "For Sale" sign goes up or a new proposal on disposal.

But I do want to discuss the current appropriation. But before I do, this committee requested a copy of your bio and testimony. GSA was unable to provide those to us. So let me first start by asking you, do you have any real estate experience?

Mr. RICHARDS. Yes, sir. I do.

Mr. DENHAM. And can you briefly explain that to us?

Mr. RICHARDS. Sure. I have worked for the General Services Administration Public Buildings Service for over 20 years now, sir.

Mr. DENHAM. And are you familiar with the real estate market in this area?

Mr. RICHARDS. Yes, I am becoming familiar with it, yes.

Mr. DENHAM. Do you believe that a developer would build a $54 million office building and then exchange it for Spring Street?

Mr. RICHARDS. We are conducting our due diligence, sir, to find out, to make sure that that is possible, yes.

Mr. DENHAM. So you haven't done your due diligence yet?

Mr. RICHARDS. We have done some preliminary research to determine if this is possible. We think that it is possible, so that is why we are going to continue to do the due diligence, to make sure that it is possible.

Mr. DENHAM. So how much money would it cost for a developer to do a seismic retrofit of the Spring Street building?

Mr. RICHARDS. I don't have that exact number. We do have a total number of around $250 million to renovate Spring Street for the courts' needs if that was to be the case.

Mr. DENHAM. What would it cost GSA to do the work?

Mr. RICHARDS. It would be $250 million, sir. I'm sorry.

Mr. DENHAM. If GSA did it?

Mr. RICHARDS. Yes. I am sorry. Yes.

Mr. DENHAM. Are you familiar with the current renovation of the 85-year-old Hall of Justice building across the street?

Mr. RICHARDS. I am not, sir.

Mr. DENHAM. You are the acting director.

Mr. RICHARDS. Yes, I am, sir.

Mr. DENHAM. Of this region?

Mr. RICHARDS. Yes, sir.

Mr. DENHAM. You are looking at the Spring Street building, and this other one is also in your region, under your purview; correct?

Mr. RICHARDS. Yes.

Mr. DENHAM. I will just tell you, it is a similar vintage and quality building as Spring Street. Do you know what the construction cost per square foot is on that building?

Mr. RICHARDS. I do not, sir.

Mr. DENHAM. Do you know what the construction cost per square foot would be on this building, this proposal?

Mr. RICHARDS. For Spring Street?

Mr. DENHAM. Yes.

Mr. RICHARDS. I could get you that number, sir. I don't know the cost per square foot.

Mr. DENHAM. Do you know the approximate cost to construct new office space in the L.A. area?

Mr. RICHARDS. Again, I could get that number. I was working on testifying for the existing building, sir.

Mr. DENHAM. These are basic questions.

Mr. RICHARDS. Sure.

Mr. DENHAM. This is the L.A. area. This is your region. These are basic just real estate questions, cost per square foot. I am not in the real estate business, but I can tell you the cost per square foot in my district.

What is the rental rate that a developer would need to cover the construction costs of a new office building?

Mr. RICHARDS. It would depend upon the cost to construct the building, sir.

Mr. DENHAM. Well, let me give you some answers. The cost to construct the building is about $300 per square foot. For new office space, it is anywhere from $250 to $300. So the rental space would be about $50 per square foot. I would love to have a GSA expert check those numbers, but you can see where I am going with this.

Do you know what the market rent is for Class A office space in the Civic Center market, where the courthouse is located?

Mr. RICHARDS. Between $35 and $40, I believe, sir.

Mr. DENHAM. $35 to $40?

Mr. RICHARDS. Yes.

Mr. DENHAM. We checked just online the current market, and we were getting $20 to $25. But hopefully we will find a developer that is looking at that and willing to pay that much more.

Do you know what the current vacancy rate is in downtown L.A.?

Mr. RICHARDS. I believe it is around 16 percent, sir.

Mr. DENHAM. Do you think the downtown L.A. market could absorb a 700,000-square-foot redeveloped Spring Street building?

Mr. RICHARDS. We are trying to do our due diligence to determine that, sir.

Mr. DENHAM. So we have 16 percent vacancy right now? Seven-hundred-thousand square feet is a lot of space. If there is a 16 percent vacancy right now and you are adding 700,000 to the market, do you not think that is going to affect the overall vacancy rate?

Mr. RICHARDS. We do. We believe this is a unique property, though, sir, that could have some potential for developers.

Mr. DENHAM. Are there plans to move other agencies into that building? Are you looking at co-leasing the building or guaranteeing a lease to the new landlord?

Mr. RICHARDS. All of those options would be available, sir.

Mr. DENHAM. Do you know when the last major highrise was constructed in downtown L.A.?

Mr. RICHARDS. I do not.

Mr. DENHAM. Twenty-two years ago. Do you know why it has been so long?

Mr. RICHARDS. The market has not supported it.

Mr. DENHAM. Given the cost to construct the new Federal Building and to renovate the Spring Street Courthouse, what kind of

rental rate do you think a developer would have to achieve to make the project economically viable?

Mr. RICHARDS. Again, it would depend on what the investment would be, sir.

Mr. DENHAM. But you testified that you thought the investment was going to be $250 million.

Mr. RICHARDS. That would be the cost for the GSA to renovate that for the courts' needs, sir.

Mr. DENHAM. By your numbers, it would be $55 per square foot. So looking it up online, if it is $20 per square foot, the rental rate today, and even by your numbers, if it is $35 to $40, how are they going to cover their cost at $55 per square foot?

Mr. RICHARDS. A private developer may not have the same restrictions that we do, and also renovating for the courts, for courtrooms and prisoner circulation wouldn't be required in a private development.

Mr. DENHAM. Let me tell you what some private developers are saying. We pulled this up online as well, and some of the local newspapers.

"I think it is an extremely speculative deal that is fraught with problems in a difficult marketplace."

Another quote: "I just think it is a pretty farfetched idea."

"I think that in today's economy, speculative office building development is out of the question."

I can appreciate the GSA is finally taking the position that they want to dispose of the property. But when it is just a made-up proposal—I mean, these are just some basic numbers. These are some basic, just get online, check the real estate market, see the availability, see when the last highrise was built, talk to any developer down here. It seems like it is a sham. These are made-up numbers.

Correct me if I am wrong. I mean, show me how this pencils out, just in the broadest terms, in the best market.

Mr. RICHARDS. When we get done with our due diligence, we will share those numbers with you.

Mr. DENHAM. When will the due diligence be done?

Mr. RICHARDS. We are thinking anywhere from 6 to 8 months. We are getting ready to start the Section 106 historic preservation requirement, and that does take a number of months to go through that, and that will greatly affect the value of the building. So that is our next step.

Mr. DENHAM. So when we start construction on the new courthouse.

Mr. RICHARDS. We are hoping to award in late October.

Mr. DENHAM. So you are going to go out and do your due diligence in the next 6 to 8 months, but you are going to begin construction in 2 months?

Mr. RICHARDS. Yes. We have the appropriation and authorization and have been asked to move forward with the project, and we think we can do that.

Mr. DENHAM. Isn't the current proposal to have a private developer pay for that?

Mr. RICHARDS. That would be the Federal Building, sir, not the new courthouse. They would be separate projects.

Mr. DENHAM. Have you met with any of the private developers in the local area to see if this even pencils out or to see if there is any interest?

Mr. RICHARDS. We have been working basically on the existing project. We have not met with the private developers on this project, no.

Mr. DENHAM. So you came up with an idea. You brought it to Congress. You have now sold it to the public, but you have not talked to one realtor? I mean, you haven't gotten online and done the same thing that we have to see what the local market is to see if this even pencils out? I mean, who is running the shop over there?

Mr. RICHARDS. We continue to——

Mr. DENHAM. You have been in real estate for 20 years. You have been part of GSA. You were up in the Boston market doing these same types of transactions. Knowing that we were holding a hearing here today, these weren't basic questions that you thought you would look into?

Mr. RICHARDS. We will continue to do that due diligence to make sure that we have those answers for you, and we will share that with you when we do have it.

Mr. DENHAM. I yield to Chairman Shuster.

Mr. SHUSTER. What I want to get to is along the same lines as what Mr. Denham is pointing out here. Again, some of the local folks here in the market that know this market think that—one quote is, "I think it is an extremely speculative deal that is fraught with problems in a difficult marketplace."

"I just think it is a pretty farfetched idea."

"I think in today's economy, speculative office building development is out of the question."

So you said you have been asked to move forward. Who is pushing this? Is it the judiciary that is pushing you to do this?

Mr. RICHARDS. No. This is GSA's proposal.

Mr. SHUSTER. So what is the judiciary saying? Are they saying stop? Are they saying hold it? Are they asking the same kind of questions that Congressman Denham and the Congress is asking? Because if they are not, they should be, because this does—I mean, from experts in this market, and as Mr. Denham has pointed out, this really seems like it is a sham.

So the GSA in Washington, they are telling you to move forward with this?

Mr. RICHARDS. No. We have made the decision to move forward to try to do the due diligence to see if it makes sense.

Mr. SHUSTER. But then you said you are going to start the due diligence in 6 to 8 months, right?

Mr. RICHARDS. Yes.

Mr. SHUSTER. But you are going to start construction in 2 to 3 months?

Mr. RICHARDS. On the new courthouse, yes.

Mr. SHUSTER. And again, you are dealing with the judiciary on this. What are they saying to you about it?

Mr. RICHARDS. Again, working with the judiciary, trying to consolidate their requirements in the new courthouse, and working

with the existing appropriation and authorization to get that building moving, just to get that project completed.

Mr. SHUSTER. And this building we are in, the Roybal Federal Building, what is the occupancy rate here? Is it full?

Mr. RICHARDS. I think there is about 10,000 square feet of vacant space. Most of that is either under construction or will be occupied soon.

Mr. SHUSTER. Mr. Goldstein, what are your thoughts on the building of these new Federal buildings, the new courthouse? What are your thoughts at the GAO on the plan that Mr. Richards is talking about moving forward with?

Mr. GOLDSTEIN. Mr. Shuster, we haven't looked at, obviously, this new proposal with the exchange. But I have read the same articles that you have, and it is clear that the market is not thinking it is a very good idea at this point in time. So our greater concern, as the chairman has pointed out, is that this does seem to be a situation that could be set up very much like what we have in Miami today where we have a lot of extra space, and without a successful exchange that the GSA is trying to propose, the GSA and the courts will be left with 85 courtrooms for an existing 59 judges, which is obviously a pretty serious case of overbuilding.

Mr. SHUSTER. And can you talk some more about the findings, the $800 million to build and then $50 million a year to operate? So over a 10-year period, we are talking $1.3, $1.4 billion, and I am sure those numbers are going to climb. Can you talk about some of the specifics of those findings?

Mr. GOLDSTEIN. Sure. This was from a report we issued in 2010 at the request of the committee, and there were three basic findings from it.

One was that—and it was all having to do with building too much space over the years, since 2000 and 33 courthouses that had been built, and it occurred for three reasons.

One is because GSA did not adhere to the authorized amount of space that they had said they would build in the prospectuses that they had given to the Congress. In some cases, they built courthouses that were 50 percent larger in square footage than Congress had authorized, 50 percent.

The second reason was because the judges, the judiciary over the years had vastly overestimated the number of judges that would be coming into the system. And so, therefore, space was built for them as well.

And then thirdly was courtroom sharing, that the judges over the years have refused to share. They have put in some new policies for a minimal amount of sharing in future courthouses for bankruptcy and magistrate and senior judges, but not for active district judges. And what we found was that you could do an extensive amount of sharing without having an impact on any of the courtrooms, without having to move any trials.

Mr. SHUSTER. You mentioned 60 percent of the scheduled time in courtrooms is postponed or canceled.

Mr. GOLDSTEIN. Yes, sir.

Mr. SHUSTER. Within a week.

Mr. GOLDSTEIN. That is correct, and the assumptions were extremely conservative because when we did this, we took into ac-

count, including in the existing time, all time that courtrooms were being used for things that the judges and the judiciary weren't even doing, such as mock trials or tours and things like that. So in reality, it is even more.

Mr. SHUSTER. And what do you think about their new sharing policies for senior magistrates and bankruptcy judges?

Mr. GOLDSTEIN. Well, it is mainly for future courtrooms, unfortunately. I mean, as I indicated in my opening statement, you could house the entire District Court in this building if Federal judges would share, and you would not need to build a new courthouse.

Mr. SHUSTER. Mr. Richards, your view on that sharing, just what Mr. Goldstein said, the entire Federal Court could be housed here if judges would be willing to share courtrooms, your thoughts on that?

Mr. RICHARDS. That is an issue that I would have to defer to the courts on. I do know that we do have sharing in the new courthouse proposal.

Mr. SHUSTER. Was that an issue that was ever brought up when you were overbuilding these courthouses? Does the GSA, being a good steward of taxpayer dollars, push back on the judiciary and say, "Hold it a second, we are going to overbuild this thing"? And more importantly than we are going to overbuild it, we are violating the law that Congress laid out to say that you can only build X amount of square feet, and you are overbuilding by 50 percent in some cases.

So what happens when the judges come in to talk to you about this at the GSA? Is there any push-back at all?

Mr. RICHARDS. Yes. We worked on this project here to work with the courts to both reduce—not only reduce the size of the courthouse itself, but we have also worked with them to institute the courtroom sharing, as well as eliminating projected judgeships from this building as well.

Mr. SHUSTER. And even though it is a very flawed courtroom sharing system?

Mr. RICHARDS. I can't comment on that. That is not——

Mr. SHUSTER. So in the project here, when you are doing this project, you wouldn't push back on them and say you really have to utilize these buildings much more efficiently?

Mr. RICHARDS. We work with the courts to institute the courtroom sharing in the new courthouse, and there will be some courtroom sharing, I believe, in the Roybal.

Mr. SHUSTER. But not in the present building? There is very little here.

Mr. RICHARDS. In this building?

Mr. SHUSTER. Yes, since this is an old building, so it is——

Mr. RICHARDS. I don't know if there is. I could find out if there is sharing here right now. I don't believe there is.

Mr. SHUSTER. So again, the overbuilding, when you go over your authorization, you go over your appropriations, or authorization I guess it would be, to overbuild a courthouse, how does that happen? Do you get in there and the judges say, now make it bigger, and you guys say, the GSA says sure, if that is what you want, that is what we will do?

Mr. RICHARDS. I have read the testimony before on the overbuilding of the courthouses, and there was some discussion on counting of atrium space and that type of thing and if that contributes to the overbuilding, and then whether there is actual construction cost associated with building that atrium space, and also the maintenance and operations of that space as well.

Mr. SHUSTER. Have you built other courthouses before in your region? You have been involved in over 20 years of building them?

Mr. RICHARDS. I had a supporting role in one courthouse project, yes.

Mr. SHUSTER. So once again, I just keep coming back to this because when the GSA goes in and talks to the judiciary about building these, who says overbuild? Who says build 50 percent, 20 percent bigger? Is that the judges telling you that? Is that the judges' staff telling you that, to ignore the authorization from the United States Congress, to build these things bigger?

Mr. RICHARDS. Speaking to this project here, again, we are going to keep it below the authorization. We have employed with the judiciary to have courtroom sharing, and also eliminating the projected judgeships as well so it is not overbuilt.

Mr. SHUSTER. And do you think that if they—well, they are going to use their courtroom sharing system, which is minor compared to what they really need to be doing. Do you think you could even make this courthouse smaller if you went back, if Congress insisted that they employ the courtroom sharing that the GAO came up with?

Mr. RICHARDS. I don't know that right now. All I can tell you is that we are staying within the authorization we have currently and employing the courtroom sharing in that building.

Mr. SHUSTER. Mr. Goldstein, I know you said you haven't looked at this current project in-depth, but just based upon the analysis you did and what you projected, this court-sharing versus what the judiciary is going to use, just off the cuff, do you think you could save significant space if you went with what you proposed in your study?

Mr. GOLDSTEIN. Absolutely, Congressman.

Mr. SHUSTER. Do you have a percentage?

Mr. GOLDSTEIN. The point is you have—there are 16 district courtrooms in this building alone, OK? And based on the sharing model—and there are certain kinds. We did both a centralized sharing model where you would need 22 courtrooms for district judges, 15 district and 7 magistrate, or fully centralized, where you would only need 21 courtrooms. And in all these cases, you still never hit a period in which you have complete utilization of the courtrooms. So you need—they have 16 district courtrooms here now. Under a fully centralized sharing model, they would only need 21.

There are four courtrooms on the fourth floor which you would need only minor changes to in terms of extending the elevator shafts, and then you would simply have to take one bankruptcy courtroom and convert it. I mean, it is really minor in terms of what you would have to do. You are essentially being asked to spend hundreds of millions of dollars so that Federal judges don't have to share courtrooms.

Mr. SHUSTER. Right. So again, just so I am clear about what you said in there, you said you believe that you don't have to—you could house the entire Federal Court in this building using time sharing, minor changes.

Mr. GOLDSTEIN. Yes. And the beauty of it, sir, is this is a very secure courthouse with respect to the circulation patterns and the prisoner exchange.

Mr. SHUSTER. So in your expert analysis, they don't need to build another courthouse.

Mr. GOLDSTEIN. No, sir.

Mr. SHUSTER. OK. Thank you very much.

Mr. GOLDSTEIN. I would add one other point, sir, if I may.

Mr. SHUSTER. Absolutely.

Mr. GOLDSTEIN. The initial justifications that made L.A. their number-one priority are not supported by the facts. The major reason was that they did not want a split court because they felt that it created operational inefficiencies. Well, the proposal on the table, the split court is even larger. The distance between Roybal and the proposed new space is even larger than what exists today. So it is very perplexing how the justification can be made in those instances.

Mr. SHUSTER. Mr. Chairman, if I could have another minute?

They also talked about security being one of the big issues with the tunnel here. So if you don't have the Spring Street Courthouse—well, first of all, we have heard from rank and file marshals, the staff talking to them, one of the complaints was that it is not secure, you don't have the tunnel, you have to take them on the street, they have to be shackled. But talking to some of the rank and file marshals, they said it is not really a problem because if there is a problem prisoner, we will use the Roybal Courthouse, we won't take them across the street. So there are different degrees, I guess, of criminals, people that they are putting in these courtrooms. Some have a lower risk. Some with a higher one, they would be here anyway.

Mr. GOLDSTEIN. During the course of our audit, sir, we talked to the marshals on numerous occasions, and they provided the same kind of testimony to us, that there is no reason that they cannot bring a prisoner to Roybal and hold that hearing. This is a multidefendant and secure room right here that is used for large trials with a lot of prisoners. There is no reason for that to be an issue.

Mr. SHUSTER. Mr. Richards, just based upon what Mr. Goldstein said there, he doesn't believe there is a need to build another courthouse here. Does the GSA have any responsibility to look at what he is saying and push back and say to the Congress, to the judiciary, that we don't need to do this, we can save $300 million?

Mr. RICHARDS. When we talk about consolidating court functions, currently right now, the District Court is split between the two buildings. So the new courthouse would solve that problem, have all the District Courts in one building.

Mr. SHUSTER. But based on what Mr. Goldstein said, he believes you don't need to do that. You can just utilize this building more efficiently, utilize the taxpayer dollars more efficiently, and you could have it all right here and not need to build a new courthouse.

Mr. RICHARDS. If you come in through the lobby today, you will notice there are three different elevator banks that only go to a certain number of floors. So those—you wouldn't be able to then have all those floors connect. If you want to go to a different elevator bank, you have to come back down to the first floor, go over to a different elevator bank. In addition——

Mr. SHUSTER. That is a justification for spending $300 million?

Mr. RICHARDS. No. In addition——

Mr. SHUSTER. We have to do that in the Cannon Building. I can't go to the fifth floor. I have to go to a different elevator. But we make due.

Mr. RICHARDS. That is just part of the problem. The other part of it is all of the bankruptcy courts don't have prisoner circulation because we are not dealing with prisoners. So you would have to create new prisoner circulation and elevator circulation to go with those prisoners to keep a secure facility like we currently have.

So there are additional things that need to be done, and it is not as easy as just saying that you could convert a bankruptcy courtroom into a district courtroom without adding prisoner holding cells, prisoner transportation, secure circulation, that type of thing.

Mr. SHUSTER. It seems to me, for $300 million, to save $300 million and spend whatever it takes, far less than that, we ought to be able to utilize this. So again, it is very, very frustrating to me over the past several years when I have seen this happen.

Again, the judiciary is not serious about utilizing these courthouses effectively, and it is sad to say the GSA is not—I believe part of your responsibility as stewards of the taxpayer dollars is to push back and push back hard and say we can do this in a much better way. You are supposed to be the stewards of our buildings, the real estate, and it doesn't seem to me that that is being handled in an appropriate way.

I yield back.

Mr. DENHAM. Thank you.

Let me start where I finished off. Mr. Richards, assuming my numbers are anywhere close, and all of these quotes in the newspapers from all of the real estate experts in the local area are in fact right and this thing doesn't pencil out, what are you going to do with the Spring Street Building?

Mr. RICHARDS. Right now, as part of the due diligence, we think we have a unique property. We will try and see what that comes up with. We do have over 1 million square feet of lease space in the Los Angeles market. But right now our plan is to dispose of, through exchange, that Federal Building.

Mr. DENHAM. OK. But if it doesn't pencil out, which clearly there are a lot of questions since you haven't done your due diligence and won't do it for the next 8 months, even though there is a proposal out there in front of the taxpayers, if it doesn't pencil out, you are going to utilize that to offset some of the million-plus square feet of lease space. So you will move other Government tenants into that building.

Mr. RICHARDS. That would be a possibility. Yes, sir.

Mr. DENHAM. How do you renovate it?

Mr. RICHARDS. We would have to get money to renovate it, sir.

Mr. DENHAM. How do you get money?

Mr. RICHARDS. We would have to go through the prospectus process.

Mr. DENHAM. So you would follow the actual prospectus process, not go around Congress like you did with the World Trade Center.

Mr. RICHARDS. That isn't something that I have been involved in. I can't answer to the World Trade Center, sir.

Mr. DENHAM. How about the Roybal Building? What is the future of the Roybal Building?

Mr. RICHARDS. Under our proposal, it would be still used by the courts. Bankruptcy, magistrate, some senior district judges will be here, along with the Federal agencies that are currently housed here as well.

Mr. DENHAM. Is there any need for renovation here?

Mr. RICHARDS. There would be a need to realign some of the space for the courts. Yes, sir.

Mr. DENHAM. And how would you pay for the renovation?

Mr. RICHARDS. We would have to get prospectus authority, as well.

Mr. DENHAM. And under the current proposal that was approved around a decade ago, was the renovation of the Roybal Building not part of that?

Mr. RICHARDS. It was not.

Mr. DENHAM. My staff has been telling me for the last year-and-a-half that it was. Are you familiar with it?

Mr. RICHARDS. I am familiar, sir.

Mr. DENHAM. There is not going to be any money left over after this construction. Do you have a contingency in the current construction plan?

Mr. RICHARDS. Yes, we do, sir.

Mr. DENHAM. And what is that contingency?

Mr. RICHARDS. I would prefer to talk about that in a separate session if we could, just because we don't want to divulge that information in public at this point.

Mr. DENHAM. It is usually a standard rate for a real estate transaction. Are we doing a special rate? You can at least——

Mr. RICHARDS. Yes.

Mr. DENHAM. OK.

You know, a question that I had for somebody from the judiciary side would have been on ignoring the President's Executive order on a couple of different items, but including the conference that they had today, or had this week. But obviously, the President has issued a number of different Executive orders promoting efficiency spending to support agency operations. That one was earlier this year, in May; a memorandum in 2010, two Executive orders; the Presidential memorandum disposing of unneeded Federal real estate, June 10th, 2010.

The President sure seems like he is issuing a lot of Executive orders and memorandums to all of his various department heads. I understand that you are in a new position, but I would assume that you would follow the President's Executive order. The Commander in Chief issues an Executive order, you follow it; correct?

Mr. RICHARDS. We are aware of it, sir, yes.

Mr. DENHAM. So why in this case are you ignoring the President's directive on Federal buildings and moving forward with a

project that is going to create 700,000 square feet of empty office space?

Mr. RICHARDS. We believe, sir, that we have the authorization, the appropriation to build a new courthouse. As part of that project, after we build the courthouse, we are going to dispose through exchange the building at 312 North Spring Street. The result of that would be a new office building that we could collapse cost of leases, and ultimately that would reduce our Federal footprint here in Los Angeles.

Mr. DENHAM. Is the President aware of this construction project? Is the administration involved?

Mr. RICHARDS. I don't know that answer, sir. I would have to find out.

Mr. DENHAM. I have a lot more questions. This is just extremely frustrating.

You are the Federal Government's real estate expert for California. That is your job. That is your position. Agreed?

Mr. RICHARDS. Yes.

Mr. DENHAM. Yet you don't know what the size of the retrofit work would be on the proposal that is out there in front of the taxpayers and the proposal that is out there in front of Congress. You are not aware of the 85-year-old building that is under your purview that is being renovated currently and the construction cost per square foot in this market. You are not aware of the cost to construct new office space in the L.A. area. You are not aware of the rental rates a developer would need to cover the construction costs. You are not aware of the market rent for Class A office space in the Civic Center market, this local market, as well as the Class A office space in the central business district. That does not sound like much of a real estate expert in this market.

I am coming to the conclusion that you are either not an expert in this area or you are just lying to the taxpayers. There is a proposal out there that you have given to Congress, a proposal that you put out on the street, a proposal that you have taken back to the taxpayers, one that you have taken to the administration because apparently the administration is signing off on it even though there is an Executive order out there. So if you are not going against the President's own Executive order, I assume that they are supporting this idea that has no justification, that has no idea of what the rental rates and everything are.

Let me ask you one last question. What is the Government Accountability Office? What is their mission?

Mr. RICHARDS. To oversee everything that goes on, to make sure that we are spending the money wisely.

Mr. DENHAM. Is it a partisan group?

Mr. RICHARDS. No.

Mr. DENHAM. It is a nonpartisan office? I mean, do you dispute Mr. Goldstein's numbers? Is he off base?

Mr. RICHARDS. All I can tell you—I can testify to what I believe, and that is——

Mr. DENHAM. Do you work with the GAO?

Mr. RICHARDS. I don't, no.

Mr. DENHAM. So it is an independent body that comes up with its own research. I assume—Mr. Goldstein has testified before this

committee before. I have never seen anybody question the validity of his numbers.

These are two different agencies under this administration. One agency is coming up with numbers, and one is supposed to be the real estate expert. How are the numbers nowhere close? Do you just ignore the GAO?

Mr. RICHARDS. No. We are trying to do our due diligence on the disposal of the property——

Mr. DENHAM. Are they just quicker? I mean, they are doing the same due diligence. They did a study. They have done several studies now.

Mr. Goldstein, does GSA have enough money to build a new courthouse as it is currently planned?

Mr. GOLDSTEIN. They have the $366 million, the remaining appropriations. But a really important point that both of you have begun to work with here is that that is the tip of the iceberg of what is going to be required for this entire project, because it is not just building a new courthouse. Is it renovating Spring Street. It is making changes to Roybal. It is activation costs on the new courthouse. It is moving various agencies into other space. All of that will cost at least as much as the existing $366 million that we are talking about.

Mr. DENHAM. And just assuming their plan moves forward and the new building is built, does the current plan of building this new 24-courtroom courthouse, does it actually correct the problems that they list as their justification for building a new courthouse?

Mr. GOLDSTEIN. No, sir, it does not fix any of them. And with all respect to our witness from GSA, there still will be a split court here. That is the biggest problem, because the District Court does include the active Federal judges, the senior judges, and the magistrate judges, and the magistrate judges and their staff and part of the Federal District will still be in this building even if they do build the other courthouse.

Mr. DENHAM. Let me ask you a very straightforward question. Should GSA build a new courthouse?

Mr. GOLDSTEIN. Sir, that is a policy decision, but the facts do not support the justification.

Mr. DENHAM. Could the existing buildings house the L.A. court in a safe and efficient way?

Mr. GOLDSTEIN. Yes, sir, they can. As I discussed earlier, Roybal could fit the Federal District Court with sharing.

Mr. DENHAM. So if they instituted the courtroom sharing policy—courtrooms right now currently get used about 2.5 hours a day?

Mr. GOLDSTEIN. That is correct.

Mr. DENHAM. So if they went to a courtroom sharing model, you could fit the entire court into the Roybal Building?

Mr. GOLDSTEIN. Yes, sir, you could. Now, you would be moving some bankruptcy probably elsewhere, back into Spring and things like that, perhaps. You could spend a lot less than you are going to have to spend for the building——

Mr. DENHAM. Could you move everybody into the Roybal Building and still get rid of Spring Street?

Mr. GOLDSTEIN. That I would have to look at.

Mr. DENHAM. Are there any vacancies in the Roybal Building?

Mr. GOLDSTEIN. I don't know.

Mr. DENHAM. There were last year. I know there was at least a whole floor that was vacant.

Mr. GOLDSTEIN. When I last toured this building about 2 years ago, there was quite a bit of it, and there were also courtrooms that were literally being used to store furniture.

Mr. DENHAM. One of the questions that comes up is the need for Government or for Federal office space in the area. I don't dispute that we have a huge amount of leases in the L.A. area, well over 1 million square feet. Could we utilize the money to build office space and get out of a lot of the expensive lease space that we are in?

Mr. GOLDSTEIN. I am sure you could. I haven't looked at the market here specifically for those kinds of things, but I think that it is certainly a viable option.

Mr. DENHAM. Thank you.

Mr. Shuster.

Mr. SHUSTER. Thank you. I think you covered my questions. I appreciate that.

Mr. DENHAM. Mr. Goldstein, do you work with GSA? I mean, I understand you are an independent body, but——

Mr. GOLDSTEIN. We are the investigative arm of Congress, sir. So we are a congressional agency. We are not an agency of the executive branch. But we work routinely with GSA. I probably meet with someone from GSA on a weekly basis. We do a lot of work in the construction facilities and courthouses, all of the work with regard to security and the Federal Protective Service of all Federal property. I probably have about 10 jobs going at any one time that involve GSA.

Mr. DENHAM. Is it cooperation? Do you work well with them?

Mr. GOLDSTEIN. Yes, sir, we do. We have differences of opinion, but we do work very well with them.

Mr. DENHAM. But your job is not to evaluate policy. You are just strictly looking at the numbers.

Mr. GOLDSTEIN. That is correct. We are the investigators and auditors of the Congress. We bring information to the Congress for their determination of what to do with it. Yes, sir.

Mr. DENHAM. I guess what I—you know, we have had these hearings over and over again, in many different vacant buildings around the Nation. We are going to continue to hold these hearings. But the thing that continues to fascinate me, when we have the IG come in and the IG does an investigation, the Inspector General does an investigation, GSA seems to follow every detail of what the investigation comes up with. And in some cases, with the conferences in Las Vegas, some things were even referred to the DOJ. There was criminal action taken.

So if GSA follows all the information from the IG, and you are the Government Accountability Office under the President, under the administration, why do they not follow any of your numbers?

Mr. GOLDSTEIN. I don't have a good answer for that, sir. I wish I did.

Mr. DENHAM. Before I turn it over to Mr. Shuster, Mr. Richards, San Diego just built a new courthouse, did they not?

Mr. RICHARDS. Yes.

Mr. DENHAM. Are they in the final construction phases?

Mr. RICHARDS. Yes.

Mr. DENHAM. Any reason why my staff would not be able to take a tour of that this afternoon?

Mr. RICHARDS. Sure.

Mr. DENHAM. You can arrange that for us?

Mr. RICHARDS. Sure.

Mr. DENHAM. Thank you.

Mr. SHUSTER. Mr. Richards, you brought up, when we talked about Mr. Goldstein believes we can house the entire Federal Court here in the Roybal Building, you don't believe so, and you talked about prisoner circulation, security concerns. Despite the fact that the U.S. marshals have reported there are no major incidents occurring in the recent years, do you agree with that, concur with that? The marshals say it is not a big problem.

A security concern raised by the court is again prisoner circulation at Spring Street, yet the GSA currently is renovating the Thurgood Marshall Courthouse in New York City and they are not going to have separate prisoner circulation when the courts move back there. Why couldn't—why does the GSA in New York view it differently than the GSA in Los Angeles? Is there that much of a difference in those two cities? Why couldn't you do the same thing here and save millions and millions of dollars?

Mr. RICHARDS. I am not familiar with the situation or the security issues with the Thurgood Marshall. I do know that they have been—the issues of security have been raised here to a level that we feel that we should continue to move ahead with the courthouse that is——

Mr. SHUSTER. Although there are no reports of any incidents. Again, I think it would be wise to call your counterpart up in New York City and say why are you doing what you are doing, explain it to me, because they are doing it for far less. I think it is about $200 million. They are saving $60 to $100 million on that project. So I would encourage you to call your counterpart in New York and find out why they are able to do it and live with it and Los Angeles is not.

I yield back.

Mr. DENHAM. Thank you.

When I get back to Washington, DC, I plan on sitting down with Mr. Tangherlini again and asking him about the GAO's numbers and understanding why it appears the two agencies aren't working better together, or at least utilizing some of the same information. If GAO has done several studies and they can tell us exactly what square footage costs are, what construction costs are, space availability, I find it unbelievable that GSA can't tell us that same information.

So I would certainly like to see the two agencies working together. Again, you don't have to agree on policy. He doesn't have to agree on whether or not courtroom sharing should be a policy matter or whether or not GSA—you are in charge of the buildings, and certainly he may have a difference of opinion on whether a courtroom is needed or gets built. But you ought to all agree on the numbers. The numbers are what they are. You can look at any real

estate market and see what the going rate is and see what the construction costs are and see if things pencil out.

So I have a hard time understanding how a proposal can be out there and how you are going to move forward on spending $360 million of taxpayer dollars without having justification for the proposal.

I have a long list of questions here that certainly would take much more than the time we have allotted here. I am going to submit those to GSA for clarification.

Let me follow back on one thing you said, Mr. Richards. Certainly there has been a lot of concern about the World Trade Center lease. I understand that is not in your region. But certainly with the World Trade Center lease, they have gone around Congress, gone against GSA's own policy, gone against the President's Executive order.

But in this case here, are you fully prepared to come back to Congress for a prospectus?

Mr. RICHARDS. We feel that we have the authorization and appropriation to go ahead with this project.

Mr. DENHAM. To go ahead with the—to spend the $360 million to build?

Mr. RICHARDS. Right.

Mr. DENHAM. But the prospectus as far as renovation on Spring Street prospectus?

Mr. RICHARDS. The Spring Street proposal now is to exchange it through disposal.

Mr. DENHAM. It still requires a prospectus?

Mr. RICHARDS. I don't believe so. I think we have the authority, the exchange authority, to do that.

Mr. DENHAM. If you have to do a renovation on Spring Street and this proposal doesn't pencil out, there is no developer that is willing to do the exchange, you would be coming back to Congress for a prospectus?

Mr. RICHARDS. Correct, yes.

Mr. DENHAM. If you needed a new appropriation or allocation for renovation of Roybal, you would be coming back for a prospectus?

Mr. RICHARDS. Yes.

Mr. DENHAM. So in sum, you fully plan on following your own guideline and following the law in coming back to Congress, back to this committee for a prospectus on any new building, on any new renovation that would be outside of what you feel we have a difference of opinion certainly on the construction of this building that was proposed over a decade ago? But anything new, anything else that comes, new leases, new renovations, new appropriations, you fully expect to comply with the law?

Mr. RICHARDS. Yes, we do, sir.

Mr. DENHAM. Thank you.

I think you can sense the frustration. I mean, certainly I am frustrated that Mr. Tangherlini is not here himself. I mean, he and I have had a very open relationship. I was somewhat intrigued by the new proposal because we were looking at disposing of a property. I thought that was a first good step. While we may disagree, I do believe in the GAO's numbers. So I find it hard to justify the new building being constructed at all. I would prefer to see, if new

construction was going to move forward, that you would actually move out of the million-plus lease square footage that we have around here. My personal belief is you can't justify the new courthouse, but we can have disagreements on policy. I find it hard to understand why the numbers can be so different, or not have numbers at all.

Mr. Tangherlini should be here. He was invited several months ago, and we have been trying to be open about this process. Again, we may disagree on the policy, but the numbers should speak for themselves. So we will be submitting a number of different questions to you.

With that, I would like to thank both of you for your testimony today. Mr. Richards, as you move forward in this new position and no longer are acting director but before you actually take the full responsibility of the new position, I would expect you to have these answers.

So we will submit them for the record. Again, I thank each of you for your testimony today.

And if there are no further questions, Mr. Shuster, I would ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to all of our questions that are going to be submitted in writing, and unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

I would like to thank our witnesses again for their testimony.

If no Members have anything to add, the subcommittee stands adjourned.

[Whereupon, at 11:02 a.m., the subcommittee was adjourned.]

Committee on Appropriations
Subcommittee on Labor, Health and Human Services and Education
Subcommittee on Homeland Security

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Whip, Congressional Hispanic Caucus

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Statement of Rep. Lucille Roybal-Allard
Subcommittee Field Hearing
Economic Development, Public Buildings and Emergency Management Subcommittee
Los Angeles Courthouse: General Services Administration's Plan
Roybal Federal Building, Los Angeles, CA
August 17, 2012

Mr. Chairman:

Welcome to the Roybal Federal Building and my Los Angeles congressional district. While I am unable to attend today's hearing on the General Services Administration's (GSA) plan for the much needed federal courthouse for the United States District Court, Central District of California in Los Angeles, I would like to submit this statement for the hearing record to again affirm my long standing support for this important project. I am also including similar statements from several key stakeholders.

Courthouse Need

Located in one of the busiest metropolitan areas in the nation, the Los Angeles division court of the Central District of California handles a high percentage of complex criminal cases related to drugs, murder, mafia, and terrorism. The two buildings that currently house the court already suffer from critical security and operational deficiencies that will only be exacerbated in the future. The project was declared a space emergency by the Judicial Conference of the United States in 2003 and has been the Judiciary's top building priority since that time.

The current aging Spring Street federal courthouse is a seismically unsound, aging facility with serious security challenges. Built in the 1930's as a post office long before modern building codes and mitigating technologies, the facility is at risk in earthquake-prone Southern California. The building is not easily adapted to modern technology, security and safety features necessary to address 21st century challenges and threats. Employees, the visiting public, jurors and judges are all at risk as the configuration of the building requires their mingling with often dangerous defendants in public spaces including elevators and garages. Only a modern building can address the challenges facing the court today.

A new courthouse for the Central District of California has been needed for over a decade. In that time, the project has been reviewed, revised, and reworked numerous times. The court has worked with GSA to downsize the project so that it could be built within the existing appropriation. The current proposal would construct a building that would meet existing

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Judicial Conference policies on senior judge courtroom sharing and contains no space for projected new judgeship positions. The new courthouse would house all federal district judges but would not be sufficiently large to accommodate all federal judges whose duty station is Los Angeles. The balance of the judges would occupy the Roybal building, which also houses the bankruptcy court. Earlier this year, the Office of Management and Budget and the GSA approved moving forward with the project and issued a request for information to begin the process. Most recently, in affirming the decision to move forward on the project, Acting GSA Administrator Tangherlini devised an innovative plan to dispose of the Spring Street facility once the court vacates it.

Specific Operational and Security Concerns

A new courthouse is needed to address a variety of security and operational concerns.

- According to the U.S. Marshals Service (USMS), the Spring Street courthouse is among the worst security risks in the nation; many serious security issues affect the safety of the public, the marshals, and the judges.

- With no vehicle sally port, prisoners are brought through the judges' parking area and prisoners and judges often encounter each other upon exiting their respective vehicles because they enter/exit the garage at the same point.

- The central holding facilities of the main cellblock are extremely undersized. As a result, in-custody defendants may be placed together, adding to the security risk. Additionally, some in-custody defendants are moved to another facility which causes delays and requires additional Marshal support.

- The pathway from the central cell block to 12 of the 29 courtrooms is circuitous through extremely narrow corridors and staircases. Escorting large numbers of prisoners who are shackled together in such tight spaces with blind spots is extremely dangerous for both the marshals and the prisoners. Because of this risk, prisoners are often moved to these courtrooms through public elevators and public corridors, crossing paths with the public, jurors and witnesses. The only prisoner access to the remaining 17 courtrooms is through the public corridors.

Spring Street Proposal

Recently, I had the opportunity to accompany GSA Acting Administrator Dan Tangherlini on an inspection tour of the Spring Street courthouse and the Roybal Federal Building to show him the unsafe and deficient facilities the court and the public currently use. I commend Administrator Tangherlini for the plan he has proposed to dispose of the Spring Street building once the federal district court vacates it and occupies the new courthouse building. The plan is an innovative, practical, and fiscally responsible solution to meet our judiciary and federal workspace needs in downtown Los Angeles. The Administrator's proposal will involve the

exchange of the Spring Street courthouse for the construction of a new federal office building adjacent to the new federal courthouse, and will save taxpayers more than $150 million over other proposals which called for the renovation of the aging Spring Street facility. This new plan will create even more construction jobs for our community and is a win, win, win for the courts, federal employees and the people of Southern California. I applaud Administrator Tangherlini for his visionary leadership in charting this new course.

Positive Economic impacts of the Proposal

In earlier testimony before Congress, the General Services Administration (GSA) stated that more than one-half of the total expenditures for construction of a courthouse would benefit the local economy in the form of salaries for construction-industry workers. Unemployment in Los Angeles County is over 12%; a large percentage of the unemployed work in the construction industry, which, as of February, had experienced a year over year (2010 to 2011) decrease in jobs of 4.9%. The courthouse construction project would create thousands of jobs, which would last over the approximate five year life of the project. This calculation of jobs does not factor in the "multiplier effect" of those construction salaries, from purchasing groceries, paying rent and mortgages, making car payments, to generating tax revenue for state and local governments. Clearly, the courthouse construction project in Los Angeles would not only impact the tradesmen working on the project, but the community overall. The site is in a prime location in downtown Los Angeles that is cleared and ready for construction today.

Conclusion

The Judiciary and GSA believe that they have found a cost-effective resolution to a long-standing problem which will provide long-term, secure housing for the Los Angeles district court as well as dispose of surplus federal property. This project incorporates courtroom sharing policies, and the directives from the House Transportation and Infrastructure Committee to maximize the use of the Roybal Building to the extent practicable.

In closing, I want to stress again the critical need of the Los Angeles community to have safe, functional and efficient facilities in which to litigate cases and redress grievances. The new courthouse that is currently planned will allow them to do so. I commend GSA and the court for developing a new courthouse plan that can accommodate the needs of the Los Angeles community within the funds that have been appropriated for this project and at the same time dispose of the vacant Spring Street building and produce a cost savings to the taxpayer.

I hope that today's proceedings will once and for all put to rest any remaining concerns as we move forward to address the needs of the millions of Southern California residents served by the U.S. District Court in Los Angeles.

Lucille Roybal-Allard

Congress of the United States
Washington, DC 20515

Statement of Chairman Boxer
House Transportation and Infrastructure Committee's
Field Hearing on the Los Angeles Courthouse
August 17, 2012

The new federal courthouse in Los Angeles is needed because the current facility, located at 312 North Spring Street, poses serious security risks and lacks adequate protections to ensure the safety of judges, other court employees, and the public.

Currently, District Court judges are split between two courthouses, and a new courthouse will allow for the consolidation of the judges in one location and will enable the court to operate more efficiently. A renovation of the Spring Street facility would be inadequate to address this problem.

The new Los Angeles Courthouse has been authorized by Congress and all necessary funds needed for construction have been secured. The current facility poses serious security risks and lacks adequate protections to ensure the safety of judges and the public. The existing facility also has serious public safety issues, including seismic risks, asbestos, and crumbling infrastructure throughout the building.

In addition to addressing security and public safety concerns, construction of the new courthouse will also create jobs in Los Angeles. Efforts by House Republicans to block the construction of this long overdue project hurt local construction workers, prevent the court from operating more efficiently, and prolong the public safety risks that exist in the current outdated courthouse.

ANTONIO R. VILLARAIGOSA
MAYOR

Statement of Mayor Antonio R. Villaraigosa
Subcommittee Field Hearing
Economic Development, Public Buildings and Emergency Management Subcommittee
Los Angeles Courthouse: General Services Administration's Plan
Roybal Federal Building, Los Angeles, CA

August 17, 2012

Mr. Chairman:

I strongly support prompt construction of the new Los Angeles federal courthouse. A new courthouse will increase public safety, improve the downtown cityscape, and create much needed jobs.

Our federal court is among the busiest courts in the nation, serving millions of Southern Californians. The new courthouse will be safer for judges, public safety officers, and the public.

It's time to turn this eyesore into a jewel of downtown Los Angeles. Building a new courthouse on this site would contribute to the revitalization of the downtown civic center area and compliment our larger redevelopment goals.

Building the courthouse would create thousands of jobs over the five-year life of the project. More than half of the total expenditures for construction would go straight to paychecks for construction-industry workers. In a city with an unemployment rate over 12%, much of it in the construction industry, this is exactly what we need.

Congress has already signed off on funding for the project. It is ready to go. It is time to move forward.

Sincerely,

ANTONIO R. VILLARAIGOSA

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012
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Los Angeles Area
Chamber of Commerce

House Transportation and Infrastructure Committee's
Subcommittee on Economic Development, Public Buildings and Emergency Management
"LA Courthouse: GSA's Plan to Spend $400 million To Create Vacant Space."
August 17, 2012
Gary Toebben, President & CEO of the Los Angeles Area Chamber of Commerce

On behalf of the Los Angeles Area Chamber of Commerce, I submit the following comments in strong support of the construction of a new federal courthouse in Downtown Los Angeles. The Chamber is comprised of more than 1,600 member organizations, representing over 700,000 employees in Los Angeles County. As a trustee for the current and future welfare of the region, the Los Angeles Area Chamber of Commerce champions economic prosperity and quality of life.

Our federal court is among the busiest in the nation, providing justice to nearly half the residents in California. In 2004, the General Services Administration (GSA) cited a rolling 5-year plan prepared annually by the judiciary in calling for the construction of a new courthouse. The 5-year plan ranked projects using a methodology that assigns an urgency score to each project based on four criteria—the year a courthouse runs out of space, the number of judges without courtrooms, security concerns, and operational inefficiencies. The Los Angeles Courthouse was ranked as the highest-priority project in the nation on the judiciary's 5-year plan based on its high urgency score.

The needs of the Los Angeles court system have not lessened since 2004, in fact they have increased. That is why the Chamber was strongly supportive of GSA's announcement earlier this year that the agency was going to begin the process to exchange the historic North Spring Street courthouse in downtown Los Angeles for the construction of a new, highly efficient federal building on the downtown campus of the new Los Angeles courthouse.

Construction of a new federal building would allow GSA to consolidate thousands of federal employees on a central campus and save taxpayers more than $10 million per year in lease costs. This exchange also has the potential to save the government $250 million in renovation costs that the old courthouse needs.

The 3.6 acre site at the corner of First St and Broadway has sat empty for nearly two decades, creating blight on the Civic Center of our city while our two existing federal courthouses fail to meet the safety and capacity required by our judiciary. The U.S. Marshals Service has called the old courthouse one of the worst security risks in the country. The new 600,000 square foot facility will house 24 courtrooms and 32 judges' chambers to accommodate demand and provide justice more quickly.

As an added benefit to California and Los Angeles, this federal project will create thousands of construction jobs and millions in new state revenue over the five-year life of the project.

For all these reasons, the Los Angeles Chamber strongly supports the immediate construction of a new federal courthouse in downtown Los Angeles and we look forward to opening its doors in 2017.

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August 13, 2012

Honorable Jeff Denham
Chairman
Subcommittee on Economic Development,
Public Buildings & Emergency Management
585 Ford House Office Building
Washington, D.C. 20515

Dear Congressman Denham:

Established in 1924, Central City Association (CCA) is L.A.'s premier business advocacy association whose 450 members employ over 350,000 people in the Los Angeles region alone. On behalf of CCA, I offer this letter in support of the construction of the new Los Angeles Courthouse.

The Los Angeles federal court system is among the busiest in the country; yet, the building faces security and asbestos-related problems dating back to its construction during the Great Depression. Earlier this year, the U.S. General Services Administration announced its intent to award a contract to construct the new courthouse. Citing the court's urgent housing and security needs, the GSA leveraged the funds previously allocated to the project to begin moving this project forward.

We ask that your Committee move forward with the project. Building this new courthouse to include 24 new courtrooms and 32 judges' chambers in 600,000 square feet of space will allow for more cases to be heard and prosecuted. Since the GSA does not require additional funding for the project, there will not be a need to ask Congress for additional funding. In the end, this project will complement existing improvements in the Civic Center community, including the recently-completed LAPD headquarters and the $55 million Civic Park, a 16-acre public space linking the Music Center with City Hall.

CCA is extremely encouraged by this development, and looks forward to helping shape the future form and function of our city's Civic Center. Should you have any questions, please do not hesitate to contact my Senior Director of Legislative & Legal Affairs, Anh Nguyen, at 213-624-1213.

Thank you for your consideration.

Regards,

Carol E. Schatz
President & CEO

LOS ANGELES
COUNTY BAR
ASSOCIATION

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President

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DONALD P. SCHWEITZER
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MAILING ADDRESS:
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213.627.2727 phone
213.833.6717 fax
LACBA.org

August 10, 2012

The Honorable Jeff Denham
United States House of Representatives
1605 Longworth House Office Building
Washington, D.C. 20515-0519

RE: The Need for a Federal Courthouse in Downtown Los Angeles

Dear Representative Denham:

On behalf of the Los Angeles County Bar Association ("LACBA") and its more than 21,000 members, I would like to express our strong support for the construction of a new courthouse for the United States District Court for the Central District of California in downtown Los Angeles. As you know, the existing courthouse located at 312 North Spring Street was built as a Post Office in the 1930s. It was not designed or built as a courthouse, and it lacks basic security features that have been incorporated into courthouses around the state and the country for many, many years. To make matters worse, its construction does not meet Los Angele County's current building codes for earthquake safety in a region known for having earthquakes.

One of the most significant problems with the existing facility is the lack of adequate secure passageways to transport prisoners in and out of the courtrooms without exposing them directly to members of the general public, jurors, lawyers and court staff. I have personally seen criminal defendants escorted through the public hallways by U.S. Marshals. I also understand the U.S. Marshals Service recognizes the Spring Street Courthouse as one of the worst security risks in the federal system. Yet, the Central District is home to one of the largest caseloads in the country.

At the same time, for at least a dozen years the number of drug-related prosecutions and the number of defendants in those cases has been consistently increasing. Those defendants are considered to be dangerous and are associated with organizations that our government considers to be dangerous. Because of the lack of adequate secure passageways, these dangerous prisoners are frequently escorted through public elevators and hallways by Marshals putting the public, and potentially the prisoners themselves, at unnecessary risk.

However, security is not the only problem with the Spring Street Courthouse that warrants a replacement structure. It also suffers from mechanical, operational and safety issues that come with an eighty-year-old building. To begin with, it is not ADA compliant, which is a sad statement for one of the most significant federal buildings in Southern California. Local building safety codes have undergone many revisions since a devastating earthquake in Long Beach in the 1930s followed by significant quakes in almost every decade since then. Modern construction to address earthquake safety concerns is very different from what it was when the Spring Street Courthouse was built. In addition, the infrastructure (HVAC, electrical, elevators) is outdated requiring costly maintenance, upgrades or replacement to address inadequate air quality and temperature control systems, insufficient electrical power, other operational deficiencies. Because there still is considerable asbestos material in the building, corrective measures are either impossible or prohibitively expensive.

Many of LACBA's members regularly appear in the Spring Street Courthouse, and these issues are serious concerns for them as users of the facility. In addition, one of LACBA's missions is to serve the public in promoting access to justice and improving the justice system, and the current safety and security risks are barriers to access creating serious concerns for our members. For those reasons, and others that have been well documented over the years, LACBA strongly urges construction of the new courthouse in downtown Los Angeles to provide a safe and secure facility for the Court and the public who must use it.

Sincerely,

Richard J. Burdge, Jr.
President

LOS ANGELES CHAPTER
of the
FEDERAL BAR ASSOCIATION

Evan A. Jenness
evan@jennesslaw.com

August 9, 2012

The Honorable Jeff Denham
United States House of Representatives
1605 Longworth House Office Building
Washington, D.C. 20515-0519

Re: Support for Construction of New Downtown Los Angeles Federal Courthouse

Dear Representative Denham:

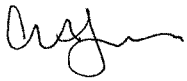
I am writing on behalf of the Los Angeles Chapter of the Federal Bar Association to voice its support for the construction of a new federal courthouse for the United States District Court, Central District of California, in downtown Los Angeles. The new courthouse is necessary to address long-standing and deep-seated security, safety, and operational deficiencies in the existing courthouse located at 312 North Spring Street which will only become more problematic as the courthouse continues to age.

As frequent visitors to the Spring Street Courthouse, one of our gravest and most immediate concerns arises from the fact that the courthouse has been recognized as being among the worst security risks in the nation by the U.S. Marshals Service. Many serious security issues exist which endanger the safety of the public, jurors, the judges, and Court employees, especially in this era of ever-increasing threats to security. The courthouse is the site of many hearings and trials in high-threat, complex, multi-defendant criminal cases, which increases the gravity of the numerous security concerns that have been documented by the U.S. Marshals Service. As is readily apparent to visitors to the courthouse, the configuration of the building often requires potentially dangerous criminal defendants to be transported in public elevators and through public corridors, putting the public, jurors, and Court employees at risk. Judges are also at risk, since prisoners must be loaded and offloaded in, and brought through, the judges' parking area, enabling the prisoners to see the judges' cars and license plates and increasing the possibility of an encounter. U.S. Marshals Service personnel and in-custody defendants are also endangered, as the pathway from the central cellblock to 12 of the courtrooms is circuitous and proceeds through extremely narrow corridors and staircases with many blind spots. Because of the danger posed by escorting large numbers of prisoners who are shackled together through this pathway, prisoners are often moved to these courtrooms using public elevators and public corridors, increasing the risk to the public, jurors, and Court employees.

In addition to these security concerns, the Spring Street Courthouse is plagued by numerous safety and operational deficiencies due to the building's age and the outdated assumptions on which it was designed and built. The Spring Street Courthouse was constructed in the late 1930's before modern building codes and earthquake mitigation technologies, raising serious concerns about its seismic stability and putting it at risk in earthquake-prone Southern California. The courthouse also lacks handicapped ramp access to the Main Street entrance, making the most convenient and heavily used entrance inaccessible to those in wheelchairs. The existing infrastructure does not accommodate, and is not easily adapted to, modern-day technology needs, and the building systems (*i.e.*, electrical, HVAC, and elevators) require upgrades or replacement in order to address the insufficient electrical power, air quality and temperature-control issues, and recurring systems malfunctions. Making matters even more complicated and costly, correcting these deficiencies is often hindered and sometimes prevented outright by the presence of asbestos throughout the building and the courthouse's historic status.

In light of these reasons and others which have been documented, the Los Angeles Chapter of the Federal Bar Association recognizes the need for a new federal courthouse to replace the aging and obsolescent Spring Street Courthouse. In addition to benefitting those members of the bar who regularly appear before the Court, a new federal courthouse will address the Court's and the public's need for a secure, safe, and fully functional courthouse in downtown Los Angeles.

Sincerely,



EVAN A. JENNESS
FBA-LA, President-Elect

cc: Victor Castillo, Legislative Director, Office of Representative Lucille Roybal-Allard

EAJ/dfm

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Los Angeles / Orange Counties Building and Construction Trades Council

Affiliated with the Building & Construction Trades Dept., AFL-CIO

ROBBIE HUNTER
Executive Secretary

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Fax (213) 483-4419

Honorable Jeff Denham
Chairman
Subcommittee on Economic Development
Public Buildings & Emergency Management
585 Ford House Office Building
Washington DC 20515

August 14, 2012

Dear Mr. Chairman:

I am the Executive Secretary of the Los Angeles/Orange Counties Building and Construction Trades Council. We represent 140,000 construction workers from 14 Trades in 52 affiliated local unions, all of whom, when working, are employed by private contractors.

These companies are awarded projects based on being the lowest bidder, using the highest-skilled, best-trained workforce, utilizing the least amount of workers completing a project in the shortest amount of time, doing it once and doing it right. It is only through bidding with these criteria that a company can be successful and bid repeatedly on public works projects.

I am writing to express our strong support for the prompt construction of the planned federal courthouse for the Central District of California in Los Angeles. When completed, the project will increase public safety, improve downtown and create much-needed jobs.

The existing courthouse is a 1930s building that is not built to today's seismic standards for an active earthquake zone such as Los Angeles. It is not able to serve residents, officials, judges and staff.

Due to today's economy, there exists excess capacity within the construction industry in this area. This has led to a very competitive market, with some of the lowest prices seen in construction in decades. For example, as reported in a recent "Los Angeles Business Journal" article, there has been a cost savings of $1 billion at Los Angeles Airport due to the competitive bidding.

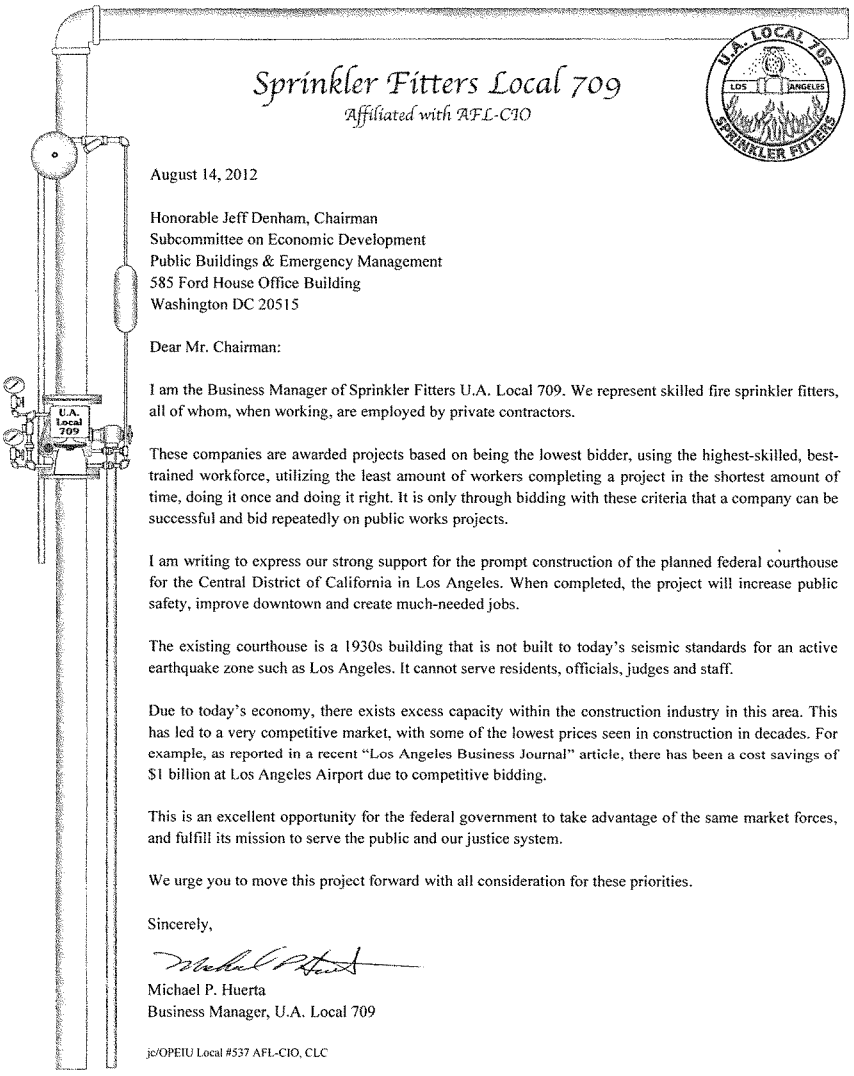
This is an excellent opportunity for the federal government to take advantage of the same market forces, and fulfill its mission to serve the public and our justice system.

We urge you to move this project forward with all consideration for these priorities.

Sincerely,

Robbie Hunter

Robbie Hunter
Executive Secretary



Sprinkler Fitters Local 709

Affiliated with AFL-CIO

U.A. LOCAL 709 LOS ANGELES SPRINKLER FITTERS

August 14, 2012

Honorable Jeff Denham, Chairman
Subcommittee on Economic Development
Public Buildings & Emergency Management
585 Ford House Office Building
Washington DC 20515

Dear Mr. Chairman:

I am the Business Manager of Sprinkler Fitters U.A. Local 709. We represent skilled fire sprinkler fitters, all of whom, when working, are employed by private contractors.

These companies are awarded projects based on being the lowest bidder, using the highest-skilled, best-trained workforce, utilizing the least amount of workers completing a project in the shortest amount of time, doing it once and doing it right. It is only through bidding with these criteria that a company can be successful and bid repeatedly on public works projects.

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This is an excellent opportunity for the federal government to take advantage of the same market forces, and fulfill its mission to serve the public and our justice system.

We urge you to move this project forward with all consideration for these priorities.

Sincerely,

Michael P. Huerta
Business Manager, U.A. Local 709

jc/OPEIU Local #537 AFL-CIO, CLC

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United States Government Accountability Office

GAO

Testimony

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

For Release on Delivery
Expected at 10:00 a.m. PDT
Friday, August 17, 2012

L.A. COURTHOUSE

Initial Project Justification Is Outdated and Flawed

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues

GAO
Accountability * Integrity * Reliability

GAO-12-968T

August 17, 2012

GAO
Accountability * Integrity * Reliability
Highlights

Highlights of GAO-12-968T, a testimony before the Subcommittee on Economic Development, Public Buildings, and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

L.A. COURTHOUSE

Initial Project Justification Is Outdated and Flawed

Why GAO Did This Study

The federal judiciary and the GSA are in the midst of a multibillion-dollar courthouse construction initiative. In 2010, GAO found that more than a quarter of the new courthouse space was unneeded, costing $835 million to construct and $51 million annually to rent, operate, and maintain.

As part of this initiative, construction has not yet begun on the L.A. courthouse project that was proposed to address perceived space, operational, and security deficits in Los Angeles, California. Specifically, the L.A. Court is split between two different buildings—the Roybal and Spring Street Courthouses—causing security and operational problems. Congress has appropriated about $400 million for the L.A. courthouse project. For this testimony, GAO was asked to review the L.A. Courthouse project and (1) explain its history and status, (2) determine the extent to which previously identified challenges related to courthouse construction apply to the project, and (3) determine if the analysis that made it the highest priority construction project still applies.

This testimony is based primarily on GAO's prior work on federal courthouses, for which GAO analyzed courthouse planning and use data, visited key sites in Los Angeles and other locations, modeled courtroom-sharing scenarios, and interviewed judges and GSA officials. This information was updated through GSA and judiciary documents and interviews. GSA and judiciary provided technical comments on GAO's updated work.

View GAO-12-968T. For more information, contact Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

What GAO Found

Because of delays and cost increases, the General Services Administration (GSA) canceled the authorized 41-courtroom Los Angeles (L.A.), California, courthouse project in 2006. Since then, GSA and the judiciary have been slow to agree upon how to proceed with the project, for which about $366 million in appropriated funds remains available. In 2012, with the judiciary's support, GSA issued a request for proposal for contractors to design and build a 24-courtoom, 32-chamber courthouse, which would be used in conjunction with 25 existing courtrooms in the Roybal Courthouse. However, this new plan will not address one of the principal justifications for the original project—that the L.A. Court be centralized at one site. Instead, it would increase the distance between the Roybal Courthouse and the planned second court location and the distance to the federal detention center from which prisoners must be transported.

Each of the challenges leading to extra space—and the associated extra costs—in courthouses that GAO identified in 2010 apply to the L.A. courthouse project. First, the initial design of the L.A. courthouse project exceeded the congressionally authorized size by 13 courtrooms and over 260,000 square feet. Second, 16 fewer judges are located in Los Angeles than were originally projected, a change that calls into question the space assumptions that the original proposals were based on. Third, officials did not fully take into consideration the advantages of courtroom sharing, again planning more courtrooms than necessary. According to the courtroom sharing model that GAO developed for a 2010 report using the judiciary's courtroom usage data, the 45 current district judges in Los Angeles would need 25 courtrooms to adequately address all scheduled courtroom time—roughly half of the 49 courtrooms currently planned.

It is not clear if the L.A. project remains a high priority. The judiciary chose not to reassess the L.A. project under a new prioritization process it began implementing in 2009. The process was changed to address concerns about the growing cost of courthouse projects and incorporate industry standards and best practices. However, there is evidence that the L.A. project justification from the old process is outdated and flawed based on the amount of space needed and the security assessment. Two high-priority projects that were reassessed under the new system were subsequently removed from the list. GAO is currently studying the judiciary's new prioritization process as it relates to projects currently on the judiciary's 5-year plan for this subcommittee and will continue to review these issues as part of that work.

Chairman Denham, Ranking Member Norton, and Members of the Subcommittee:

I am pleased to be here to discuss our recent work on federal courthouse construction issues and on the Los Angeles (L.A.) courthouse in particular. Since the early 1990s, the General Services Administration (GSA) and the federal judiciary (judiciary) have undertaken a multibillion-dollar courthouse construction initiative. According to GSA, that initiative has resulted in 76 new courthouses or annexes, and 18 additional courthouses in various stages of development. However, in 2010, we reported that more than a quarter of new courthouse space—then costing $835 million to construct and $51 million annually to operate—was unneeded.[1] We found the new extra courthouse space was the result of poor oversight and planning. Meanwhile, construction has not yet begun on the L.A. courthouse project, ranked by the judiciary as its top priority for construction since fiscal year 2000.

For this testimony, we were asked to (1) explain the history and current status of the L.A. courthouse project, (2) determine the extent to which previously identified planning issues related to overall courthouse construction specifically apply to the L.A. courthouse, and (3) determine whether the analysis that made the L.A. courthouse the judiciary's highest priority courthouse construction project still applies. This testimony is based primarily on our prior work on federal courthouses,[2] for which we analyzed courthouse planning and data; reviewed relevant laws, regulations, and project planning and budget documents; visited courthouse sites in Los Angeles and other locations; analyzed selected courthouses as case studies; modeled courtroom-sharing scenarios; contracted with the National Academy of Sciences to convene a panel of

[1]GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417 (Washington, D.C.: June 21, 2010).

[2]See GAO, Federal Courthouse Construction: Nationwide Space and Cost Issues Are Applicable to L.A. Courthouse Project, GAO-12-206T (Washington, D.C.: November 4, 2011); GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417 (Washington, D.C.: June 21, 2010); GAO, *Federal Courthouse Construction: Estimated Costs to House the L.A. District Court Have Tripled and There Is No Consensus on How to Proceed*, GAO-08-889 (Washington, D.C.: Sept. 12, 2008); GAO, *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613 (Washington, D.C.: June 20, 2006).

judicial experts; conducted structured interviews with district and magistrate judges about the challenges and opportunities related to courtroom sharing; analyzed nationwide judiciary rent data generated from GSA's billing system; and interviewed judges, GSA officials, and other relevant stakeholders. Information was updated though GSA and judiciary documents and interviews. To determine whether the judiciary's prioritization of the L.A. courthouse project still applies, we reviewed judiciary planning documents and interviewed judiciary officials. Our prior work was conducted from June 2004 through June 2010, and our additional work was conducted during July and August 2012. GSA and judiciary provided technical comments to our additional work. All of our work was conducted in accordance with generally accepted government auditing standards. More detail on our scope and methodology is available in the full reports on which this testimony is based.

Background

The judiciary uses a 5-year plan to define its priorities for courthouse construction. From fiscal year 1996 through 2008, the judiciary used a process to prioritize and score projects for inclusion in this plan based on

1. caseload and estimated growth in the number of judges and staff,
2. security concerns, and
3. any operational inefficiencies that may exist with the current facilities.

GSA uses the judiciary's plan to develop construction proposals and cost estimates for congressional authorizations and appropriations.[3] In 2009, the judiciary began applying a new process for prioritizing courthouse projects that will apply to future 5-year plans. Judiciary officials said that the new process was developed in part to address concerns about growing costs and incorporate industry standards and best practices. The judiciary is currently evaluating its 94 federal judicial districts and 11 courts of appeal under the new process. We are reviewing this new process as part of an ongoing engagement for this subcommittee.

Under the old prioritization process, the judiciary had identified the L.A. courthouse project as high-priority for several reasons. The federal court in downtown Los Angeles (L.A. Court) is split between two buildings—the

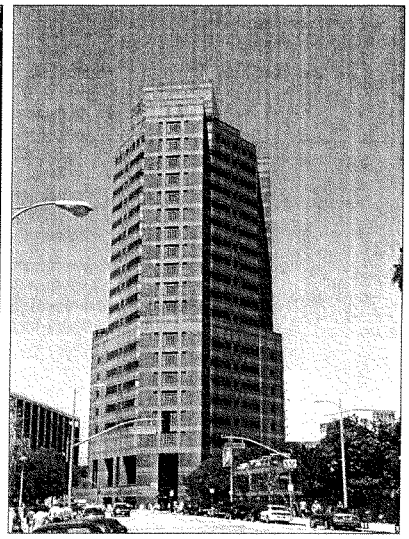
[3]For purposes of this testimony, we refer to approval of these projects or prospectuses by the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure as "congressionally authorized." See 40 U.S.C. § 3307.

United States Courthouse on North Spring Street (Spring Street Courthouse) built in 1938 and the Edward R. Roybal Federal Building and United States Courthouse (Roybal Courthouse) built in 1992. The Spring Street Courthouse consists of 32 courtrooms—11 of which do not meet the judiciary's minimum design standards for size.[4] The Roybal Courthouse consists of 34 courtrooms (10 district, 6 magistrate, and 18 bankruptcy). (See fig. 1.)

Figure 1: U.S. District Courthouses in Los Angeles

Source: GAO.

Spring Street Courthouse, opened in 1938 *(765,000 square feet)*



Source: GAO.

Roybal Courthouse, opened in 1992 *(1.2 million square feet)*

[4]The judiciary considers three of the courtrooms in the Spring Street Courthouse to be hearing rooms and not courtrooms.

In 1996, the judiciary concluded that having the L.A. Court split between two courthouses created security and operational problems, that the judiciary needed additional space in downtown Los Angeles, and that the Spring Street Courthouse had obsolete building systems and poor security conditions. One of the security challenges created by the split court is that prisoners must be transported from the Metropolitan Detention Center along surface streets to the Spring Street Courthouse. The Roybal Courthouse, however, is connected to the detention center by a secure tunnel.

In fiscal year 2000, the judiciary requested and GSA proposed building a new courthouse in downtown Los Angeles. From fiscal year 2001 through fiscal year 2005, Congress made three appropriations for a new L.A. courthouse, to remain available until expended.

- In fiscal year 2001, Congress authorized $35.25 million and later provided funding to acquire a site for and design a 41-courtroom, 1,016,300-square-foot building based on a GSA prospectus.[5]
- In fiscal year 2004, Congress also appropriated $50 million to construct a new L.A. courthouse.
- In fiscal year 2005, Congress appropriated an additional $314.4 million.

As we reported in 2008, GSA spent $16.3 million designing a new courthouse for the L.A. Court and $16.9 million acquiring and preparing a new site for it in downtown Los Angeles, leaving about $366.45 million available for the construction of a 41-courtroom courthouse.

[5]This authorized funding amount refers to a GSA reported amount in its courthouse project funding data. The $35.25 million amount reflects the amount approved by the House Committee on Transportation and Infrastructure in July 2000 and is less than the $36.20 million approved by the Senate Committee on Environment and Public Works also approved in July 2000.

L.A. Courthouse Project Was Repeatedly Delayed and Estimated Costs Increased

As we first reported in 2008, the L.A. courthouse project remains un-built because of delays and cost increases. The project was delayed in part because GSA decided to design a 54-courtroom, 1,279,650-square-foot building based on a request from the judiciary, instead of designing the congressionally authorized 41-courtroom, 1,016,300-square-foot courthouse. GSA completed the proposal for the 54-courtroom design in 2003, but the Office of Management and Budget (OMB) rejected the proposal and did not include it in the President's budget request for fiscal year 2005. GSA then designed a 41-courtroom building—the originally authorized size—but by the time that design was completed, the schedule for constructing the building had been delayed by 2 years, according to a senior GSA official involved with the project. With this delay, inflation then pushed the project's cost over budget, forcing GSA to further reduce the scope of the project in order to construct it within the authorized and appropriated amounts. However, the cycle continued as GSA and L.A. Court officials were slow to reduce the project's scope, causing additional delays, which in turn necessitated additional reductions. For example, GSA did not simplify the building-high atrium that was initially envisioned for the new courthouse until January 2006, even though the judiciary had repeatedly expressed concerns about the construction and maintenance costs of the atrium since 2002. As a result, cost estimates for the project tripled to over $1.1 billion, and GSA ultimately cancelled the 41-courtroom L.A. courthouse project in 2006.

Since 2006, GSA and the judiciary were slow to agree upon how to proceed with the L.A. courthouse project for which appropriated funds still remain available. As we reported in 2008, the judiciary supported a scaled-back option that included constructing a new 36-courtroom, 45-chamber courthouse and returning the Spring Street Courthouse to GSA for other uses. GSA also considered two less costly options, such as simply continuing to house the L.A. Court in both the Roybal and Spring Street Courthouse locations. In 2012, with the judiciary's support, GSA issued a request for proposal for contractors to design and build a 600,000 square-foot courthouse with 24 courtrooms and 32 chambers, which would be used in conjunction with 25 of the existing courtrooms in the Roybal Courthouse. However, this new plan will not address one of the principal justifications for the original project—that the L.A. Court be centralized at one site. Instead, it will increase the distance between the Roybal Courthouse and the planned second court location as well as the distance to the Metropolitan Detention Center from where prisoners must be transported.

Planning Issues GAO Previously Identified that Cause Extra Space in Courthouses Also Apply to the L.A. Courthouse Project

The three causes of extra space in courthouses—and the associated extra cost—that we identified in 2010 also apply to the L.A. courthouse project. These include:

1. exceeding the congressionally authorized size,
2. overestimating the number of judges a courthouse would have, and
3. not planning for courtroom sharing among judges.

First, as previously mentioned, the initial design of the L.A. courthouse exceeded the congressionally authorized size by 13 courtrooms and more than 260,000 square feet. In addition, we found in 2010 that large atriums—like the one in the L.A. courthouse design—contributed to size overages in several courthouses completed since 2000. Because the courthouse design exceeded the congressionally authorized size, this led to delays that contributed to the tripling of estimated costs and to GSA's ultimately canceling the project in 2006.

Second, judiciary overestimated how many judges the L.A. Court would need and therefore designed a courthouse with more courtrooms than necessary. Specifically, we reported in 2004 that the proposed L.A. courthouse was designed to include courtrooms for 61 judges—the 47 existing district and magistrate judges and 14 additional judges expected authorized or appointed by 2011. However, in 2012, rather than having an additional 14 judges, the L.A. Court has just 45 district and magistrate judges—2 fewer than we reported in 2004.[6] This outcome calls into question the assumptions made in the original proposals.

Third, judiciary did not fully take advantage of courtroom sharing by judges, which led to building more courtrooms than necessary. Our 2010 analysis indicated that the judiciary could reduce the number of courtrooms it needs by having judges share courtrooms. Table 1 illustrates the basic courtroom sharing that is possible based on judiciary's courtroom usage data.

[6] According to the judiciary, the L.A. Court currently has 30 authorized district judgeships including 2 vacancies, plus 17 magistrate judgeships.

Table 1: Courtroom-Sharing Possibilities Based on GAO Model and Analysis

Judges	Dedicated courtrooms needed
3 district judges	2 district courtrooms
3 senior judges	1 district courtroom
1 district and 1 senior judge	1 district courtroom
2 magistrate judges	1 magistrate courtroom

Source: GAO.

According to GSA in November 2011, the new plan would bring the total number of district courtrooms in Los Angeles to 49, even though there are only 45 district judges currently located and working in Los Angeles. Applying the courtroom-sharing model that we developed, the 45 current district judges would need 25 courtrooms to adequately address all scheduled courtroom time—the number of district courtrooms that GSA currently has planned for the Roybal Courthouse. Even this model would leave the courtrooms unused much of the time, since 60 percent of scheduled court events are canceled or postponed within one week of the event's original date. Additional efficiencies might also be realized if the L.A. Court's judges were to use a centralized courtroom scheduling system.

It Is Unclear Whether the L.A. Courthouse Project Remains a High Priority Project

Judiciary officials said the judiciary has not applied its new process for prioritizing projects to the L.A. courthouse project because it was grandfathered under the old process and, like 10 of the 12 courthouses on the current 5-year plan for construction, will not be reevaluated under the new process. However, if the L. A. courthouse project were reevaluated, it is not clear that it would retain the same high priority status from when it was first justified in 2000.

- Judiciary's projected increase in judges has not occurred. As we mentioned previously, none of the 14 additional judges expected by 2011 have been authorized or appointed. In fact, the L.A. Court has 2 fewer judges than we reported in 2004. This suggests that the previous space projections are currently outdated.
- The original security assessment did not include the Roybal Courthouse. The security score under the old prioritization process indicated that the L.A. Court lacked proper circulation routes for prisoners, but this problem does not apply to the Roybal Courthouse, a key court location being considered for continued use.

- The old prioritization process did not consider the potential for reducing the number of needed courtrooms by having judges share courtrooms.
- Other potential construction projects that were also rated high priority in 2012 under the original prioritization process have been reevaluated and have subsequently dropped in priority. Specifically, the judiciary applied its new prioritization process to two of the courtrooms on the list of projects in its 2010 5-year plan—San Jose, California, and Greenbelt, Maryland—and decided to remove both of them from the high-priority, 5-year construction plan. Formerly among the top 12 most urgent courthouse projects, the San Jose project now ranks 79th and the Greenbelt project now ranks 91st among potential courthouse projects.

In conclusion, the L.A. courthouse construction project has been repeatedly delayed and costs have increased for more than a decade. The current plan to build a new 24-courtroom courthouse would provide more courtrooms than are needed and will not solve the problem of a split court posed by two separate buildings—one of the key justifications for the project. We are currently studying the judiciary's new prioritization process as it relates to projects currently on the judiciary's 5-year plan for this subcommittee and will continue to review these issues as part of our ongoing work. Chairman Denham, Ranking Member Norton, and Members of the Subcommittee, this concludes our testimony. I would be pleased to answer any questions you might have at this time.

Contact Information

For further information on this testimony, please contact Mark L. Goldstein, (202) 512-2834 or by e-mail at goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Keith Cunningham (Assistant Director), George Depaoli, James Leonard, and Amy Rosewarne.

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U.S. General Services Administration

Kevin Richards
Acting Regional Commissioner
Pacific Rim Region
Public Buildings Service

Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings, and Emergency Management
"Los Angeles Courthouse"
August 17, 2012

Good morning Chairman Mica and Chairman Denham. My name is Kevin Richards, and I am the Acting Regional Commissioner for the U.S. General Services Administration's (GSA) Public Buildings Service (PBS) Pacific Rim Region.

I appreciate the opportunity to join you here today at the Los Angeles Courthouse complex where GSA, at Congress's direction and with existing appropriations, is moving forward to construct a Courthouse to meet the Courts' number one priority for new construction. This long-delayed project is proceeding in an efficient manner, with a significantly reduced scope from what was originally planned and at a size that meets the Courts' new sharing requirements for Judges.

At the same time, and in line with Administration goals to better utilize real estate, GSA intends to dispose of the outdated historic Courthouse at 312 North Spring Street. The plan is to do this through an exchange, and in return, receive a new and efficient Federal building that will save taxpayers money by eliminating costly leases.

The New Los Angeles Courthouse –

GSA is pursuing the construction of a new and efficient Courthouse in Los Angeles to meet the Courts' needs. Due to security deficiencies in the existing building and courtrooms that do not meet the Courts' space needs or functional requirements, the Los Angeles Courthouse is the Courts' number one priority for new construction. Between FY2001 – FY2005, the project received appropriations and was fully authorized, but for a variety of reasons, including scope and cost, was unable to move forward.

Congress made clear on several occasions during the life of the Los Angeles Courthouse project that GSA should work with the Courts to develop a viable solution for the project within the funding already appropriated. House report language accompanying the FY2009 Appropriations bill noted that "GSA is prohibited from using funds previously appropriated for the courthouse in Los Angeles for any other project. The GSA is further prohibited from using any proceeds from the sale of the land for this project, if one were to occur, on any other project." Congress has also relayed its concern about the lack of progress in constructing a new courthouse in Los Angeles as evidenced by the FY 2010 Senate Appropriations Committee report that directed GSA to work with the Judiciary in "developing a cost-effective design that would not require splitting of the District Court." Language in the FY 2011 Senate Committee report and the FY 2012 House markup further stressed the interest in the project. Support was also provided by 19 Members of the California delegation, who sent a letter to GSA in

October of 2011 urging GSA to "proceed immediately" with construction of a new Federal Courthouse to meet the Courts' needs.

In November 2011, the Courts and GSA announced a plan to deliver this critical facility within the current appropriation and authorization, eliminating future projected judgeships from the requirements and incorporating courtroom sharing policies. Originally planned for 41 courtrooms and nearly 1 million gross square feet, the project has been down-sized to 24 courtrooms and between 600 and 650 thousand gross square feet.

Since that announcement, GSA has been proceeding with a two-phase solicitation to select a firm to design and construct the new Courthouse. On February 6, 2012, GSA issued a Request for Qualifications, which was used to establish a short list of four highly-qualified firms. These four firms have been asked to provide detailed design proposals as part of a Request for Proposals and an award is expected later this calendar year, with completion and occupancy in the second quarter of Fiscal Year 2016.

The project will allow a more effective use of space, consolidating the Court functions currently housed in 312 North Spring Street and the Roybal building to the new Courthouse. The District Court will fully occupy the new courthouse, as well as the District Clerk and the accompanying U. S. Marshals Service. A number of senior district judges, the magistrate judges, as well as Pretrial Services and Probation, will consolidate in the Roybal building with the Bankruptcy Court. These two buildings will meet the security needs and functional requirements of the Courts, while satisfying the updated court requirements.

This will allow GSA to improve the security of the Los Angeles Federal District Court and meet the functional needs of the Court, taking advantage of an unfortunate downturn in the market to deliver the project within the current appropriation.

Disposal of 312 North Spring Street –

The consolidation of the Judiciary in the new Courthouse and the Roybal Building, however, will result in a large vacancy at the historic Courthouse at 312 North Spring Street. This circa-1930s building does not meet current seismic, fire safety, or security requirements.

Given the Administration's strong push to aggressively dispose of unneeded property, on June 22, 2012, GSA announced we would begin pursuing an exchange of the property. In return for the 312 North Spring Street Courthouse, a private-sector partner will be asked to provide a new, highly efficient Federal building to accompany the new Courthouse at the site bounded by 1st Street, Hall, and Broadway. This new building would allow GSA to backfill Federal tenants into this newly constructed Federal building and out of costly leased space, saving taxpayers millions in annual rent payments per year.

Since the announcement of the exchange, GSA has been conducting due diligence on the property, and will begin the Section 106 historic consultation process shortly. This process will determine what a developer will be allowed to do with the property, thus affecting its value. We are already working with potential tenants to develop a program of requirements for the new Federal building and, after completing the required due diligence, will engage the private sector to solicit proposals.

Better Utilizing Federal Real Estate –

As noted, this disposal through exchange is consistent with the Administration's goals to better utilize real estate. In June 2010, the President issued a Memorandum entitled "Disposing of Unneeded Federal Real Estate," which charged civilian agencies to utilize space, reduce operating costs, and dispose of unneeded real property more effectively to save $3 billion by the end of 2012. GSA has saved more than $300 million as part of the $3 billion goal outlined in the June 2010 Presidential Memorandum.

Most recently, Acting OMB Director Jeffrey Zients issued a May 11, 2012, memorandum, entitled "Promoting Efficient Spending to Support Agency Operations," which stated, among other things, that agencies may not increase the size of their civilian real estate inventory. Any increase in an agency's total square footage of civilian inventory must be offset through consolidation, co-location, or disposal of space.

These initiatives are improving the Federal Government's management of real estate, ensuring that agency decisions are made in a cost-effective way, and saving taxpayers money. GSA is doing its part to meet these goals. The disposal by exchange of 312 North Spring Street will ensure taxpayers do not pay for an unneeded building.

Conclusion –

GSA and the Courts are well underway in moving forward with the plan to complete the new Courthouse in Los Angeles within the current appropriation to help the Courts meet their mission needs, with an award expected later this year. Los Angeles will have a secure, state-of-the-art Courthouse, helping improve court functions and services, while keeping tenants and the visiting public safe. Additionally, we look forward to the disposal through exchange of the historic Courthouse at 312 North Spring Street, allowing for backfill of costly leases and avoidance of ongoing maintenance and renovation costs. Both actions will result in a more efficient real estate footprint in the Los Angeles area.

I welcome the opportunity to be here and I am happy to answer any questions.

Statement of
The Honorable Margaret M. Morrow
District Judge
United States District Court
Central District of California

for the hearing of the

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

entitled

"LA Courthouse: GSA's Plan to Spend $400 Million to Create Vacant Space"

Los Angeles, California
August 17, 2012

Thank you for the opportunity to submit written testimony regarding the Los Angeles Courthouse project, the Judiciary's number one courthouse construction priority. I am a District Judge of the United States District Court for the Central District of California, resident in Los Angeles. I regret that I am unable to appear in person at the hearing of the Subcommittee; I have a previous commitment on the east coast that could not be changed. I would, of course, be happy to respond in writing to any questions the Subcommittee may have following the hearing.

The Central District of California is one of the largest and busiest courts in the nation. The court in Los Angeles currently operates in two buildings: the Depression-era courthouse located at 312 North Spring Street (Spring Street), and the Edward R. Roybal Federal Building and Courthouse (Roybal Building), which also houses other federal tenants, at 255 East Temple Street. Over the past two years, the Judiciary has worked closely with the General Services Administration (GSA) to develop a plan for a functional and cost-effective facility that will provide long-term, secure housing for the Los Angeles district court and for the public that uses the building. The planned facility

incorporates the direction we have received from this Subcommittee and the full Committee to maximize the use of existing courtrooms in the Roybal Building to the extent practicable, to share courtrooms, and to design and construct a building within the $366 million already appropriated for the project.

I last had the opportunity to discuss the Los Angeles Courthouse project with the Subcommittee at its November 4, 2011 hearing in Washington, DC. At that time, I explained why a new courthouse is needed and detailed some of the serious security, operational, and infrastructure issues that exist at the Spring Street courthouse. I will not repeat that testimony here. The court understands that since that hearing, GSA's Acting Administrator, Daniel M. Tangherlini, has conducted a thorough review of the need for a new courthouse in Los Angeles. His review included a trip to Los Angeles to tour the existing Spring Street facility and to assess security and other issues there. Mr. Tangherlini has advised the court that, after considering other options, he has reaffirmed the need for a new courthouse and concluded that GSA should proceed with the project.

As described in more detail below, the current plan consists of the court vacating the Spring Street facility, construction of a new courthouse on land already owned and prepared by GSA for that purpose, and the court's continued use of the Roybal Building. As part of this plan, we understand that GSA also intends to transfer ownership of the Spring Street facility to a private developer in exchange for that developer's agreement to construct a new federal office building that will house federal tenants who are in, or who would otherwise occupy, leased space. The new federal office building is to be constructed on a portion of the site that has been acquired for the courthouse. The site should accommodate both buildings, given that GSA and the court have agreed to construct a courthouse that is smaller than originally contemplated. The court does not foresee a problem with GSA's proposed plan.

The planned courthouse is the result of multiple studies conducted by the Judiciary and GSA, beginning in the mid-1980s and continuing to the present day. These studies have included a thorough assessment of the space needs of the Los Angeles court, an evaluation of the relative merits of different housing options, and several GSA feasibility studies – all elements of the Judiciary's current long-range facilities planning process. Last year, GSA and the court agreed that construction of a new courthouse with 24 courtrooms and 32 chambers would be the most cost-effective and operationally efficient solution, taking into consideration the Judiciary's policies for courtroom sharing and planning space for new and projected judgeships. Also, as noted, the courthouse can be constructed within the existing Congressional appropriation.

As you are aware, the Los Angeles courthouse project has the long-standing support of members of the California congressional delegation and the local community. I attach to this statement a letter sent by the delegation to GSA last year in support of the project, and I respectfully request that it be made part of this hearing record. Further, I understand the Subcommittee has recently received statements from others in the Los Angeles community who are supportive of the new courthouse, and I ask that those letters also be included in the hearing record.

Plan for the New Courthouse and Use of the Roybal Building

The scope of the courthouse now planned in Los Angeles is the same as that presented to the Subcommittee at the November 2011 hearing, and is the product of close collaboration between the Judiciary and GSA – at both the national and local levels. GSA and the court were able to reduce the requirements for the new courthouse by applying current Judicial Conference senior judge courtroom sharing policies and eliminating any provision for projected judgeships. Given the federal government's difficult budgetary situation, the Los Angeles court suggested numerous other reductions in the scope of the project to ensure that the project budget stays within the amount

previously appropriated. Although we anticipate growth in the court through the addition of senior judges and their active judge replacements, we are committed to making this plan work.

Details of the project include:

- Construction of a new federal courthouse on a site that is already owned by the government and has been cleared and is ready for construction.

- The newly constructed facility will have 24 district judge courtrooms and 32 chambers for 21 authorized active district judges and 11 senior judges. This reflects application of the Judicial Conference's courtroom sharing policies for senior judges.

- As has always been planned, when the new courthouse is completed, the district court will vacate the Spring Street facility, and will be housed in the new courthouse and the Roybal Building. The Judiciary understands that GSA plans to exchange the Spring Street facility for a new federal office building, which will consolidate some agencies and move others out of leased space.

- The portion of the Roybal Building occupied by the courts will be fully utilized for: (1) shared magistrate judge courtrooms and chambers; (2) shared courtrooms and chambers for senior judges who cannot be accommodated in the new facility; (3) bankruptcy judge courtrooms and chambers; and (4) judicial support functions.

- In response to the concerns expressed by this Subcommittee, the House Transportation and Infrastructure Committee, and the Government Accountability Office (GAO), this housing plan does ***not*** include space for judgeships the Judiciary has requested that Congress create, nor for projected judgeships not yet approved by the Judicial Conference but warranted based on caseload.

While the plan will not address all of the operational issues resulting from the division of court operations into two facilities, the court will function more efficiently in this new configuration than it currently does. In particular, significant efficiencies will be achieved by the consolidation of all active district court judges in the new facility.

A question was raised at the Subcommittee's November 4, 2011 hearing as to whether the entire district court could be consolidated with the bankruptcy court in the Roybal Building, obviating the need for construction of a new facility. The answer is that it would be neither cost-effective nor practicable to do so. I refer the Subcommittee to the supplemental information I

provided for that hearing record, which outlines the reasons why this is so. Let me add, however, that even if **all** executive branch agencies were displaced from the Roybal Building, the remaining available space (approximately 160,000 square feet) would be insufficient to house the district court operations currently located in the Spring Street courthouse. Assuming courtroom sharing pursuant to Judicial Conference policy, the space available in the Roybal Building would still be several hundred thousand square feet less than what would be required to consolidate court operations in that building.

Conclusion

The Judiciary greatly appreciates the courthouses that the House Transportation and Infrastructure Committee has authorized over the years. These buildings provide secure places and space needed to administer justice fairly and equally to the American people. The plan I have described is a reasonable, efficient and cost-effective solution for the Los Angeles court's long-standing housing problem. The project has not changed since the Subcommittee's last hearing in November 2011. It will provide long-term, secure housing for the Los Angeles district court and members of the public who use the building. It incorporates Judicial Conference courtroom sharing policies, and the directive of the House Transportation and Infrastructure Committee to maximize the use of existing courtrooms in the Roybal Building to the extent practicable. The Judiciary appreciates that as a result of Acting Administrator Tangherlini's recent review, the need for the project was reaffirmed. It also appreciates the unwavering support the project has received from the California congressional delegation and the local community, which looks forward to construction of a modern, safe and secure federal courthouse in downtown Los Angeles.

Congress of the United States

Washington, DC 20515

October 28, 2011

Honorable Martha N. Johnson
Administrator, General Services Administration
1800 F Street, N.W.
Washington, DC 20405

Dear Administrator Johnson:

We write to urge the General Services Administration (GSA) to proceed immediately with construction of a new federal courthouse for the United States District Court, Central District of California in Los Angeles. Congress first authorized site, design and acquisition in 2000 and the project was declared a space emergency by the Judicial Conference of the United States in 2003 and has been the Judiciary's top building priority since that time. It has been delayed too long.

Located in one of the busiest metropolitan areas in the nation, the Los Angeles court handles a high percentage of complex criminal cases related to drugs, murder, mafia, and terrorism. A request to create new permanent judgeships for the district, many of which will be placed in Los Angeles, is currently pending before Congress to handle the court's pressing caseload. Moreover, additional growth is expected in the near future when several active judges in existing judgeships assume senior status and their replacements come on board. The two buildings that currently house the court already suffer from critical security and operational deficiencies that will only be exacerbated as the court grows.

Congress approved the funding for GSA to construct the new courthouse in fiscal years 2004 and 2005, but escalating construction costs at the time caused the project budget to exceed the appropriation. With no additional funding available to build the project as planned, congressional committees directed the court and GSA to work together and agree on a building that could be built within the funds appropriated. It is our understanding that GSA and the court have now reached agreement on a proposal that will do just that. We hope, therefore, that GSA will proceed with the process of awarding a contract to build the new courthouse.

In closing, we want to stress again the critical need of the Los Angeles community to have safe, functional and efficient facilities in which to litigate cases and redress grievances. The new courthouse that is currently planned will allow them to do so. Building the courthouse, moreover, will create thousands of construction and related jobs, which are sorely needed in an area where unemployment exceeds 12% and a large percentage of the unemployed are in the construction industry. We commend GSA and the court for developing a new courthouse plan that can accommodate the needs of the Los Angeles community within the funds that have been appropriated for this project and we ask you to move ahead without delay.

Sincerely,

DIANNE FEINSTEIN BARBARA BOXER LUCILLE ROYBAL-ALLARD

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Administrator Martha N. Johnson, October 27, 2011, Page 2

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September 20, 2012

Honorable Jeff Denham
Chairman
Subcommittee on Economic Development,
Public Buildings and Emergency Management
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Honorable Eleanor Holmes Norton
Ranking Member
Subcommittee on Economic Development,
Public Buildings and Emergency Management
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman and Ranking Member Norton:

I respectfully request that this letter and its enclosures be included in the record of the Subcommittee's August 17, 2012, field hearing in Los Angeles, California, entitled, "LA Courthouse: GSA's Plan to Spend $400 Million to Create Vacant Space." As I stated in the written testimony I submitted for the hearing, I regret that I was unable to appear in person at the hearing due to a previous commitment on the east coast that unfortunately could not be changed.

During the question and answer portion of the hearing, two issues were raised that I would like to address. In addition, the General Services Administration (GSA) witness was asked to provide information about courtroom sharing in the Edward R. Roybal Federal Building and Courthouse (Roybal Building). I believe it is appropriate for the Central District of California to provide that information to you for the record rather than the GSA.

The Possibility of Consolidating the District and Bankruptcy Courts in the Roybal Building is Based on a Flawed Courtroom Sharing Model

At the hearing, it was suggested that, based on the Government Accountability Office's (GAO) courtroom sharing models, the district court and bankruptcy court could be consolidated in the Roybal Building, obviating the need for construction of a new courthouse in Los Angeles. This same suggestion was made at the Subcommittee's November 4, 2011 hearing on the Los Angeles courthouse project, and in response I provided supplemental information to the

Subcommittee that detailed the obstacles to consolidation of both courts in the Roybal Building. I have enclosed that information with this letter for the Subcommittee's consideration (Enclosure 1). Additionally, the Judiciary has provided detailed explanations of its disagreement with, and the flaws in, the GAO courtroom sharing models, which I shared with the Subcommittee in the supplemental information I provided for the November 4, 2011 hearing. I have enclosed that information with this letter for the Subcommittee's consideration as well (Enclosure 2).

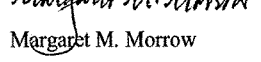
In sum, and as I explained in my written testimony, it would be neither cost-effective nor practicable to consolidate the entire district court with the bankruptcy court in the Roybal Building. Even if **all** executive branch agencies were displaced from the Roybal Building, the remaining available space (approximately 160,000 square feet) would be insufficient to house the district court operations currently located in the Spring Street courthouse. Assuming courtroom sharing pursuant to Judicial Conference policy, the space available in the Roybal Building would still be several hundred thousand square feet less than what would be required to consolidate court operations in that building.

Courtroom Sharing in the Roybal Building

The Roybal Building contains 10 district judge courtrooms, including a multi-defendant courtroom; 6 magistrate judge courtrooms; and 16 bankruptcy judge courtrooms. All district court judges resident in Los Angeles share the multi-defendant courtroom. At this time, the other 9 district judge courtrooms are assigned to individual active district judges, including one judge whose appointment is pending before the Senate; the 6 magistrate judge courtrooms are assigned to individual magistrate judges; and the 16 bankruptcy judge courtrooms are assigned to individual bankruptcy judges, including one judge anticipated to be recalled and one visiting judge. The Judicial Conference policies on courtroom sharing apply to new construction. Because the Roybal Building was constructed prior to the adoption of these policies, there has not been courtroom sharing to date in the Roybal Building. When the new courthouse is built, however, it is anticipated that 13 senior judges will share 7 courtrooms in the new courthouse and the Roybal Building, and 17 magistrate judges will share 9 courtrooms in the Roybal Building. Any unassigned courtrooms will be re-purposed as chambers or released as appropriate.

Again, thank you for the opportunity to present the views of the Central District of California on these matters related to the Los Angeles courthouse. I appreciate your accommodation of our request for these additional materials to be placed into the hearing record.

Sincerely,



Margaret M. Morrow

Enclosures

Enclosure 1

Challenges in Consolidating the District and Bankruptcy Courts in the Edward R. Roybal (Roybal) Federal Building.

At the hearing, it was suggested that the district court and bankruptcy court could be consolidated in the Roybal building, obviating the need for construction of a new courthouse in Los Angeles. The district court and bankruptcy court cannot be consolidated in the Roybal building without: a) significant construction in and renovation of the existing building, the cost of which, when combined with the cost of the swing space that would be needed during construction, would likely exceed the cost of constructing a new building; b) evicting current federal tenants and moving them into leased space; and c) obtaining additional space for the bankruptcy and district clerks' offices, and for probation and pretrial services offices that could no longer be accommodated in the Roybal building due to lack of space.

Specifically, consolidation of the district court and bankruptcy court in the Roybal building would require the following:

- The build out of 13 new district and magistrate judge courtrooms, and the provision of secure prisoner circulation and holding cells for these courtrooms.
- The build out of 39 additional chambers for use primarily by senior and magistrate judges. It would be necessary to demolish four bankruptcy courtrooms to provide space for these chambers. If Congress were to create the clearly needed district judgeship positions proposed in S. 1032 and HR 2365, additional space would need to be found and built out for them as well.[1]
- Significant alterations to eight bankruptcy courtrooms to provide the prisoner access and holding cells necessary to convert them for district court use.
- Demolition of twelve bankruptcy court jury deliberation rooms that are too small for district court needs and reconstruction to convert them for district court use.
- Conversion of the district court clerk's office in Roybal to a jury assembly area.
- Expansion of USMS holding cells.
- The vacating of approximately 155,000 usable square feet (usf) of space in the Roybal building by current executive branch agencies and other federal occupants, demolition of the vacated space, and reconstruction for district court purposes. The court understands that this amount of space is not available in GSA's inventory of federal space in the area, and that it will be necessary to obtain leased space for these tenants. Based on past experience, it is likely to take three to at least four years to process a lease prospectus for this amount of space.

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[1] The Central District of California is the 11th busiest of the 94 districts in the nation. District judges in the Central District carry one of the heaviest caseloads in the nation with the number of weighted caseload filings currently at 639 per authorized judgeship (year ending June 30, 2011). This far exceeds the national average of 505.

- The resulting configuration would be able to accommodate the bankruptcy court but would not accommodate the bankruptcy clerk's office, the probation office and pretrial services office. There would also be significant space shortfalls for the USMS. An additional 253,000 usf would be required to house these functions.
- The extensive construction that would be required on floors 12 through 20 to complete these renovations would significantly impact building egress and life safety systems, making occupancy of these floors impractical during the construction period, which can be expected to take at least three years. This would necessitate the acquisition of approximately 125,000 usf of leased temporary swing space to house the bankruptcy court for the duration of construction.

As can be seen, renovation of the Roybal building would be a complex construction project that would require multiple interdependent phases. Delays and additional costs can be expected. Consequently, and for all of the reasons noted, consolidation of the district court in the Roybal building would not be cost effective or practical.

Enclosure 2

GAO's Courtroom Sharing Recommendations Are Based on Invalid Assumptions

In its testimony, GAO stated that based on its 2010 analysis, three senior judges could share one courtroom, two magistrate judges could share one courtroom, and three district judges could share two courtrooms. The Judiciary addressed the GAO's analysis in a June 1, 2010 letter from James C. Duff, the former Director of the Administrative Office of the United States Courts, which responded to the GAO's draft report titled *FEDERAL COURTHOUSE CONSTRUCTION: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs* (GAO-10-417) (Attachment 1). In Mr. Duff's letter, the Judiciary explained its objection to the GAO's use of policies and rules that were not in effect at the time buildings were planned and constructed, and articulated the Judiciary's doubts about the validity and viability of the courtroom sharing model developed by the GAO. Regarding the model, the Judiciary noted a) the fact that the contractor who developed the model apparently lacked expertise concerning the judicial process and the manner in which courts function; b) the fact that the model inflated the workday by 25 percent to arrive at the proposed sharing ratios; and c) the lack of transparency concerning the assumptions used to develop the model.

Nearly three months after the GAO finalized the report, and following numerous requests by the Judiciary, the GAO provided the Judiciary with a copy of the report of the contractor who developed the courtroom simulation model. This enabled Judge Michael A. Ponsor, United States District Judge for the District of Massachusetts and Chair of the Judicial Conference Committee on Space and Facilities, to discuss the flaws in the model at a September 29, 2010 hearing of the Subcommittee on Courts and Competition Policy of the House Committee on the Judiciary (Attachment 2). In his testimony, Judge Ponsor provided the following analysis:

> According to the report, the assumptions were kept simple. This simplicity has resulted in inaccuracies in the model that we can easily identify based on our expertise in the judicial process. For example, the model appears to assume that judges are fungible – that any available judge could be plugged into any available courtroom to hear any available case. The model also appears to assume that the participants in the process – the litigants, prisoners, jurors, courtroom personnel – are also fungible because they are lined up and ready to appear at court at the moment a courtroom is freed up. And the model assumed that courtrooms would be used ten hours per day, reflecting a lack of understanding of reality in the courtroom and the judicial process. Jurors, litigants, witnesses, family members and other court participants would have great difficulty sitting in court for ten hours a day, due to work, child care and other responsibilities. Nor could we expect jurors to focus clearly on testimony for that long.

On a disturbing note, the model appears to have completely ignored the security issues that exist at courts. Courts are places where dangerous and violent individuals are brought on a daily basis. They are places where civil litigants have in the past expressed violent and deadly disagreement with the outcomes of their cases. The more moving around the courthouse that is done as cases are shifted from one courtroom to another, the greater the potential for security problems.

Attachment 1

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

June 1, 2010

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Goldstein:

I write on behalf of the Federal Judiciary in response to the draft report entitled, *FEDERAL COURTHOUSE CONSTRUCTION: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs* (GAO-10-417). The Judiciary takes its stewardship responsibilities seriously and would welcome a fact-based and objective analysis as well as constructive suggestions for improving our facilities planning approach. It is regrettable at a time when the General Services Administration (GSA) and the Federal Judiciary are working closely and effectively to control courthouse costs – including current and planned courtroom-sharing measures adopted by the Judiciary – that GAO has produced a misinformed report that distorts both the current facilities planning process and prior projects.

In short, we have serious concerns about the accuracy of key data, the misleading way in which information is presented, and the soundness of methodologies employed to substantiate the draft report's conclusions. We emphatically dispute the draft report's contention that the 33 federal courthouses completed since 2000 have 3.56 million square feet of unnecessary and wasted space; and we have grave doubts about the validity and viability of the courtroom-sharing model developed by GAO.

We are also deeply troubled that the draft report issued by the GAO under strict disclosure restrictions was released to the public by GAO as its testimony to Congress on May 25, 2010, before Judiciary and GSA officials had provided comments. Additionally, after hearing GSA's and the Judiciary's testimony before the House Subcommittee on Economic Development, Public Buildings and Emergency Management of the Committee on Transportation and Infrastructure disputing key facts underlying the draft report's conclusions, you nevertheless discussed those conclusions on Federal News Radio.

Mr. Mark L. Goldstein
Page 2

This letter describes concerns related to those aspects of the draft report that pertain directly to the Federal Judiciary's programs and policies. A companion Judiciary response is enclosed in the form of a letter from the Honorable Loretta A. Preska, Chief Judge, United States District Court for the Southern District of New York. Chief Judge Preska's letter decries GAO's misleading characterization of her district's temporary experience with courtroom sharing as proof of the long-term efficacy of sharing by district judges (as asserted by GAO obliquely in the draft report and explicitly at the May 25 hearing); and it refutes the accuracy of the draft report's portrayal of an expert-panel discussion in which she participated. The draft report also covers important issues that are under the purview of the GSA, which will be responding separately.

We appreciate that the internal review process within GAO strives to ensure the objectivity and fairness of reports as well as the accuracy of facts and analyses. It is worrisome, however, that a senior member of the GAO audit team disclosed a predilection for a particular outcome when he told a group of Judiciary officials that more courtroom sharing would be coming and there would be no point in arguing against it. It appears that the audit team's zeal to meet certain objectives may have compromised its ability to be entirely objective and fair. It may be too late to change false impressions already generated by the premature disclosure and discussion of an unreviewed draft report, but it is not too late to make corrections and you expressed a willingness to do this during the May 25 hearing. We hope these comments will be helpful to GAO to produce a final product that will satisfy its high standards of quality, objectivity, and fairness. Primary issues are outlined below, followed by more detailed analysis.

- For the 33 courthouses studied by GAO, the Judiciary's courtroom policies in effect at that time were used to determine the number of courtrooms needed in each facility and these numbers were authorized by Congress. Those policies provided a courtroom for each judge. Auditors typically review actions and operations against the policies and rules in effect at the time. Instead, GAO has manufactured its own rules in the course of this study regarding how many courtrooms it thinks should be provided to judges, and it has applied these untested and unapproved rules retroactively to the 33 courthouses that were already built. The report attributes to this made-up concept 946,000 excess square feet.

- Because of GAO's retroactive application of its notion about courtroom sharing, this draft has defined as excess and wasted space courtrooms that currently are assigned to and used daily by federal judges. This is not reasonable.

- It is misleading to suggest that 887,000 extra square feet exist because of inaccurate estimates of judges for the 33 courthouses studied. GAO's snapshot approach to counting heads simply does not provide a complete picture. For example, the draft report supports its conclusion that the Judiciary's planning process overstates the need for judges by showing photographs of unassigned chambers' suites in the Coyle Courthouse in Fresno, California (on p. 29). The Eastern District of California is desperately in need of

additional judges. Its caseload per judge is the highest in the nation (with over 1000 cases per district judge, it has twice the national average caseload), and additional judgeships are currently pending approval by Congress. To suggest that those empty chambers are because of poor planning or are unneeded is absurd.

- The draft report focuses a great deal of attention on courtrooms, but nowhere in the report is a table indicating the numbers of courtrooms and judges in the courthouses studied. For a fact-based analysis of courtrooms, the absence of such vital data is surprising. The facts present a different picture than what has been suggested. Our analysis of facts (actual data on courtroom numbers, current judges, existing vacancies, soon-to-be vacant authorized positions, and pending new judgeships) indicates that for most of the 33 courthouses studied, either all courtrooms are assigned now, or they will be shortly or in the next few years. Moreover, these courthouses must suffice for many decades of occupancy.

- Based on the limited information provided about the simulation model, it is highly doubtful that GAO's courtroom-sharing model is sufficiently sound to be worthy of publishing, much less touted as an alternative to the carefully studied courtroom-sharing policies that have been promulgated over the last few years by the Judiciary. Running a simulation model for courtroom sharing requires making a large number of assumptions about case processing. It appears that the model was developed without the involvement of any experts in the judicial process and included some invalid assumptions. The draft report does not describe this model in the level of detail typically presented in research products to enable its assumptions and methods to be critically scrutinized. GAO has steadfastly refused to provide this information. Minutes after the May 25 hearing concluded, despite the Subcommittee's request that the GAO work collaboratively with the Judiciary and GSA and make available these assumptions, GAO pointedly refused to share them. If the model is well-grounded, why has GAO withheld this critical information?

- GAO has suggested that a one-day confidential meeting of an expert panel convened by GAO and the National Academy of Sciences helped to develop assumptions used for the simulation model. All of the Judiciary's participants in that panel have repudiated the representation of the panel discussion that appears in the draft report. A panel member's comprehensive and detailed critique is enclosed with this response.

- GAO's conclusions about feasible courtroom-sharing formulas do not appear to be supported by the source data. For example, courtroom-usage data provided by the Federal Judicial Center and used by GAO to develop the model showed that courtrooms in the top quartile of use during the study period had an average 6.6 hours of use per day. This level of usage would appear to leave approximately one hour free in a typical workday for other use. In a three-judge courthouse, for example, if the judges each

needed to use a courtroom for 6.6 hours each day but had to share one or two courtrooms as suggested by GAO, there clearly would be insufficient courtroom availability, and this would result in serious delays in the administration of justice.

Additional details about these and other issues are provided below.

Evolution of the Judiciary's Facilities Planning Process

The GAO report is critical of the Judiciary's planning process. Predicting what will happen in the future is, to say the least, challenging, and the GAO has recognized these challenges. A 1993 GAO report titled, *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GAO/GGD-93-132, Sept. 28, 1993), also noted that:

> *GAO recognizes that it is difficult to project future space needs with precision. The projection of such needs is not an exact science, and in the final analysis, it is reasonable to expect some variation between the estimate and what is actually needed. Space estimates are particularly challenging for the judiciary because there are numerous factors that cause changes in the workload, and therefore space needs, which are beyond its control.*

It can take upwards of 15-20 years from the time of initial planning to occupancy of new federal courthouses. During that time circumstances change: judgeship bills are not passed when anticipated, judges do not take senior status when planned, and judges retire or die. In addition, caseloads can fluctuate, prosecutorial policies change, and federal jurisdiction can expand – all impacting the workload of the federal courts. But once the decision is made to size a building based on a certain set of assumptions, it becomes very difficult and costly to change course mid-stream. To do so results in expensive change orders and a building that is not likely to meet longer-term needs.

The Judiciary was one of the first entities in government to establish a systematic approach to space and facilities planning. In the mid-1980s, the Judiciary began its formal facilities program to address problems associated with outdated and antiquated courthouses, the need for additional space to accommodate a growing Judiciary, and security issues. We have continued to improve and refine our space-planning process as additional data have been gathered and analyzed. Thus, the methodologies used in planning the courthouses studied by GAO have changed.

The Judiciary has been open to suggestions for improvements made by outside entities, and has adopted recommendations previously made by GAO and by private-sector consultants. Some of the improvements include use of multiple forecasting methods, review of the accuracy of the prior year's forecasts, and re-instituting the on-site planning sessions in each district and comprehensive facility evaluations of each courthouse. Perhaps most dramatically, the Judiciary

stopped its space planning process entirely in 2004 so that it could, once again, re-evaluate its planning methodology with a view toward cost containment. The Judicial Conference, the Judiciary's policymaking body, determined that the long-range planning process should be modified to ensure that the courts with the most urgent space needs were highlighted. The courts now employ a new long-range facilities management process known as Asset Management Planning to assess facilities needs on a go-forward basis. The process was developed as an objective methodology that identifies costs and benefits for alternative housing solutions such as renovating existing space. We have worked with the GSA to contain costs, including implementing cost controls for the approval of deviations from space standards.

Amount of Excess Space

The draft GAO report asserts that many courthouses have not been fully occupied and it suggests that what it then deems to be "excess" space constitutes a waste of funding. There are several reasons to question the validity of these conclusions. One key question concerns the number of courtrooms and judges in these facilities. We analyzed the 33 buildings identified by GAO and found that in most of these buildings, the number of courtrooms is either equal to the number of judges in the building, or will be equal to or be very close to the number of judges to be housed in the building once vacancies are filled and required new judgeships are approved. It also appears from the draft report that GAO did not always take into account congressionally authorized vacant judgeship positions in its analysis. The building sizes authorized by Congress assumed that vacant, congressionally authorized judgeship positions would be filled at these locations, that senior district judges and magistrate judges would not be sharing courtrooms, and that space would be provided for future new judgeship positions. It is more appropriate to apply the planning policies in place *at the time* to determine whether we met or came close to our projections.

Out of the 33 courthouses studied, GAO chose to highlight six (p. 28) to demonstrate what appear to be large differences between planned and actual numbers. It is not clear how GAO calculated the numbers in this table. To provide a much simpler and understandable assessment of whether there is excess space in these courthouses, we have produced a table below that indicates for each courthouse the number of district, magistrate and bankruptcy judges compared to the number of courtrooms for these judges. The table below shows a very different picture. All of the courtrooms in these facilities are expected to be assigned within the next few years, and in three of the six courthouses there will be fewer courtrooms than judges.

Number of District and Bankruptcy Judges & Courtrooms at GAO's Selected Courthouses (By 2016)

	Current Number of Judges & Vacancies	Pending New Judgeships Anticipated	Judges Eligible for Senior Status by 2016	Possible Number of Judges by 2016	Current Number of Courtrooms	Surplus/Deficit Number of Courtrooms by 2016
Bryant/ Prettyman CHs Washington, DC	24	0	9	33	27	(6)
Coyle CH, Fresno, CA	10	3	1	14	14	0
D'Amato CH Central Islip, NY	15	2	2	19	19	0
DeConcini CH Tucson, AZ	12	1	3	16	14	(2)
Eagleton CH St. Louis, MO	19	0	1	20	20	0
Ferguson/King Atkins CHs Miami, FL	25	1	7	33	27	(6)

Note: Our analysis includes all district, magistrate and bankruptcy judge types and authorized vacancies not covered by recalled judges.

There are factual corrections previously provided to GAO in response to a "Statement of Facts" that should be made. For example, GAO states (on p. 31) that the U.S. District Court for the District of Columbia had projected 14 senior judges by the end of the 10-year planning period. The correct projected number of senior district judges is 7. Also, GAO incorrectly reports that the district court currently has 9 fewer senior judges than estimated. The correct number is 1. Within the next 6 years, that district court will have 9 additional judges who will be eligible for senior status. On page 32, the draft reports an incorrect figure. There are 5 not 4 pending new district judgeships in the Eastern District of California.

As noted in the draft report, there are locations where we did not meet our projections. Several of these buildings were planned at the inception of our planning process – a process that has evolved over time. With the adoption of courtroom sharing policies for senior district judges and magistrate judges approved by the Judicial Conference in 2008 and 2009, many of these locations will now be able to support the operations of the Judiciary and the U.S. Marshals Service well beyond the initially planned 10-year time frame. It is misleading to say that the space is "extra" because of incorrect judge estimates. The space will be needed at some point in the near future. It may not be needed until the 12th year or the 14th year from the time design of the building started, but it will be needed.

The draft report charges that "the Judiciary's method of estimating judges does not account for uncertainty in when judges will take senior status and in how many new judgeships will be authorized." To account accurately for "uncertainty" would seem to be an oxymoron. The draft report states that the Judiciary's estimates were based on "unsupported assumptions about the amount of time it would take to obtain authorizations for new judgeships." This is false. When the courthouses studied by GAO were planned, Congress regularly enacted new judgeship legislation. In fact, up until 1990, Congress had passed comprehensive judgeship legislation about every six years, including 1978, 1984, and 1990. These bills added hundreds of new judgeships to the courts, and this history formed a reasonable basis for the planning assumptions. Likewise, history regarding when eligible judges, on average, tended to take senior status formed the basis for the planning assumptions.

Although Congress has not passed regular comprehensive judgeship legislation in recent years, in the past two decades, the Judiciary has gained 103 district judgeships, 61 bankruptcy judges, and 210 magistrate judges. The draft GAO report criticizes the Judiciary for continuing to plan space for new judgeships – however, if Congress had enacted our requests, as they had historically done, and we had *not* planned chambers and courtrooms for these judges, there would have been a critical shortfall of space around the country.

The draft report incorrectly characterizes space provided for visiting judges by stating that it is a way of building "extra" space (p. 30). In smaller courts with few judges, it is not unusual to have all the Article III judges recuse themselves because of a connection or conflict with one of the parties. In other courts, judges are assigned from other districts or circuits to assist with a surge in workload. And, in some courts, judges travel from one division within a district to another because there are not enough judges at any one location to handle the caseload. When these circumstances exist, smaller chambers and sometimes a courtroom dedicated to use by visiting judges is provided. Characterizing this space as "extra" space because it is not assigned to a specific judge demonstrates a fundamental misunderstanding of how the judicial system operates at some locations.

We are sensitive to the costs of constructing courthouses, and we are willing to consider reasonable changes to our planning assumptions to reduce the risk of significant over-projections of future needs. Failing to take into account requested judgeships that are already needed because of existing caseload, but that have not yet been authorized by Congress, would be imprudent. Most courthouses are occupied for many decades. To employ a planning process that could never result in unassigned space would be extremely shortsighted, would risk having inadequate capacity to house needed judges and staff for the future, and would therefore reduce the useful life of these courthouses.

Courtroom Sharing

The Judicial Conference has adopted several significant policy changes that included a policy to provide one courtroom for every two senior judges, and a policy to provide one courtroom for every two magistrate judges. In addition, a courtroom usage study of bankruptcy courts is currently underway and after a determination is made regarding the bankruptcy courts, the Judiciary will consider a courtroom sharing policy for courthouses with more than 10 active district judges. These are major changes to the courtroom allocation policies for the Federal Judiciary, which were made only after a great deal of consideration of their impact on the litigation process and the delivery of justice.

While these policies were not in effect at the time the 33 courthouses were planned, the Judiciary now applies its courtroom-sharing policies to new planning efforts. These policies will result in substantial cost savings. The draft GAO report proposes senior district judges and magistrate judges sharing policies that differ from those endorsed by the Judicial Conference. The draft GAO report also proposes a sharing ratio for active district judges, a matter that the Judiciary is still working on. The report provides practically no information about the assumptions used to produce these results and nothing to support the contention that a single ratio could apply in districts of all sizes. Experience demonstrates that this cannot possibly work.

The GAO proposals – articulated in a scant seven pages – are based on two sources of information. One source is interviews of court officials and an expert panel convened by GAO and the National Academy of Sciences, which included federal judges and a court clerk who had experience with courtroom sharing. GAO mischaracterizes many of the participants' comments. For example, the draft asserts that a district court official said that "indicators of courthouse efficiency . . . increased when the judges of the court were sharing." As noted in the enclosed comments from Chief Judge Loretta A. Preska, this statement is completely contrary to what was said. Chief Judge Preska's letter contains numerous examples of GAO's misrepresentation of the panelists' views and GAO's interviews in that district court.

The other source of information is a computer model of the Federal Judicial Center's study data that was developed for the GAO by a contractor with no apparent claim to any particular expertise in courts or the judicial system. As a result, the model does not reflect the reality of what happens in the courtroom or the litigation process. As with any type of modeling effort, the courtroom model must be based on certain assumptions, the formulation of which requires significant expertise and understanding of how courts actually work, and the consideration of possible impacts on litigants, parties, jurors and judges. The only key assumption identified by GAO in its report that may have radically affected the outcome of the modeling is noted in the appendix, i.e., that every courtroom should be in use for 10 hours every day. This is unrealistic and virtually impossible. It inflates the work day by 25 percent.

Federal employees of the court and DOJ are dedicated and may well work long hours on a regular basis, but jurors, litigants, witnesses, family members, and other parties would have

trouble arranging their schedules for the extra hours and may have difficulties arranging for child care, or meeting other commitments that would be necessary if normal work hours of 8:00 a.m. to 6:00 p.m. are assumed. This 10-hour-a-day assumption alone would have grossly distorted the resulting courtroom sharing ratios. The draft report also contains incorrect statements about trials (p. 42). Average trials per judge in 2008 were 20 trials.[1] The median length of a trial was 3 days.[2]

A courtroom is not simply a facility but an essential tool for the delivery of justice. The application of courtroom usage data to construct a simulation model may give the appearance of authentic analysis, but the approach has serious logical and conceptual flaws, primarily through what appears to be simplistic and unrealistic assumptions. An assessment of the need for courtrooms was completed by Ernst & Young in 2000 as part of an *Independent Assessment of the Judiciary's Space and Facilities Program.* That report noted:

> *Planning for courtrooms and the impact of courtroom sharing is more complex than a simple assessment of actual courtroom use would indicate. Understanding the dynamics of the judicial process is fundamental to any attempt to anticipate courtroom needs accurately and to use courtrooms effectively.*

In describing factors that affect courtroom usage and needs, the 2000 Ernst & Young study concluded that it would be wrong to assume that all of the hours spent by judges in a courthouse can be perfectly redistributed across fewer courtrooms without adding a generous allowance for flexibility. They indicated that such a factor is needed because scheduling full utilization of courtrooms would require conditions that do not exist in the judicial environment, namely, greater certainty that scheduled events will occur; greater certainty about event duration; adequate notice of all events; and the ability to reschedule events to fill open courtroom time.

As noted by Ernst &Young, it would be a false premise to assume that judicial events are largely knowable and predictable. They are not. It is one thing to plug into a mathematical model statistics about events that have already occurred, but it is another matter altogether to predict the duration of these events in advance. This would be difficult, even for experts, because of the inherent variability and uncertain nature of the judicial process. Trial times can range significantly in length, and juries may deliberate for minutes or many days. Not only is the duration of many proceedings unpredictable, but only in a simulation model and not in reality can a suddenly available courtroom be readily used for another case. After the fact, one may know

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[1]Administrative Office of the United States Courts. *2008 Federal Court Management Statistics*, Washington, D.C., March 2009.

[2]Administrative Office of the United States Courts. *2008 Annual Report of the Director: Judicial Business of the United States Courts*, Washington, D.C.: U.S. Government Printing Office, 2009.

that a case concluded at noon and the courtroom was free in the afternoon, but how foreseeable was that circumstance? Perhaps it could have been foreseen the day before, but probably not a month earlier. An average trial for a particular type of case may take three or four days, but others will not. There is considerable variability. A 1998 study by the National Center for State Courts entitled *On Trial: the Length of Civil and Criminal Trials*, demonstrated there were substantial differences in experienced state court judges' and attorneys' estimates of trial length compared to the actual length of the trials.

The draft report does not describe in any sufficient detail the methodology and assumptions used to determine its recommended ratio of judges to courtrooms. GAO did not provide the draft report to the Federal Judicial Center, which is the Judiciary's research and education entity, although GAO used the Federal Judicial Center's data to develop its simulation model. After review of GAO's draft report, the Federal Judicial Center has provided the following response:

The GAO's draft report provides little or no information about most of the model elements....Thus, there is not enough information or details about the simulation model, in general, or about the components of the simulation, in particular, to allow the Center to make a constructive technical assessment of the GAO's efforts to model and simulate courtroom use in the district courts. It is possible, however, to identify instances where this lack of detail raises questions about the completeness and adaptability of the model and therefore the ability of GAO's simulation to provide useful guidance for the judiciary.

- *According to the draft report (page 56 of Appendix I), the GAO used discrete event simulation techniques, such as those discussed above, to develop their simulation model of courtroom use. From the limited information the report provides about the simulation, however, it is difficult to determine exactly what elements were included in the GAO's model. It is unclear, for example, what entities were defined (e.g., case proceedings, sessions of court) and whether different types of entities were represented (e.g., were case proceedings differentiated into trials and hearings). Decisions made about the elements of the model are critical for the outcome of the modeling effort. The GAO report provides little information about those decisions.*

- *From the information given, it does not appear that the model included the concept of cases or a caseload, either as a specific entity of the model or as a parameter that could be varied in each simulation. If the model does not include cases and caseloads, then the simulation cannot estimate how changes in the model affect the time to disposition for individual cases or how changes in caseload affect courtroom use. The GAO report notes that the Center's study "... showed no correlation between the number of weighted and un-weighted cases filed in a courthouse and the amount of time courtrooms are in use" (page 36). The study did, however, show a statistically significant correlation between pending caseloads and courtroom use, suggesting that cases and caseloads are important elements of a model. (See the continuation of the Executive Summary table on page 4 of the Center's report.)*

- *The draft report notes that the model allowed for "...user input of the number and types of judges and courtrooms," (page 56) so it seems that both judges and courtrooms were identified as resources in the model. But it is not clear how the coordination of judge and courtroom availability was handled. In particular the report mentions that the model was "...based on scheduled courtroom availability on weekdays from 8 a.m. to 6 p.m." (page 56), but it does not mention what schedules were used for judges. It also doesn't mention if those hours of operation are typical for the federal courthouses they studied or what the results would be if a typical operating schedule of less than 10 hours per day were assumed (e.g., if 8 hours per day were used).*

- *The draft report does not provide details on what processing statistics were gathered during the simulation runs and only describes the output measures of the simulation broadly ("...the output states whether the utilization of the courtrooms does not exceed the availability of the courtrooms in the long run." (page 56)). It is unclear whether this means that all scheduled events were processed each day as expected, or if it implies that events were sometimes "bumped" from the day they were scheduled, but over the course of a week or a month all events were eventually processed. Whether events are processed on the same day as scheduled or over some longer period is an important distinction decision makers would want to take into account when determining the impact of changing the system.*

- *The draft report seems to imply that simulation runs were made for different courthouse configurations and that these runs resulted in different outcomes ("When using the model to determine the level of sharing possible at each courthouse..." (page 56)), but it provides no specific information about what those outcomes were. The report also recommends a single sharing configuration for each type of judge – e.g., 3 district judges to 2 district courtrooms – suggesting that level was sufficient in every modeled situation. The report does not, however, provide details that support a recommendation that a single ratio can apply in districts of all sizes.*

- *The draft report states that "The goal of the model was to determine how many courtrooms are required for courtroom utilization rates similar to that recorded by FJC." (page 56) The level of utilization it seems to be referring to is the average use of a courtroom per day based on actual use and unused scheduled time combined (e.g., 4.1 hours for courtrooms assigned to individual active district judges (page 35)) reported by the Center in our report on Courtroom Use. The average time per courtroom is not the only level of courtroom use that was reported for the Center's study, however. In particular, courtrooms in the upper quartile of use reported 6.6 hours per day on average. (See the Executive Summary table on page 3 of the Center's report on courtroom use.) The draft report does not appear to take into account the impact of a 3-to-2 courtroom sharing ratio in situations where use is different than the average level of use.*

- *The draft report describes GAO's efforts, with the assistance of the National Academy of Sciences, to assemble a panel of judicial experts to discuss the challenges to courtroom sharing (pages 40- 41). However, it does not appear that the expert panel had an opportunity to review the GAO's model assumptions, decisions about entities and resources, decisions about the processing statistics that should be collected and reported, and so on. In other words, it does not appear that the expert panel had an on-going role in development of the model.*

Conclusion

The Judiciary has already made great strides to reduce construction and rent costs. We understand that we must use limited resources wisely. The Judiciary and GSA will continue to work collaboratively as we plan new court facilities with an emphasis on cost and function. We will continue to look for ways to improve our planning methodologies. We welcome constructive and feasible recommendations from the GAO and will implement them as we have in the past. Also, the Judiciary will continue to examine seriously courtroom needs based on a thorough and considered analysis of data and its potential impact on the administration of justice and the Judiciary's responsibility to provide an impartial forum in which criminal prosecutions and civil cases can be resolved in a just, speedy, and inexpensive manner.

GAO should consider carefully the Judiciary's comments (including those of Chief Judge Preska and the Federal Judicial Center) as well as those to be provided by the General Services Administration, to make substantial, realistic, and informed modifications to the report.

Sincerely,

James C. Duff

James C. Duff
Director

Enclosure

Attachment 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

LORETTA A. PRESKA
CHIEF JUDGE

212-805-0240
FAX 805-7941

June 1, 2010

Mr. Mark L. Goldstein
Director, Physical Infrastructure Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Re: Federal Courthouse Construction Draft

Dear Mr. Goldstein:

Please accept this as a formal response to the draft report on Federal Courthouse Construction (GAO-10-417) (the "Draft"). I request that this letter be published in the final report. I participated in both the Government Accountability Office ("GAO") visit to my courthouse and the GAO/National Academy of Science panel discussion of September 14 on courtroom sharing ("Panel").

The Draft is disappointing in that it mis-characterizes, over-simplifies, and omits important parts of the discussions that took place at the Panel and at the meeting at the Moynihan Courthouse with the GAO and members of the Third Branch. That the Draft relies on those inaccuracies in reaching its conclusions is, I suggest, reason to reject those conclusions.

Panel of Experts

As noted above, I participated in the "panel" of experts held in Washington on September 14, 2009. I understand that the judiciary panelists were selected as experts because of our practical experience with courtroom sharing.

The Draft states as facts and relies on matters that, at least in this district, are demonstrably incorrect. The Draft states at page 42 that the median trial lasts one or two days. Using our district's jury statistics for the six-month period from November, 2009 to April, 2010, the median civil trial lasted four days, and the median criminal trial lasted seven days. The average civil trial lasted almost five-and-a-half days, and the average criminal trial lasted eight days. Indeed, trials in our district often last for weeks or months. Statistics aside, in my seventeen years experience as a trial judge, it takes a total of more than a full day to select a jury,

sum up and charge in the most simple criminal or civil case. Thus, the numbers relied on in the Draft allow no time at all for the taking of evidence in single-day jury cases and less than a day for the taking evidence in two-day jury cases. For both reasons, these supposed statistics about median trial length are demonstrably incorrect and thus provide adequate grounds for rejecting the Draft.

Even if these statistics were correct, the Draft oversimplifies the facts by implying that trials are the only use for courtrooms. It ignores conferences, oral arguments, evidentiary hearings, pleas and sentencings. It is beyond peradventure that all these non-trial activities, conducted in the courtroom, are necessary to the disposition of any case. The incorrect implication that these activities are not conducted in the courtroom infects the entire analysis of the Draft.

The Draft oversimplifies the disservice to the public of rescheduling court proceedings by saying only that it costs the public time and money (Draft at 41). While that is correct as far as it goes, it ignores the severe difficulty, discussed at the Panel, that rescheduling presents to our pro se litigants. Those litigants generally are not easily reachable for notification of the rescheduling and often must plan ahead to take a day off from work to attend court proceedings. Rescheduling on the short notice apparently contemplated by the "modeling techniques" employed by the Draft would likely result in litigants' not receiving timely notice and thus being required to take an additional day off. Unexpected changes in location of a proceeding, even if on the same day at the same time, would certainly result in pro se litigants' missing proceedings, causing delay of the case and increasing the amount of pay lost to litigants due to court appearances. On the criminal side, the Draft also omits the damage (discussed at the Panel) that such rescheduling would cause to transparency of criminal proceedings when a defendant's family and friends are prevented from witnessing a trial, plea or sentencing.

The supposed mitigating effect of "coordination . . . as long as people remain flexible and the lines of communication remain open" (Draft at 41) oversimplifies facts and ignores discussion at the Panel. It also reflects a lack of understanding (or, in light of the specific discussion at the Panel of these issues, a refusal to acknowledge) the realities of what district judges do. As discussed at the Panel, a great deal of time is expended in district judges' chambers attending to scheduling and rescheduling of proceedings. Indeed, that activity consumes much of the ordinary courtroom deputy's time—even without courtroom sharing. What is unmentioned in the Draft, however, is the unanimous view of the judges present at the Panel and at the Moynihan Courthouse meeting that the kind of scheduling coordination that would be necessary for substantial courtroom sharing would be entirely unworkable and would result in serious disservice to the judicial process and to the public we serve. While an easy palliative to invoke, the call for increased coordination (and the observation at page 41 that "court staff [in sharing arrangements] must work harder than in non-sharing arrangements to coordinate with judges and all involved parties to ensure that everyone is in the correct courtroom at the correct time") fails (or refuses) to acknowledge the opinion of the experienced judges in the trenches that it is easily said but impossible to achieve on a long term basis. It is also remarkable that factual information provided by a Clerk of Court on the Panel about the <u>negative</u> effect of courtroom sharing on case disposition times has been described in the Draft (at page 41) as an efficiency improvement. The Draft cites only those "facts" that support the

desired outcome and ignores the impossibility imposed by reality and brought to the drafters' attention by the judges who do this every day.

The supposed mitigating effect of technology discussed at page 43 misstates what was said at the Panel and relates "facts" that show a serious lack of understanding of what goes on in a trial in a district court. At the Panel, the participants discussed greater use of videoconferencing in non-jury matters as a way to save courthouse construction costs. For example, it was discussed that some courts have eliminated the need for an additional place of holding bankruptcy court by use of videoconferencing from a normal room in a remote location to the bankruptcy courthouse. The Panel mentioned, as does the Draft,[1] the cost savings associated with conferences, including Rule 16 conferences and other pretrial conferences with incarcerated parties (although these savings are in time and travel costs because these conferences also take place from the courtroom). So far, so good. The unremarkable observation in the Draft that "increased technology saves money; it expedites general processing because documents can be submitted to the court electronically" (at page 43) has nothing whatsoever to do with courtroom sharing. The final observation in the Draft on this topic (at page 43) is "Another judge said that if less money were spent on space, more could be spent on technological upgrades to increase flexibility and increase the ability to share space among judges." First, I do not recall hearing that comment, but, of course, it could have been made at a session I did not attend. Second, the comment is a meaningless non-sequitor. Third, and most importantly, by implying that technology will decrease courtroom usage, the Draft is seriously misleading. The Draft fails to mention that Rule 43 of the Rules of Criminal Procedure specifically requires that the defendant be present in the courtroom at the initial appearance, initial arraignment and every trial day. Indeed, in the Second Circuit, a plea and a sentencing NOT held in a courtroom (but in the adjacent robing room) were reversed. See United States v. Alcantara, 396 F.3d 189 (2d Cir. 2005). Thus, the technology section of the Draft is at least irrelevant and at worst misleading.

Discussion at the Moynihan Courthouse

The Draft states categorically that "judges with experience in sharing courtrooms said that they overcame the challenges when necessary and trials were never postponed because of sharing." I suggest that the authors are cherry-picking the facts here. For example, the reason my court, the Southern District of New York, was chosen for a site visit is that our court is currently engaged in limited courtroom sharing (about ten judges total) because of the on-going renovation of our second courthouse at Foley Square, the Thurgood Marshall Courthouse, with the resulting scarcity of courtrooms. Both at the Panel and during the interview GAO personnel conducted in New York with judges who are sharing (at which, as noted above, I was present), it was stated that this limited sharing is only workable because of collegiality, that is, the sharing pairs were carefully chosen for compatibility of workload and personality. While the Draft does

[1] On this topic, the Draft states:

"Technology makes certain conferences easier through the use of teleconferences and videoconferencing. One judge said that videoconferencing with a defendant who was being held in prison hundreds of miles away saved potentially thousands of dollars."
(Draft at 43).

mention the word "collegiality," stating at page 41 that "[j]udges that share courtrooms in one district also said that coordination is easier when there is a great deal of collegiality among judges," it omits the point made at the discussion in the Moynihan Courthouse. Perhaps the Draft is making reference to remarks made in some other district, but, even if it is, it fails to convey accurately the statements of judges in our district who actually do share courtrooms and the statement that I made at the Panel. The careful pairing of judges on which the temporary sharing in the Moynihan Courthouse is proceeding cannot be replicated in the widespread sharing urged in the Draft.

The Draft discusses alternating chambers with courtroom floors (Draft at 41–42) stating that such design "may be more conducive to collegiality and sharing." First, collegiality is not the issue here. Second, courtroom floors and chambers floors DO alternate in the Moynihan courthouse, and that has no effect on our view that courtroom sharing to the extent contemplated in the Draft is not a viable option among active judges and should be subject to local exemption for senior judges. While some designs might, in fact, be more conducive to courtroom sharing without unduly increasing security risks (for example, perimeter chambers around several courtrooms of varying sizes), alternating courtroom and chambers floors is not one of them. The observation that "this design breaks the apparent association of chambers with specific courtrooms without significantly increasing the distance from chambers to courtrooms" is simply irrelevant.

The Model

In support of its conclusion that "GAO's courtroom sharing model shows that there is sufficient unscheduled time for 3 district judges to share two courtrooms and 3 senior judges to share 1 courtroom" (Draft at 1), the Draft relies on a computer simulation model. In describing the creation of that Model, the Draft states:

> To create a simulation model, we contracted for the services of a firm with expertise in discrete events simulations modeling. This consulting engineering services and technology firm uses advanced computer modeling and visualization and other techniques to maximize throughput, improve system flow, and reduce capital and operating expenses. Working with the contractor, we discussed assumptions made for the inputs of the model and verified the output with in-house data experts. We designed this sharing model in conjunction with a specialist in discrete event simulation and the company that designed the simulation software to ensure that the model conformed to generally accepted simulation modeling standards and was reasonable for the federal court system. The model was also verified with the creator of the software to ensure proper use and model specification. Simulation is widely used in modeling any system where there is competition for scarce resources. The goal of the model was to determine how many courtrooms are required for courtroom utilization rates similar to that recorded by FJC. This determination is based on data for all courtroom use time collected by FJC, including time when the courtroom was scheduled to be used but the event was cancelled within 1 week of the scheduled date.

(Draft at 56.)

This description is, I suggest, merely gibberish and fails to inform the reader about precisely what assumptions were made and the method employed. To the extent that any assumptions are stated, the Draft states that it is "based on scheduled courtroom availability on weekdays from 8 a.m. to 6 p.m." (Draft at 56). First, these hours of operation are wholly unrealistic. Assuming that jurors would not be required to serve from 8 a.m. to 6 p.m., but only during a portion of that time, it is unrealistic to expect any juror to appear ready to start a trial by 8 a.m or to serve until 6 p.m. Many jurors have children who need to be attended to and cannot appear in Court by 8 a.m. or sit until 6 p.m.[2]

Assuming that the Model contemplates jury trials running in shifts, for example, 8 a.m. to 1 p.m. and 1 p.m. to 6 p.m., such shifts would close to double the time it takes to try any case, thus vastly increasing the cost to the litigants. There is already public outcry over the cost of litigation,[3] and doubling the cost of trial would be a severe injustice to the public we serve.

Finally, from the scant description of the Model presented in the Draft and from the conversation at the Panel, I infer that the Model assumes all court proceedings are the same in kind and manner. Such treatment is directly contrary to fact and, more importantly for these purposes, contrary to the specific discussion at the Panel. Participants of the Panel specifically stated that courtroom proceedings are not interchangeable, especially trials and other evidentiary proceedings. A preliminary injunction hearing, for example, is by definition of great urgency and ordinarily must proceed from day to day until complete. Also, considering all trials as portable—subject to movement from courtroom to courtroom—is inaccurate. Even the Draft acknowledges (at page 35) that some courtroom use involves attorney set-up and break-down time (although the Draft incorrectly considered this as an "[e]vent[] not related to case proceedings"). These days, almost all trials involve the presentation of some evidence by electronic means, and lawyers (more likely computer contractors) spend time in advance of trial setting up their equipment for presentation of evidence electronically and time after trial taking it down. Most trials also involve boxes of files and other materials that are stored in the courtroom or in the hall outside the courtroom for ready access by counsel throughout the trial. Counsel's need for electronic equipment for presentation of evidence and for access to hard copy materials cannot be accommodated when the courtroom changes during a trial.

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[2] In New York State Courts, jurors generally commence service between 8:30 and 9:00 a.m. and are generally dismissed between 4:00 and 4:30 p.m. The State Courts only draw jurors from a single county, however, while the SDNY draws jurors from eight counties, including from the cities of Poughkeepsie (85 miles) and Monticello (94 miles).

[3] See INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, CIVIL LITIGATION SURVEY OF CHIEF LEGAL OFFICERS AND GENERAL COUNSEL BELONGING TO THE ASSOCIATION OF CORPORATE COUNSEL 17 (2010), *available at* http://www.du.edu/legalinstitute/form-chieflegal.html ("[A]n astonishing 97% of respondents responded that the system is 'too expensive,' with 78% expressing strong agreement.").

Conclusion

The authors of the Draft have not reported accurately the statements of even those they recognize as experts—the members of the Panel and the participants in the site visit to the Moynihan Courthouse. To the extent that the assumptions and techniques used in the modeling were disclosed, they are counter-factual, according to the same experts. Thus, the Draft is without foundation and, I suggest, should be rejected.

Moreover, the Draft relies on only one metric—efficiency. While efficiency is a fair factor to be considered, it is only one. Less susceptible to quantitative measurement, however, is a more important consideration—delivery of justice to the citizens of this country. I suggest that doing so in a user-friendly manner is inherently inefficient and thus that efficiency is only one of many factors to be considered.

Very truly yours,

Loretta A. Preska

Loretta A. Preska

Attachment 2

JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

JUDGE MICHAEL A. PONSOR
CHAIRMAN, COMMITTEE ON SPACE AND FACILITIES

BEFORE

THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

UNITED STATES HOUSE OF REPRESENTATIVES

ON

"ELIMINATING WASTE AND MANAGING SPACE IN FEDERAL COURTHOUSES: GAO RECOMMENDATIONS ON COURTHOUSE CONSTRUCTION, COURTROOM SHARING, AND ENFORCING CONGRESSIONALLY AUTHORIZED LIMITS ON SIZE AND COST"

May 25, 2010

Attachment 2

STATEMENT OF
HONORABLE MICHAEL A. PONSOR, CHAIR
COMMITTEE ON SPACE AND FACILITIES OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY
MANAGEMENT

MAY 25, 2010

Introduction

Good morning, Madam Chair, and members of the Subcommittee. I am Michael A. Ponsor, a District Judge of the United States District Court in Massachusetts, and Chair of the Judicial Conference's Committee on Space and Facilities. Also accompanying me here today is Judge Julie A. Robinson, a District Judge from the District of Kansas. Judge Robinson is the Chair of the Judicial Conference's Committee on Court Administration and Case Management. The Committee she represents here today has assisted the Judicial Conference with the development of policy on courtroom sharing arrangements. I appreciate the opportunity to appear before the Subcommittee today to discuss the Government Accountability Office (GAO) draft report on Federal Courthouse Construction and efforts made by the Judiciary to manage the costs of the courthouse construction program.

Before addressing these issues, however, I want to convey the Judiciary's appreciation to this Subcommittee for the courthouses that have been authorized over the years, which include the courthouse in Springfield, where I work. These buildings provide secure places with adequate space to administer justice and ultimately, provide a valuable service to the public.

The GAO's draft report focuses on courthouses that were built and occupied between 2000 and 2010, and addresses three main topics: space measurement; space projections; and a courtroom sharing model. My testimony will primarily focus on space planning processes and

efforts to control space costs. Judge Robinson will address courtroom sharing, and it is my understanding that Mr. Robert A. Peck, the Commissioner of Public Buildings of the General Services Administration, will give testimony that focuses on space measurement and issues about square footage limitations in authorizing resolutions.

Evolution of the Planning Process

By way of background, the Judiciary was one of the first entities in government to establish a systematic approach to space and facilities planning. It has continued to improve and refine its space planning process as more data are gathered and analyzed. The judiciary has been open to suggestions and improvements made by outside entities about the process, including those made by the GAO and private sector consultants.

Predicting what will happen in the future is, to say the least, challenging, and the GAO has recognized these challenges. The GAO made six key planning recommendations in its 1993 report titled *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GAO/GGD-93-132, Sept. 28, 1993). The report noted that:

> GAO recognizes that it is difficult to project future space needs with precision. The projection of such needs is not an exact science, and in the final analysis, it is reasonable to expect some variation between the estimate and what is actually needed. Space estimates are particularly challenging for the judiciary because there are numerous factors that cause changes in the workload, and therefore space needs, which are beyond its control.

This sentiment has been repeated in the current 2010 GAO draft report:

> Limitations of the judiciary's 10-year judge estimates are also due, in part, to the challenges associated with predicting how many judges will be located in a courthouse in 10 years. Such challenges include predicting when judges will take senior status, how many requested judges will be authorized [by Congress], and where newly authorized judges will be seated.

In an updated progress report dated January 25, 2001, which was provided to the Chairman of this Committee at the time, the GAO reported that, of all six recommendations made about space planning projections, the Judiciary had fully implemented five of them and partially implemented the remaining one. Specifically, the Judiciary now: 1) limits the time covered for space projections for courthouse requirements to 10 years; 2) uses standard statistical forecasting techniques to generate caseload projections with defined confidence intervals; 3) verifies local personnel forecasts with national statistical projections; 4) accounts for case complexity in addition to caseload; 5) uses baselines for existing space based on the *U.S. Courts Design Guide* and the relationships between caseloads, staff needs, and space requirements; and 6) prepares updated space plans for all districts (partially implemented – the Judiciary established a goal to update the plans every 3-5 years, but with the introduction of a new planning methodology, the goal has not yet been met for some districts).

Additional Efforts to Improve the Planning Process and Contain Costs

Aside from implementing GAO's recommendations about planning and its associated statistical methodology, the Judiciary has implemented other improvements, including those recommended in a 2000 Ernst and Young study of the Judiciary's space and facilities program,

such as using more advanced statistical techniques to forecast caseloads. Some of the improvements that have been made include use of multiple forecasting methods, review of the accuracy of the prior year's forecasts, and re-instituting the on-site planning sessions in each district and comprehensive facility evaluations of each courthouse. These program changes have been discussed with GAO staff in the past. Furthermore, and perhaps most dramatically, the Judiciary stopped its space planning process entirely in 2004 so that it could, once again, re-evaluate its planning methodology with a view on cost-containment. The Judicial Conference, the Judiciary's policymaking body, determined that the long-range planning process should be modified to ensure that the courts with the most urgent space needs were highlighted. The courts now employ a new asset management planning methodology to assess facilities needs on a go-forward basis.

Several other cost-containment controls have also been approved by the Judicial Conference. Additional space cost controls involving the approval of deviations from our space standards, a new policy that places more control over contractors designing courthouses during the requirements development phase so that new courthouse projects do not exceed the amount of space requested in a prospectus document, and the implementation of courtroom sharing policies for magistrate judges and senior district judges have also been approved by the Judicial Conference.

Determining the Appropriate Size of a Building is Challenging

It can take upwards of 15-20 years from the time of initial planning to occupancy of new federal courthouses. During that time circumstances change: judgeship bills are not passed when anticipated, judges do not take senior status when planned, and judges retire or die. In addition,

caseloads can fluctuate, prosecutorial policies change, and federal jurisdiction can expand – all impacting the workload of the federal courts. But once the decision is made to size a building based on a certain set of assumptions, it becomes very difficult and costly to change course mid-stream. To do so results in expensive change orders and a building that is not likely to meet longer-term needs. In my project in Springfield, it took more than ten years to get all the necessary approvals, and to design, construct, and occupy the building.

The draft GAO report asserts that many courthouses have not been fully occupied and it suggests that what it then deems to be "excess" space constitutes a waste of funding. There are several reasons to question the validity of these conclusions. One key question concerns the number of courtrooms and judges in these facilities. We are in the process of analyzing facts for the 33 buildings identified by GAO and we have found that in more than half of these buildings, the number of courtrooms is either equal to the number of judges in the building, or will be equal to or be very close to the number of judges to be housed in the building once vacancies are filled and required new judgeships are approved. It also appears from the draft report that GAO did not always take into account congressionally authorized vacant judgeship positions in its analysis. The building sizes authorized by this Committee assumed that vacant, congressionally authorized judgeship positions would be filled at these locations, that senior district judges and magistrate judges would not be sharing courtrooms, and that space would be provided for future new judgeship positions. It is more appropriate to apply the planning policies in place *at the time* to determine whether we met or came close to our projections. Undoubtedly, we will occupy a courthouse for many decades. Our revised analysis will give the Committee a more accurate view of how planned space relates to existing conditions at selected locations.

As the GAO notes in its draft report, there are locations where we did not meet our projections. Several of these buildings were planned at the inception of our planning process – a process that has evolved over time. With the adoption of courtroom sharing policies for senior district judges and magistrate judges approved by the Judicial Conference in 2008 and 2009, many of these locations will now be able to support the operations of the Judiciary and the U.S. Marshals Service well beyond the initially planned 10-year time frame. To say that the space is "extra" because of incorrect judge estimates, as noted by GAO in its draft report, is misleading. The space will be needed at some point in the near future. For example, it may not be needed until the 12th year or the 14th year from the time design of the building started, but it will be needed.

Planning for New Judgeships

The draft GAO report recognizes the challenges faced by space planners doing projections, such as projections of determining additional new judgeships. The Judicial Conference examines the need for new judgeships biannually and adjusts the recommendations based on current need and current caseload. Working collaboratively with the courts involved, assumptions are made about when judges will take senior status, and where new judgeships will be located. Not to plan for these projected judgeships would mean that a judge would potentially not have a place to work which could therefore impact the timely administration of justice.

This was the situation for many years when Congress regularly enacted new judgeship legislation. In fact, up until 1990, Congress had passed comprehensive judgeship legislation about every six years, including 1978, 1984, and 1990. While Congress has not passed comprehensive judgeship legislation in recent years, small groups of judgeships have been approved during this

time. We are hopeful that the current House and Senate judgeship bills that reflect the Conference's recommendations will be passed.

The draft GAO report criticizes the Judiciary for continuing to plan for space for these judgeships – however, if Congress had enacted our request, as they had historically done, and we had *not* planned chambers and courtrooms for these judges, there would have been a critical shortfall of space around the country. Nevertheless, we believe that on a go-forward basis, working with the Committee and its staff, assumptions about new judgeships and when judges might take senior status can be addressed. But because it can take such a long time for buildings to be planned, funded, designed, constructed and occupied, there is, of course, no guarantee that assumptions based on current, shorter-term circumstances and trends will always accurately predict future space needs.

Visiting Judges

I would also note that the GAO draft report mischaracterizes space provided for visiting judges by stating that it is a way of building "extra" space. In smaller courts with few judges, it is not unusual to have all the Article III judges recuse themselves because of a connection or conflict with one of the parties. In other courts, judges are assigned from other districts or circuits to assist with a surge in workload. And, in some courts, judges travel from one division within a district to another because there are not enough judges at any one location to handle the caseload. When these circumstances exist, smaller chambers and sometimes a courtroom dedicated to use by visiting judges is provided. Characterizing this space as "extra" space because it is not assigned to a specific judge demonstrates a fundamental misunderstanding of how the judicial system operates at some locations. We will provide more detailed comments about this aspect of the draft

report in our formal comments.

Conclusion

Over the past two decades, this Committee has supported efforts to build courthouses that facilitate the effective administration of our judicial system. They provide space to handle cases at locations along the southwest border where courts handle a significant and growing percent of the criminal cases nationally. In many cases, the buildings have played an important role in urban economic redevelopment. And, they provide a secure environment in which to handle our caseload because they are designed to mitigate security risks, as evidenced in the shootings and resultant deaths that took place in the new Seattle courthouse and more recently, in the new Las Vegas courthouse. The design of the lobby in the courthouses at those locations did what it was supposed to do, and these incidents were contained to the lobby and atrium area. These design features no doubt saved the lives of members of the public and those who work in the buildings.

Courthouses, like any substantial federally constructed buildings, are designed and built to last for many years. A courthouse is a fixed resource – if it is not built with sufficient space to house the judges and staff necessary to dispense justice, it is difficult and costly to add space once the building is complete. Without precise knowledge of future events, planning can only be done based on the best information that exists during the planning period. We would be happy to discuss with the Committee innovative ways of accommodating future growth, including projected new judgeships. We do strongly believe, however, that because of the inability of real property to easily expand or contract as circumstances change, the capacity for future growth needs to be included in a new courthouse. Budgetary constraints are likely to preclude adding annexes to buildings that are too small within ten years from the time the design of the new

building started, which is the current planning assumption. When capacity is not provided in the building, costly leased space – the most expensive space alternative – must then be obtained, which poses security risks and results in significant operational inefficiencies.

Madam Chair and members of the Subcommittee, thank you again for the opportunity to address the space requirements of the federal Judiciary. The Judiciary and the GSA will continue to work collaboratively with each other and with this Committee as we plan new court facilities with an emphasis on cost and function. We understand that with competing needs, limited budgets, and other priorities, we must use limited resources wisely. I would also ask that our formal response to GAO's draft report, which will be sent to GAO by June 1, 2010, be included with this statement as part of the hearing record.

○