

# GAO REVIEW: ARE ADDITIONAL FEDERAL COURTHOUSES JUSTIFIED?

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(113-11)

## HEARING BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

APRIL 17, 2013

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

**Will Shuster**  
**Chairman**

Washington, DC 20515

**Nick J. Rahall, III**  
**Ranking Member**

April 15, 2013

Christopher P. Bertram, Staff Director

James H. Zola, Democrat Staff Director

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Committee on Transportation and Infrastructure  
**FROM:** Staff, Committee on Transportation and Infrastructure  
**RE:** Full Committee Hearing on “GAO Review: Are Additional Federal Courthouses Justified?”

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**PURPOSE**

The Committee on Transportation and Infrastructure will meet on Wednesday, April 17, 2013, at 10:30 a.m. in 2167 Rayburn House Office Building to receive testimony related to a review by the Government Accountability Office (GAO) of the Judiciary’s 5-year Courthouse Project Plan. At this hearing, the Committee will examine the results of the GAO’s review of the Judiciary’s 5-year plan and whether additional federal courthouses are justified. The Committee will hear from the GAO, the General Services Administration (GSA), and the Judiciary.

**BACKGROUND**

**General Services Administration**

The Committee 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), within GSA, 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 (CILP) and the Federal Courthouse Program**

PBS activities are funded primarily through the Federal Buildings 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, including repairs and new construction of federal courthouses. Each year, GSA submits to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works 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 fiscal year (FY) 2013, a prospectus is required for any project in excess of \$2.79 million.

Pursuant to the prospectus process under section 3307 of title 40, United States Code, 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.

As with many Executive Branch agencies, the Judiciary is a tenant of GSA. In addition to the costs authorized for constructing a new courthouse, there are costs associated with rental payments to GSA. Rental payments by tenant agencies are deposited into the FBF and are appropriated each year for the purposes of covering costs associated with maintenance, repair, alternation, or other construction projects. In FY 2012, the Judiciary's rental payments to GSA totaled over \$1 billion for approximately 42.4 million square feet of space in 779 buildings, including 446 federal courthouses.

#### **Judiciary's 5-Year Courthouse Plan and the GAO's Review**

Each year, the Judiciary submits to the Committee a 5-year Courthouse Project Plan approved by the Judicial Conference of the United States. The plan reflects the Judiciary's official list of priority projects over a 5-year period. The most recent plan was submitted to the Committee on March 11, 2013 for FY 2014 – FY 2018. The plan lists 12 projects with \$1 billion in proposed costs.

In 2006, the Judiciary developed a new process for evaluating whether new courthouses are needed, called the Asset Management Planning (AMP) process. In 2008, the Judiciary began using the new AMP process. One of the key criteria is that a new courthouse no longer can be justified based solely on security and operational deficiencies and that a key threshold for justifying a new courthouse is a need for two or more additional courtrooms. Thus far, the Judiciary has completed AMP evaluations for 298 of the 446 federal courthouses (approximately 67 percent) and is not expected to complete a review of all 446 until October 2015, plus an additional 18 to 24 months to complete a Long-Range Facilities Plan based on those results.

#### **Oversight Background of Federal Courthouse Construction Program**

The Committee has conducted ongoing oversight over the years on the federal courthouse construction program. In 2005, Chairman Shuster as the then-Chairman of the Subcommittee on Economic Development, Public Buildings, and Emergency Management, requested that the Judicial Conference of the United States study the Judiciary's courtroom usage and report back to the Committee. During the early 2000s, the Judiciary had proposed the construction of a number of new courthouses justifying them, at least in part, on a lack of space, projected growth in judgeships, and increased caseloads.

In 2008, the Judiciary submitted to the Committee a final report on courtroom usage completed by the Federal Judicial Center (FJC), the education and research agency for the U.S. Courts. The FJC study showed that, on average, a courtroom is *scheduled* to be used 4.1 hours a day for active district judge courtrooms, 2 hours a day for senior judge courtrooms, and 2.6 hours a day for magistrate judge courtrooms.<sup>1</sup> In addition, only half of the scheduled courtroom time is actually spent on case-related proceedings. For example, the 4.1 hours scheduled for the use of courtrooms assigned to district judges includes about 1 hour for scheduled events that were subsequently canceled or postponed and 1 hour for events that are not related to case proceedings.<sup>2</sup> In light of this study, the Committee requested the GAO review federal courthouse planning and construction.

### Unneeded Space and Overbuilding

In 2010, the GAO completed a study entitled, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*.<sup>3</sup> 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. In the 2010 report, the GAO found:

- GSA constructed 887,000 extra square feet of space due to the 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 percent (342 actual judges versus a total projected judge population of 461).

<sup>1</sup> *Report on the Usage of Federal District Court Courtrooms*, Judicial Conference of the United States, September 16, 2003. See also, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417, June 2010.

<sup>2</sup> Such as set-up and take-down time for courtroom uses, public tours and other events.

<sup>3</sup> GAO-10-417.

*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<sup>4</sup>, 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. In the 2010 report, the GAO concluded:

- 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*

Additionally in the 2010 report, the GAO found that many courthouses were built above authorization limitations. 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.

Following the GAO study issued in 2010, in August of 2010, the Subcommittee on Economic Development, Public Buildings, and Emergency Management submitted a bipartisan letter to President Obama highlighting the concerns raised by the GAO report and indicating that the Committee planned to withhold authorizing new federal courthouse construction until the Committee was satisfied that appropriate reforms to the program were in place. The Committee has not approved any new courthouses since August of 2010.

The Committee subsequently requested that the GAO review the Judiciary's 5-Year Plan, which is the focus of this hearing. Additional information regarding the GAO's findings and recommendations will be provided to Members prior to the hearing. In addition, the GAO is currently reviewing the utilization of the original courthouses in locations where new courthouses or annexes were constructed.

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<sup>4</sup> 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.

WITNESS LIST

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

The Honorable Michael A. Ponsor  
Judge  
United States District Court  
Chairman  
Committee on Space and Facilities  
Judicial Conference of the United States

Dr. Dorothy Robyn  
Commissioner  
Public Buildings Service  
U.S. General Services Administration

## GAO REVIEW: ARE ADDITIONAL FEDERAL COURTHOUSES JUSTIFIED?

WEDNESDAY, APRIL 17, 2013

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
WASHINGTON, DC.

The committee met, pursuant to notice, at 10:36 a.m. in Room 2167, Rayburn House Office Building, Hon. Bill Shuster (Chairman of the committee) presiding.

Mr. SHUSTER. The committee will come to order. I first want to take the opportunity to welcome everybody here today, especially our distinguished witnesses: Mr. Mark Goldstein, who is the director of Physical Infrastructure, Government Accountability Office—good to see you, Mr. Goldstein, again; the Honorable Michael Ponsor, judge of the United States District Court for the District of Massachusetts and Chairman of the Committee on Space and Facilities of the Judicial Conference of the United States—welcome; and Dr. Dorothy Robyn, the Commissioner of Public Buildings, General Services Administration. Welcome.

And also, a special welcome to my Federal judge, Brooks Smith from Hollidaysburg, Pennsylvania. And I understand he is slated to become the Chairman of the Committee on Space and Facilities for the Judicial Conference of the United States. Welcome, Judge Smith. Good to see you.

The purpose of today's hearing is to prevent the future overbuilding of Federal courthouses and to save billions of taxpayer dollars, and I think that is something that we are all very, very focused on in Congress today and across the United States, is saving taxpayers' dollars. Today, we are releasing GAO's most recent report on the Federal judiciary's 5-year plan for new courthouses.

And, essentially, the committee asked GAO a basic question: "Keeping in mind that we could administer justice in a warehouse with two milk crates and a piece of plywood, the judiciary and the GSA have learned the lessons of past overbuilding, and can Congress rely on the 5-year plan to authorize the highest priority and necessary courthouse projects?" That is the question.

Unfortunately, GAO's response is "No." In fact, GAO's written testimony today recommends a moratorium on new courthouses until the projects on the plan can be re-evaluated.

The 5-year plan lays out the judiciary's priorities for courthouse construction in the coming fiscal years, and the current plan includes projects representing more than \$3 billion in costs to the taxpayer.

So what were the mistakes of the past and what did they cost the taxpayers?

In 2010, at the request of the committee, GAO reviewed all 33 courthouses built between 2000 and 2010. And the GAO found that over 3.5 million extra square feet were built, costing the taxpayers \$883 million in construction costs and \$51 million in annual operating, the extra space. And that figure doesn't even count the space abandoned by the courthouse, such as the old Dyer Courthouse in Miami or the Dillon Courthouse sitting vacant right now in downtown Buffalo, New York.

The GAO gave 3 reasons for this waste of taxpayer money: the judiciary overestimated the number of future judges by as much as 50 percent; the judiciary's policy to not share courtrooms, requiring new courtrooms and chambers for every projected judge; and GSA simply built larger and more expensive courthouses than Congress authorized.

Let me give you one example here in Washington, DC. Two days ago Chairman Barletta, Ranking Member Norton, and I toured the Federal courthouse on Constitution Avenue. It consists of two buildings: the original 1950s courthouse and the large annex that opened in 2005. When GSA proposed the annex in the 1990s, the judiciary projected they would be 36 district judges when it opened. Today there are only 24. As a result, there are about 600 people working in almost 1 million square feet. To put that in context, that's about the size of 500 2,000-square-foot homes.

To avoid making the same mistakes in the future, it appears we can't rely on the projections of future judges, we need courtroom sharing, and GSA has to follow the law and build courthouses within the authorized limits.

Eight years ago, when I chaired the subcommittee I requested a judiciary study—courtrooms—how often courtrooms are used and adopt courtroom sharing. The courts' own report showed that courtrooms across the Nation sat unused for most of the day, and they adopted a courtroom sharing policy for new courthouses.

In addition, the judiciary revised its planning process for when to recommend new courthouses for construction. Today, we will hear testimony on GAO's review of this process and the judiciary's 5-year courthouse plan. This plan is critical in helping GSA and Congress determine what projects are justified and cost-effective. The accuracy of this plan and how it is developed should ensure taxpayer money is not wasted.

However, as we will hear today, there are serious questions as to whether the projects on the most recent 5-year plan, submitted to the committee last month, are even needed. Despite developing a new assessment process to evaluate the need for a new courthouse, the judiciary has not applied the process to 10 of the 12 projects on the plan. As I said earlier, GAO recommends a moratorium on new courthouses until the projects can be re-evaluated using the new assessment process.

Right now we are running trillion-dollar deficits, we have a \$16 trillion debt, and agencies are furloughing staff and shutting down air traffic control towers. In homes across the Nation, families are worried about the economy, their jobs, and balancing their own budgets. They expect the same from us here in Washington. And

we must save taxpayer dollars and we must ensure new projects are truly needed and fully justified.

And it has been brought to my attention that our colleagues across the capital, in some cases, don't apply the same standards that we or the GAO or the judiciary do in picking courthouses. So that is something we have to make sure, in this body, are standing up to those folks on the other side of the Capital.

I look forward to the testimony of our witnesses, and I hope we can—you can help Congress to decide what, if any, courthouses should be approved in the future.

So, again, thank you. Welcome. And with that, Ranking Member Norton is recognized.

Ms. NORTON. Thank you very much, Mr. Chairman. You will recall that the overbuilding and resistance to sharing courtrooms has been one of the pet peeves of this committee for many years now. I was pleased to accompany the chair of our full committee, Mr. Shuster, and Mr. Barletta, to our own Federal courthouse here just the other day, this week, where we saw a courthouse that was built before there was any sharing, where all the judges can have her or his own courtroom, and where you have a very lovely courthouse, but where you don't meet the standards that have since been set by this committee.

Now, that courthouse was authorized in 1999. So we are more than 10 years out from that. And it is our obligation to see to it that all courthouses follow the directions of this committee that have now been made plain.

So, we are pleased to convene this hearing about the GAO report on the Judicial Conference of the United States 5-year construction plan. Today's hearing has, as its necessary context, a 2010 GAO report that the Economic Development, Public Buildings, and Emergency Management Subcommittee commissioned in 2008 to examine courthouse planning and construction, including management and costs. The GAO report found astonishing—made astonishing findings of mismanagement by GSA and the judiciary of the courthouse program, and documented wasted funds and space.

The GAO determined that the 33 courthouses constructed by GSA since 2000 included 3.56 million square feet of space above the congressionally authorized specifications and frequent overestimation of the number of judges that courthouses would need to accommodate, and failed to implement courtroom sharing, despite the committee's mandate. The GAO also found that the total value of the extra space was \$835 million in construction costs and \$51 million annually in rent and operation expenses.

Following the GAO study in August of 2010, the leadership of the Subcommittee on Economic Development, Public Buildings, and Emergency Management submitted a bipartisan letter to President Obama highlighting the concerns about waste, stating the committee would withhold authorizing new Federal courthouse construction until the committee was satisfied that appropriate reforms to the program were in place.

We then requested a GAO study of the Judicial Conference's 5-year courthouse project plan to determine whether the courthouse current construction schedule had been evaluated in the context of new courtroom-sharing guidelines and best practices in capital

planning. The findings of the latest GAO report on the 5-year courthouse project plan are stunning, yet unsurprising.

The judiciary has rightly made some adjustments to the capital planning process in light of the continued urging and oversight of this committee, by developing the asset management planning, or AMP process, in 2006 that more accurately represents the administrative office of the U.S. courts' current policies on judicial sharing, projecting judges, security deficiencies, and facility conditions.

Unfortunately, the judiciary has rejected GAO's recommendations to re-evaluate the 12 projects that are currently on the 5-year courthouse project plan, and would like to proceed with nearly \$3.2 billion worth of projects on the list without the benefit of the AMP process.

As of October 2012, the judiciary has conducted AMP evaluations for about 67 percent of all Federal courthouses. As a result of the AMP process, two projects that were on the prior 5-year courthouse project plan were removed, and the judiciary determined that the needs of those courthouses could be addressed through repair and alteration projects that reconfigure space.

The judiciary, however, has not agreed to re-evaluate the other 10 projects on the 5-year courthouse project plan, and to make adjustments based on the AMP process being applied now to the entire inventory.

I will withhold my support of the authorization of any courthouse construction on the judiciary's 5-year project plan until I am assured that there will be real savings and steps to control spending in the judiciary construction program, and that planning of new courthouses is consistent with the actual needs of the judiciary, based on the AMP process. We intend to work with GSA and the judiciary to ensure that good asset management decisions are made in the courthouse construction program.

We appreciate the testimony of our witnesses, and we welcome your thoughts, suggestions, and insights. And I thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. And with that I recognize the subcommittee chairman, Mr. Barletta, for his opening statement.

Mr. BARLETTA. Thank you. I want to thank Chairman Shuster for his leadership and work to reduce costs in the Federal courthouse program.

In 2005 Chairman Shuster chaired the subcommittee I now chair, and began to look into whether we need all of the space the judiciary and GSA were proposing. The committee did not make a knee-jerk reaction. Ensuring the proper administration of justice for our citizens is critical to the Nation. Chairman Shuster insisted on thorough reviews and studies. Years later, we now have the benefit of that work and we can act on it.

We now know, from numerous GAO studies and judiciary's own space usage report that, in fact, significant money can be saved in the courthouse construction program. And, as part of this work, today GAO has recommended that we take a step back and wait for the judiciary to properly evaluate the \$3 billion worth of projects on its 5-year courthouse plan before we act and spend more taxpayer dollars. That seems to be a logical conclusion.

With today's budget deficits, the growing national debt, and people expecting Government to be a better steward of the tax dollar, we must ensure waste is minimized. I appreciate the work of the judiciary to take—that has taken to improve the process it uses to evaluate the need for new courthouses. While, as GAO points out, the new process is not perfect, and there could be further improvements to the new process, it is a step in the right direction.

However, knowing that at least 10 of the 12 projects currently on the 5-year plan have yet to be evaluated under the new process, we must ask the question: Are these projects still urgently needed? Are they justified? I hope we can address these issues today as we hear from our witnesses. Thank you, Mr. Chair.

Mr. SHUSTER. Thank you. With that I would recognize a brief statement from Mr. Mica, the former chair of the full committee.

Mr. MICA. Well, thank you. And thank you, Chairman Shuster, and also Chairman Barletta, Ranking Member Norton, for conducting this hearing. I think this is an appropriate time to start again refocusing—Mr. Shuster has done it in the past, we have done it in the committee—and looking at the Federal Government's bulging inventory of judiciary overbuilt Taj Mahals is long overdue. I think that what you are going to accomplish today, and when we are facing these huge deficits and looking for ways to save taxpayer money, we can have a "lessons learned."

I conducted a little inventory, Mr. Chairman, of Florida in the last 10 years. And we have Tallahassee, Jacksonville, Orlando, Miami. The Federal courthouses built there, the excess space that was constructed was over half-a-million square feet, 551,000. This is Exhibit A I would like to submit for the record today of Florida's history, if we could do that, Mr. Chairman. I would like to submit Exhibit A.

Mr. SHUSTER. Without objection, so ordered.  
[The information follows:]

## MEMORANDUM

To: Chairman John L. Mica  
 From: Sean McMaster  
 Date: March 12, 2013  
 Subject: Excess Federal Courthouse Space in Florida

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The following is a list of excess federal courthouse properties created in Florida between 2000 and 2010.

Tallahassee	25,000 extra square feet
	\$4.9 million construction
	\$450,000 annually to operate
Jacksonville	108,000 extra square feet
	\$23 million construction
	\$1.5 million annually to operate
Orlando	180,000 extra square feet
	\$29 million construction
	\$1.2 million to operate
Miami	239,000 extra square feet
	\$48.5 million construction
	\$3.8 million annually
Total	551,000 extra square feet
	\$106 million construction
	\$7 million annually to operate

Mr. MICA. Then I want to take—drill down to one example. In Miami they built a Federal courthouse to replace the Dyer Building, and that particular building was built with 97,000 square feet more than they needed, and it was authorized by Congress. Now, you have, basically, in building the temples of justice you have people violating the Federal law. How the hell are they building these things exceeding the guidelines established and what is set in law?

So, this is Exhibit B of what has taken place in Miami. I would like that submitted.

Mr. SHUSTER. Without objection, so ordered.  
[The information follows:]

*Miami Courthouse Complex – Wilkie D. Ferguson Jr. United States Courthouse*

The new Wilkie D. Ferguson Jr. United States Federal Courthouse was built in 2007. In 2000, when the new courthouse was proposed, the 10-year projection for judges was 33. There are currently 27 judges, including vacancies, four senior judges, and 12 magistrate judges.<sup>1</sup> The Ferguson courthouse was specifically highlighted by the GAO as over built. According to GAO, the courthouse was overbuilt by 238,000 square feet at an excess cost of \$49 million plus \$3.8 million in annual costs related to maintenance and operations.<sup>2</sup> It exceeded the authorized limit on construction by over 97,000 square feet.<sup>3</sup>

In this case, not only was the new courthouse overbuilt, the new Miami courthouse was originally intended to supplement space in the existing David W. Dyer Federal Building and United States Courthouse, a historic building now abandoned by the U.S. courts. The square footage of overbuilding calculated by the GAO did not take into account the space in the historic courthouse no longer in use by the Judiciary. In addition, according to the Federal Real Property Profile database, the vacant Dyer building is costing the taxpayer \$1.2 million in annual operating costs.

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<sup>1</sup> Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs, GAO-10-417, June 2010, p. 28; Information also reconfirmed with U.S. courts on August 1, 2012. Further, of the 12 magistrates, 3 are “recalled,” meaning they are retired but returned temporarily to assist in the caseload.

<sup>2</sup> *Id.* at p. 11.

<sup>3</sup> *Id.* at p. 18.

Mr. MICA. Then, finally is the court—when we build these courthouses, we know there will either be vacant space or what are they going to do with the space? The Dyer Building, we did a hearing under this committee, I just did one chairing the Government Oversight Subcommittee in Miami. That building has been vacant for nearly 6 years, probably \$20 million worth of remediation now required because it sat idle with mold, costing the taxpayers in excess of \$1.2 million to sit idle. And when we finished the hearing I got a letter from Miami-Dade College, which is across the street, telling me for 5 years they have been trying to get the building and couldn't get the building and would utilize the building and take it off the taxpayers' roll.

So, today I am introducing a bill to transfer that, and working with the south Florida and the Florida delegation to transfer the damn building and get it out of, again, the deficit column of the taxpayers.

I thank you for coming. I do have a competing hearing, and wanted to get that in. Yield back.

Mr. SHUSTER. I thank the chairman for his statement and for his hard work over the years.

I again wanted to welcome our witnesses; thanks for being here today. I ask unanimous consent that our witnesses' full statements be included in the record. I would ask—without objection, so ordered.

And since your written testimony is in the record, I ask you to keep it to 5 minutes and then we will go to asking questions after you have—all three of you have completed. So, with that first, Mr. Goldstein, you may proceed.

**TESTIMONY OF MARK L. GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; HON. MICHAEL A. PONSOR, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, AND CHAIRMAN, COMMITTEE ON SPACE AND FACILITIES, JUDICIAL CONFERENCE OF THE UNITED STATES; AND DOROTHY ROBYN, COMMISSIONER, PUBLIC BUILDINGS SERVICE, U.S. GENERAL SERVICES ADMINISTRATION**

Mr. GOLDSTEIN. Thank you, Mr. Chairman and members of the committee. A pleasure to be here this morning. I am pleased to be here to discuss the Federal judiciary's capital planning efforts for new courthouses.

Since the early 1990s, the judiciary and the GSA have undertaken a multibillion-dollar Federal courthouse construction program. To date, this program has resulted in 78 new courthouses or annexes, and 16 projects that are currently in various stages of development. However, rising costs and other budget priorities that you have mentioned this morning have slowed the construction program. In addition, we have previously found that almost all courthouses built in the last 10 years have been constructed larger than necessary because of poor planning, inadequate oversight, and inefficient courtroom use.

In 2008, the judiciary began using a new capital planning process called the Asset Management Planning process, AMP, to assess, identify, and rank its space needs. judiciary officials said the AMP

process addresses concerns about growing cost and incorporates best practices related to capital planning.

Today we are releasing a new report that addresses the extent to which the judiciary's capital planning process aligns with leading practices, and provides information needed for informed decisionmaking related to new courthouses, and the extent to which courthouse projects recommended for funding in fiscal years 2014 to 2018 were assessed under the judiciary's AMP process. My statement highlights the key findings and recommendations. Our findings are as follows.

First, the asset management planning process represents progress by the judiciary in better aligning its capital planning process with leading capital planning practices. But its 5-year plan for fiscal year 2014 to 2018, the document the judiciary uses to request courtroom construction projects, lacks transparency and key information on how projects qualify for new construction, alternatives the judiciary considered, and their cost.

For example, the Plan lists costs for the next phase of the 12 recommended courthouse projects, which have several phases. But it does not list previous funding or ongoing annual costs for these projects. As a result, the plan lists about \$1 billion in costs for the 12 projects, but the projects would actually cost the Federal Government an estimated \$3.2 billion over the next 20 years.

Congress has appropriated a small share of the money needed for the projects, and most will need design changes before construction can begin. As a result, there is a risk that congressional funding decisions could be made without complete and accurate information. However, with this information, decisionmakers could weigh current-year budget decisions within the context of projects' expected future costs, and spur discussion and debate about actions to address them and put the judiciary's requests in context with other Federal spending.

Second, 10 of the 12 recommended projects were not evaluated under the AMP process. Judiciary officials said they did not want to delay the current projects, or force them to undergo a second capital planning process after they had already been approved. Two courthouse projects from a previous 5-year plan that were assessed under AMP were removed from the list, and are now ranked behind more than 100 other courthouse construction projects.

Furthermore, 10 of the 12 recommended construction projects do not qualify for a new courthouse under the AMP criterion, which requires that new courthouses need two or more additional courtrooms. These conditions call into question the extent to which the projects remaining on the 5-year plan represent the judiciary's most urgent projects, and whether proceeding with these projects represents the most fiscally responsible proposal.

While 10 additional AMP evaluations would involve some additional costs, not conducting those evaluations could involve spending \$3.2 billion over the next 20 years on courthouses that may not be the most urgent projects. As a result, we have made several recommendations, including: the judiciary should provide more information to decisionmakers related to how projects qualify for new construction; any alternatives the judiciary considered, and their

cost; and impose a moratorium on the projects currently on the 5-year plan until they are evaluated under AMP.

Mr. Chairman, that concludes my oral statement. I would be happy to respond to questions that you or other Members have. Thank you.

Mr. SHUSTER. Thank you, Mr. Goldstein.

And with that, Judge Ponsor, please proceed.

Judge PONSOR. Thank you. My name is Michael Ponsor. That is spelled P-o-n-s-o-r, in contrast to this morning's Washington Post article, which spells my name P-o-s-n-e-r. Judge Richard Posner is much richer, taller, and smarter than I am, and I am proud to be confused for him. But my name is Ponsor, P-o-n-s-o-r.

[Laughter.]

Judge PONSOR. It is an honor to appear before this committee again in my role as chair of the Judicial Conference's Committee on Space and Facilities to discuss the GAO's draft report. I want to make two points, preliminarily.

First, I want you to know that we do appreciate this committee's assistance with the courthouses that have been authorized and built over the past decades, including the courthouse in Springfield, Massachusetts, where I work. These buildings do allow the judiciary to perform its mission for the people of this country, the administration of justice, in a safe and well-functioning physical environment.

Second, I want to confess an error in my submitted written testimony. Page 12 addresses certain inaccuracies in the GAO's report concerning numbers of courtrooms in some of the courthouses in the judiciary's 5-year plan. There are inaccuracies in the GAO report, but my summary of these inaccuracies also contains inaccuracies, and I only realized that last night. We will be submitting a replacement page with the correct numbers.

There is no higher priority for my committee, especially these days, than reducing the cost for space for the judiciary. Among the many steps we have taken at the urging of the committee is the implementation of courtroom-sharing policies for senior judges, magistrate judges, and bankruptcy judges. We also adopted a recommendation from GAO's 2010 report that we not plan for courtrooms that are projected as necessary, but not yet approved by the Congress. Let me address the draft report's two recommendations.

With regard to the first recommendation, the need to provide additional information, the report does overlook or disregard not only the extensive documentation generated by the judiciary's long-range planning process, but also the primary role that GSA plays in the planning and cost estimating for new courthouses. The judiciary's 5-year plan has never been intended to be a long-term capital investment plan as the report mistakenly assumes. The 5-year plan is simply intended to encapsulate the judiciary's priorities for new courthouse projects. In fact, the information which GAO suggests be part of our 5-year plan is already provided to decision-makers through GSA on behalf of and in coordination with the judiciary.

For each project proposed for funding, GSA produces a lengthy feasibility study evaluating all alternatives to new construction. If the product is approved, GSA provides a detailed prospectus for

site and design and another for construction. These prospectuses summarize the need for the project and its scope, alternatives considered, and costs, prior funding, and the project schedule. It would be a waste of limited resources, and would be unnecessary, for the judiciary to replicate the fine work that GSA is already doing.

Of greatest concern in the draft report is GAO's second recommendation, stating that the judiciary impose a moratorium on projects on the current 5-year plan until AMP evaluations are completed for each of them. The proposed re-evaluation would also likely require a subsequent repetition by GSA of its feasibility study. The effect of this recommendation on projects which Congress has already supported with \$188 million in funding would risk further extensive delays.

While the AMP process does feature significant refinements and improvements, the prior process accurately identified courts where the need for new facilities was most urgent. Significantly, both processes require GSA feasibility studies and require prospectuses. Both protocols are detailed and comprehensive and require years to complete. Because of this, no reconsideration of the 5-year plan is necessary.

Further evidence of this comes from the fact that 4 of the 12 projects on the current plan—I emphasize, 4 of the 12 projects on the current plan—have gone through the AMP process: Chattanooga, Des Moines, San Antonio, and Anniston have already been reviewed through the AMP process, and their degree of urgency is confirmed. The other eight projects have been updated to reflect the judiciary's courtroom sharing policies, and the determination not to plan for projected judgeships.

For 8 of the 12 projects, sites have already been acquired. In two instances there is a swap with municipalities: San Antonio and Charlotte, North Carolina. In 10 of the 12 projects, the courthouses have been on the plan for more than 10 years. It would be brutally unfair to make these communities, after so long, endure further unnecessary delay for additional analysis and review. The projects on the current 5-year plan deserve to remain where they are.

It is especially disturbing that the GAO report ignores ominous security deficiencies that have been identified in the courts on the 5-year plan. All these courthouses lack essential security features, such as secure sally ports for unloading prisoners, holding cells for defendants in custody, secure corridors, and separate elevators for court staff. These courthouses have become, in the words of the U.S. Marshals Service, "disasters waiting to happen." The security concerns are real. They are not hypothetical. It is dangerous, as well as unfair, to expect these communities to endure further delays caused by needless additional analysis and data collection, as the draft report recommends.

Apart from the absence of any discussion of potential security risks, the report omits any reference to the deteriorating physical condition of the facilities on the plan. The report notes that the GAO team visited two courthouses on the 5-year plan and observed that keen insights were obtained, as a result. Unfortunately, the report nowhere reveals what these insights were.

The letter and photographs of Chief Judge Lisa Wood, which are attached to my written testimony, whose Savannah Courthouse

was built in 1899, was visited by GAO. This letter and these photographs vividly detail the serious structural defects that plague her courthouse. These deficiencies in building systems and structures are typical of shortcomings existing in various ways in all the courthouses on the 5-year plan.

In sum, the recommendation that this judiciary treat its 5-year plan as a long-term capital investment plan misconstrues the purpose of the 5-year plan and ignores the wealth and data of analysis provided by the GSA that already accompanies each building project. The recommended moratorium would be devastating to the 12 communities that have waited so long and would prove dangerous, expensive, and unnecessary.

I would be glad to answer questions you may have.

Mr. SHUSTER. Thank you, Judge, for your testimony. And it doesn't surprise any of us that the Washington Post got the facts wrong.

[Laughter.]

Mr. SHUSTER. And with that, I recognize Dr. Robyn. You may proceed.

Ms. ROBYN. Good morning, Chairman Shuster, Chairman Barletta, Ranking Member Norton, other members of this committee. I am Dorothy Robyn, Commissioner of GSA's Public Building Service. I appreciate being invited here today to discuss GSA's investment in U.S. courthouses, and GAO's latest report on courthouse construction. I want to make four points this morning.

First, GSA is committed to meeting the needs of the courts in the most cost-effective way possible. Over the last two decades, GSA and the courts have continually and significantly refined the process for selecting, managing, and overseeing courthouse construction projects. One key example is the judiciary's recent policy of requiring judges to share courtrooms, which has allowed the courts to significantly reduce their requirements.

For its part, GSA has shifted its focus to the renovation and improvement of existing courthouses wherever possible, both to limit the need for all new construction, and to preserve buildings that are historic landmarks in many communities. We have also developed controls such as the use of Building Information Modeling, or BIM, to ensure that our projects come within budget.

Second, although GSA has not sought or received appropriation for any new courthouse construction project since 2010, we have worked with the judiciary during that time to implement the new approaches to the projects on the 5-year plan. For example, in San Jose, California, GSA worked with the judiciary to reassess proposed new construction in light of courtroom sharing. As a result, the courts were able to remove San Jose from the 5-year plan. We are, in turn, developing a revised prospectus to pursue selected upgrades to the existing building, rather than all new construction.

Likewise, GSA worked with the courts to rethink the proposed annex at the U.S. courthouse in Greenbelt, Maryland. Congress approved and appropriated \$10 million for what was envisioned as a \$100 million, 263,000-square-foot expansion. Based on the judiciary's courtroom sharing policy, GSA developed a new prospectus for a comparatively modest \$15 million renovation, and we have submitted that prospectus to you.

And let me note that both San Jose and Greenbelt came off of the 5-year list not because of the new AMP process, but because of the ongoing application of courtroom sharing to projects on the list.

A third example is Mobile, Alabama, which tops the U.S. courts' most recent 5-year plan, and where cooperative efforts between GSA and the courts to reduce space requirements and increase courtroom sharing have resulted in significant projected savings. The 5-year plan originally had proposed a stand-alone new courthouse estimated at \$190 million. We are now proposing instead to modernize the 1932 courthouse and expand it with an annex that enhances the useful and symbolic meaning of the original historic building.

GSA is currently working with the courts to revise and reduce the requirements for every courthouse on the 5-year plan, and we look forward to keeping this committee apprised of our progress on these efforts.

The third point I want to make is that GAO's latest report on courtroom construction largely ignores the central role that GSA plays in analyzing the court's requirements and evaluating alternative options, including our detailed feasibility studies and prospectus submissions to Congress that provide comprehensive project cost estimates. The GAO report uses some questionable cost figures, figures that in some cases fail to reflect the very right-sizing of proposed projects that I just described.

The analysis is flawed in other ways, as well. For example, GAO faults the court's 5-year plan for omitting the long-range projected rent costs for proposed new courthouse buildings. Capital plans do not normally include such costs. Rent costs should inform the capital plan, but they are not normally part of a capital plan. But leaving that issue aside, GAO looks at only one side of the ledger, ignoring the savings in rental costs to agencies now housed elsewhere that would backfill a new courthouse or Federal office building.

The fourth and final point I want to make this morning is that while GSA is very supportive of GAO's efforts to encourage more efficient management of the courthouse program, and we have incorporated GAO's recommendations from—in past reports, GSA does not support the moratorium that GAO calls for. The projects on the court's 5-year plan have been subjected to extensive planning and analysis by GSA and the courts, including our ongoing efforts to downsize these proposed projects to improve their efficiency, to meet courtroom sharing requirements, and to utilize existing buildings. It would be imprudent to postpone these investments. A moratorium would undermine GSA's ongoing maintenance of the Federal inventory, and our mission to provide the courts with safe and secure courthouse space.

In closing, GSA will continue to collaborate with the courts to reduce the cost of courthouses, while maximizing their functionality and civic benefit. On behalf of GSA and the Public Building Service, I welcome the committee's oversight of this essential program.

I appreciate being here this morning, and I am pleased to take your questions. Thank you.

Mr. SHUSTER. Thank you, Dr. Robyn. With that, I will start the questioning off.

Mr. Goldstein, I think it is important that we understand the context of why we are here. We have the ability of hindsight, which they say is 20/20. And so I would like to know what the GAO found out when you looked back over the last 33 courthouses that the GSA built, what did the GAO learn from looking at those that had been built in those—and again, I think the number is 33 that you looked at.

Mr. GOLDSTEIN. Thank you, Mr. Chairman. As you indicated a little bit in your opening statement, sir, we issued a report in 2010 that looked at the 33 courthouses built since 2000, and we found that, of those 33 courthouses, they were overbuilt by 3.56 million square feet for 3 different reasons.

The first reason was that the GSA had built many of them beyond their authorized square footage. That authorization is provided by the United States Congress in the authorization.

The second reason is that because a lot of the judgeships had been projected improperly over time—and, in fact, they built space for over 119 judges that never materialized. And so you have courtrooms—119 courtrooms, for the most part—and chamber space for those judges, as well.

And the third reason is because, despite admonitions from this committee and others, the judiciary had not agreed to share courtrooms at the district level for judges. They do, to some extent, at the bankruptcy, magistrate, and senior judge level today, but we found that you could have built 40 percent fewer courtrooms—40 percent fewer—had you allowed a sharing scheme. And so those were the main reasons.

If I may add one point, sir, which goes to the Commissioner of Public Building Service's comments, I am quite surprised. The Public Building Service and GSA had 30 days, as did the judiciary, to return to us any comments they had on our report. We received only a couple of very technical comments. This is the first time GAO has heard any of the comments criticizing our report. And, frankly, in the years that I have been doing this job, I have issued about 500 reports. This has never happened before, in my experience.

Mr. SHUSTER. Dr. Robyn, can you respond to that? Why didn't the GSA respond to the GAO?

Ms. ROBYN. Well, I believe we did give them cost—correct cost figures—what we thought were better cost figures. And they did not—and GAO did not use them, they used numbers that they got from the courts. There is a little bit of an apples and oranges issue there, in what they are using, what is on the 5-year plan, and is the total cost of a construction project.

But, for example, in Mobile, the GAO report uses the figure, the construction cost, of \$219 million. That is a very old number. That reflects the size of the project that was authorized by this committee 10 years ago. We have right-sized that project so that it will be an annex, rather than a new courthouse, substantially smaller, and about half of that cost. That isn't reflected in the GAO report.

Mr. SHUSTER. Does the GAO have those, that plan?

Mr. GOLDSTEIN. Whenever we—we have, obviously, disputes about numbers all the time with the judiciary and with GSA. For many years, the GSA—the GAO has been doing this work. We always received—these are not GAO's numbers. We always get courthouse numbers from GSA and judgeship numbers from the judiciary. The only thing we did to the numbers we had, which were provided by them, was to amend them for inflation purposes. But we do not derive our own numbers. Whatever numbers they give us are the numbers we use.

Mr. SHUSTER. And, Dr. Robyn, the third problem that GAO identified was that cause the overbuilding was that the GSA often exceeded congressional authority. I know you haven't been there for the last 10 years—

Ms. ROBYN. Right, yes.

Mr. SHUSTER [continuing]. But we really need to understand. Why did the GSA, over the past several years, past decade or so, exceed congressional authority, when under the Public Buildings Act the administrator is not able to exceed authorized cost by more than 10 percent?

Ms. ROBYN. Let me make two points in response to that. First of all, I want to distinguish what we have been doing in the last couple of years, where there has been a strong effort to right-size the projects on the court's list, to work with the courts to reduce requirements in light of the court's new courtroom sharing policy, and our desire to take advantage of existing courthouses.

I feel passionately about the need to preserve our historic courthouses. And I think GSA and the courts were too quick to embrace the idea of building a shiny, new courthouse and not preserving the existing courthouse. So there is—we have been doing things in a different way the last several years.

But I also want to say there is a long—there is a history here of disagreement, strong disagreement, with GSA's—I'm sorry, with GAO's methodology on the 2010 report. And that was a—there is an appendix that is longer than the GAO report which contains the GSA response and the court's response. And I want to just summarize, in three bullets, the testimony of my predecessor in 2010 on that report.

GAO has used a space measure that assumes upper space in building atriums is included in the gross square footage of an asset. That is a key point, because courthouses have large atriums. And how one treats what is called void space, or that atrium space, is critical to the calculation of square footage. GAO compounded this—

Mr. SHUSTER. So I understand—

Ms. ROBYN. Yes.

Mr. SHUSTER [continuing]. You are including square footage up in the atrium?

Ms. ROBYN. GAO included—

Mr. SHUSTER. GAO included that?

Ms. ROBYN [continuing]. The square footage—

Mr. GOLDSTEIN. Yes, Mr. Chairman, that was GSA's policy since 2000. All we did was quote back GSA's own policy to them. And we have repeated this to GSA numerous times, to Mr. Peck, and everyone else at GSA now since 2010. This is GSA's own policy. I

sat here before this committee, Ms. Norton remembers this, and held up that policy on numerous occasions. It is GSA's own policy.

Mr. SHUSTER. Dr. Robyn?

Ms. ROBYN. My understanding is that GAO applied—that our policy, which—this gets complicated, but we instituted that policy of counting that space in 2005. We have since changed that policy. We don't count it now. We typically base our practice on BOMA, the Building Operators and Managers Association, policy. We—yes, sorry.

Mr. SHUSTER. I understand that is their policy to include those open spaces as—

Ms. ROBYN. No. I think the latest—and this is quite new—is to not include it. But I think the key principle here is to apply the policy that was in place when a courthouse was built, as opposed to applying a policy that was instituted later. That, I think, is the key, is the crux of the disagreement, that and the issue—and I will let Judge Ponsor speak to this—of whether also applying courtroom sharing policies that came into place later to buildings that were built before the courtroom sharing policies existed.

As you said, Mr. Chairman, hindsight is 20/20. If we knew now what we—if we had known then what we know now about courtroom sharing, we could have made a lot of these smaller. But that wasn't the policy.

Mr. SHUSTER. Judge, do you care to response?

Judge PONSOR. I just wanted to make a sort of personal comment with regard to the first element of GAO's criticism back in 2010. As Congresswoman Holmes Norton knows, we had a 3½-hour hearing on that report in May of 2010, and that taught me that if you are going to be in a hearing before the congresswoman, no liquids after 8:00.

[Laughter.]

Judge PONSOR. We were here for 3½ hours. We went over that report, point by point. And the predecessor of Dr. Robyn strongly—strongly—contested the measurements made by GAO. It is quite a serious accusation by GAO to say that GSA ignored the prospectus limitations.

My own personal experience was I built a new courthouse in Springfield, Massachusetts, that is I sat in on the planning. Once a week I sat down with the GSA people and with the contractor, visited the courthouse, and we were accused in their report of having overbuilt by 10 to 15 percent. I compared the prospectus numbers to the size of the courthouse by GSA. We went over by between 1 and 2 percent. I was astonished to see that we were accused of going over. We didn't. We built the courthouse with GSA. I assisted in that. And we did not overbuild.

So the first area of criticism was very strongly contested at the hearing back in May of 2010.

Mr. SHUSTER. Thank you. And one final question of Dr. Robyn. What are you prepared to commit to the committee today that the GSA will not overbuild, run with cost or size in the future?

Ms. ROBYN. Mr. Chairman, my predecessor did commit—and this is an example of where we have incorporated a recommendation. We have incorporated many of GAO's recommendations, but one was that we commit to not going over, or to notification of the com-

mittee if we are at risk of going over the size—the square footage specified in a prospectus. We already do that. We let you know if there is a risk of going more than 10 percent over cost, over budget. That is a statutory requirement. We committed 4 years ago—my predecessor did—to notification of the committee if there is a comparable risk of going over the square footage set out in the prospectus.

Mr. SHUSTER. Thank you. With that, I recognize Ms. Norton for questions.

Ms. NORTON. Thank you very much, Mr. Chairman. Not to belabor the points of—about space, Dr. Robyn, you would concede—in fact, Judge Ponsor, you too would concede that the atrium space was at least partly responsible for what GAO found to be overbuilding.

Judge PONSOR. That appears to be true. They were counting that.

Ms. NORTON. So that is not occupiable space.

Ms. ROBYN. It is also not—

Judge PONSOR. And—

Ms. NORTON. And, of course, when Congress authorizes—look, I am all for atriums. But when Congress authorizes space, is it not the case that it is thinking of occupiable space?

Ms. ROBYN. I think this gets into the technicalities of how space is counted—

Ms. NORTON. It is not very technical. Just—

Ms. ROBYN. Yes—no, no, no—

Ms. NORTON. Try sitting in an atrium, you know?

Ms. ROBYN. Yes. No, no, no. Look, I agree with that. I don't think—I think the policy we adopted most recently is the right policy, that one should not count—

Ms. NORTON. All right. So the policy now is that an atrium is not regarded as occupiable space.

Ms. ROBYN. Right.

Ms. NORTON. I hope we can still have atriums.

Ms. ROBYN. Yes.

Ms. NORTON. It seems to me you can have atriums without a lot of space, you just open up a ceiling.

Ms. ROBYN. Yes.

Ms. NORTON. So I am not—I want to go on record as being for atriums. But Congress has in mind, when it is talking about square feet, that there will be some feet such as storage feet that will not be occupiable, for example. And I must say the part of me that loves beauty and architecture and sees what an atrium has done in the courthouse here understands why atriums are desirable. But of course, we have got to be—we always have in mind what the Congress intends, and I think that is what the GAO report was based on.

Now, well, let's look at what we have now, because we have been looking at this for a very long time. The GAO recommended that the district court judges—and they gave them two options. Either three district judges to two courtrooms, or pairing one district judge with a senior judge. Now, do you, Judge Ponsor, and you, Dr. Robyn, agree that those are reasonable requirements?

Judge PONSOR. I will say, speaking personally, I do not agree that they are reasonable requirements.

Ms. NORTON. Well, of course, Judge Ponsor, you are not here in your personal capacity.

Judge PONSOR. Exactly. And I made that caveat because it is Judge Robinson of the Committee on Court Administration and Case Management who articulates the formal Judicial policy with regard to courtroom sharing. That is not part of the jurisdiction of the Committee on Space and Facilities. So I really don't want to play games with you, but I do have to make that point.

Ms. NORTON. Well, if—just for the record, what is your personal objection?

Judge PONSOR. I am trying to find a way to express myself in a balanced way. I don't think there is a single Federal trial judge in the country who would agree that a court with three active judges could provide the people of the United States the sort of justice that they are entitled to, permanently using just two courtrooms. It would—

Ms. NORTON. Regardless of the call, the amount of cases that a particular judge may have, you are making such a blanket statement as that? GAO didn't come to this conclusion without some study, Judge Ponsor.

Judge PONSOR. Can I address that study? The study that came to this conclusion was developed by a man named Higgins, Steven Higgins. Steven Higgins had a BS in chemical engineering. He belonged to something called System Flow. We obtained a copy of the backup for their recommendation after your hearing, but before a hearing that following September before Congressman Johnson. He belongs to an organization called Systems Flow. He has a BS in chemical engineering. His studies have involved production of industrial soap, John Deere tractors, and extracting nickel from granite. Based on that experience, he told the judiciary—

Ms. NORTON. Based on that experience, you believe that the consultant did not observe—did not have data regarding judges' use of courtrooms?

Judge PONSOR. I am sure—

Ms. NORTON. I mean I would trust a chemical engineer on lots of work, frankly, with that kind of background. But the first thing I would ask him is how he reached those conclusions, not what his training was in.

Mr. Goldstein, how did he reach those conclusions?

Mr. GOLDSTEIN. It is sort of amazing that we are kicking a dead horse here several years after we began this process. I thought we were talking about new courthouses today.

But anyhow, the process that we used was vetted inside of GAO/ outside of GAO by independent analysis and by the company that made the modeling software that we used. Whether or not the individual had a bachelor's in chemical engineering or a doctorate in methodology, what that individual was doing was putting numbers that came out of the Federal judiciary center, which showed that, on average, courtrooms are used by a district judge less than 2 hours a day—less than 2 hours a day—and that includes time which was unscheduled, and which we included as scheduled anyhow, to be sure that we were using conservative statistics.

They came up with a statistically valid model that showed that you could figure out how to distribute judges to ensure that all courtroom activities were still held. This is not rocket science. It is done for hospital emergency rooms, it is done for modeling nuclear bombs. You can do this for any variety—number of things. The point I would—

Ms. NORTON. Well, I asked the question because we had resistance before, and we are not going to tolerate resistance, and certainly not based on an attack of the credentials of the consultant.

Judge Ponsor, you should know that the Congress relies very heavily on GAO as an objective analyst. And, you know, I clerked for a district court judge. I know that judges like to start their—you know, they all like to start their courtrooms at 9:00, at 10:00. You know, somebody may have to start their day at 11:00 or 1:00, and they may have to live in the real world. So we have no alternative but to rely on what the objective analyst tells us is possible, and to hold the courts to that data.

Now, you know, I am really mystified as to why the courts would want to proceed with courthouses without going through the AMP process, because they have gone through it and made changes. And we cite some of those changes, some of those modifications close to here, in Greenbelt. Here they decided, well, yes, we are going to use sharing that is not required, and that the courthouse was entitled to only one courtroom. They also chose to use the funds for the design of a new annex to modify the existing buildings. There were also changes in San Jose, California.

So, here, process has been used to good effect, saving money. Why would anybody not want to apply that same process to the other courthouses with the prospect of making similar savings?

Judge PONSOR. If that question is directed to me, I would be happy to answer.

Ms. NORTON. It is to you, Judge Ponsor.

Judge PONSOR. All right. I think I have two responses to that, and I am going to try to be as clear as I can.

The changes that occurred in Greenbelt and San Jose, as Dr. Robyn has already stated, were not in response to a re-analysis of the project under AMP. Repeat, they were not in response to a re-analysis of the project under AMP. The Greenbelt project was re-analyzed because the tenant, the United States Attorney, moved out, creating more space. We are constantly looking at projects, not through the AMP process, but just through common sense, and talking to the judges. It created more space, we were able to reconfigure it. The court came to us and said, "We can manage without a new facility."

In San Jose we did what you asked us to do. We applied the courtroom sharing policies, which now apply, incidentally, to half of the judges in the Federal judiciary. Bankruptcy judges, senior judges, and magistrate judges make up half of the personnel of our Federal judiciary. All of them are now subject to a courtroom sharing process. And this has just come into being in the last 4 years. We have really listened to you. We may not have moved as far as you would like us to move, but we have responded.

In any event, we looked at San Jose, we looked at the courthouse, we applied courtroom sharing, and we realized that we do

not need as big a project as we thought. We worked with the court, and that project was amended, and it saved the taxpayers money. I think we deserve some credit for doing that. We are looking alertly at the projects. But I want to make it clear the application of the AMP process had no relation—

Ms. NORTON. Well, what does that mean, that you—look: If we have to wait for the U.S. Attorney to move out to get reconsideration of these other eight projects, and you want to ignore the AMP process, are you telling this committee that you are ignoring the AMP process and you are going to use your own process, which is to wait to see if somebody moves out, because that is just as good?

Judge PONSOR. No, no, that is not—

Ms. NORTON. Are you saying you will use the AMP process on the other projects or not, Mr.—Judge Ponsor?

Judge PONSOR. I will be very clear. Two things. One, we have applied the AMP process to four—

Ms. NORTON. You have applied another process that is not the same as the AMP process. This committee has asked for the AMP process to be applied. Are you willing to use the process this committee has required to be applied?

Judge PONSOR. No, we would prefer not to. That is my direct answer.

Ms. NORTON. You are in contempt of this committee.

Judge PONSOR. Certainly not. You have asked me to give you an answer to your question, ma'am, and I am giving—

Ms. NORTON. Are you willing to use the AMP process that this committee authorizes to be used in order to authorize any new courthouses?

Judge PONSOR. Yes—

Ms. NORTON. Yes or no?

Judge PONSOR. The answer is I would hope that I could persuade you not to require us to do that. If you require us to do that, then I guess we will have to do that. But it would be a terrible mistake, in my opinion.

Mr. SHUSTER. I thank the gentlelady for her questions, and with that, recognize Mr. Webster for questions.

Mr. WEBSTER. Thank you, Mr. Chairman. I am not sure—I have an engineering degree too, and it may not qualify me to ask a question, but I have one, if I could do that.

Mr. SHUSTER. Yes, sir.

Mr. WEBSTER. My question would be, I think, Mr. Goldstein, is the AMP process—does it in any way include the cost of the process in its—in the way it rates or scores a particular project?

Mr. GOLDSTEIN. The cost of the process?

Mr. WEBSTER. No, the cost of the project itself.

Mr. GOLDSTEIN. It does have some project costs, yes, it does. It does not include all of them, which is among the reasons we hope that more information might be provided.

Mr. WEBSTER. Did you in any way look at the actual cost per square foot, or something like that? Did you do any analysis of that?

Mr. GOLDSTEIN. That was not within the scope of this particular project, sir. We certainly have looked at numerous courtrooms over the years, and the cost of those per square foot.

Mr. WEBSTER. Would you, just in your opinion, if functional/frugal was a 10 and elaborate was a 1, where would you rate them?

Mr. GOLDSTEIN. Where would a rate these projects?

Mr. WEBSTER. Yes.

Mr. GOLDSTEIN. I think they are probably all over the map, sir.

Mr. WEBSTER. All over the map?

Mr. GOLDSTEIN. Right. I think some are—

Mr. WEBSTER. There is no real criteria that you found to determine whether or not we would just be trying to build a functional, frugal courthouse that would still be able to produce justice for people, or it could be some elaborate—with lots of roof lines and cuts and angles and atriums and high—there is no real standard for that?

Mr. GOLDSTEIN. One of the things we looked at was the criteria that the AMP process has. We are pleased, you know, quite honestly. We don't always compliment the judiciary on its process, we recognize that. But this is an instance where we believe the judiciary has been moving very much in the right direction. And the criteria that it has developed in consultation with GSA is much clearer and cleaner than the older process that was in place previously. It is not a district approach, it is a comprehensive, nationwide approach. There are very specific criterion, and there are AMP business rules which the judiciary uses to specifically say when they will go out for new construction and when they will not. So we are very pleased with the direction that this process is going in.

Mr. WEBSTER. Well, once that process is done, it says—I mean there is a needs, I assume, based on certain criteria other than just the cost. There is a needs determined through that process that says, "We need more space, we need to expand, and we have too much for the particular area," city, or whatever it is. That is what determines whether or not there would be a project.

But once that is determined, is there any sort of model that they go by on what the cost would be for that new facility?

Mr. GOLDSTEIN. Sure. There is something called the Design Guide—and that has been in place for a number of years—by which the judiciary and GSA work together. It has standards in it: the size of a courtroom, the size of a chambers, things like that, and other kinds of modifications. And if they wish to go beyond Design Guide standards, they need to go to the Judicial Conference in order to get a waiver.

Mr. WEBSTER. OK. So maybe I have the question for the GSA, then. What—how do you determine—I mean I have heard you say, "We have done a lot of cost reduction, we have decided to remodel instead of rebuild." What kind of process do you go through? Once there has been a determination that there is a need, what do you do?

Ms. ROBYN. We typically work with a—we do a competition for an architecture and engineering firm, and select one to do a very detailed feasibility study on different ways to meet that requirement. This is the feasibility study for Des Moines.

Mr. WEBSTER. Is that subjected to any sort of criteria in that you pick one that has done certain projects? Or is it done on a cost basis?

Ms. ROBYN. You mean the selection of the A&E firm?

Mr. WEBSTER. Yes.

Ms. ROBYN. That is—it is a competitive process based on—it—their cost and their qualifications.

I think I may be getting beyond my level of knowledge here, but I think, like many competitions that we do to select experts, it is a combination of their cost and their qualifications.

Mr. WEBSTER. And this will be the last question.

Ms. ROBYN. Yes.

Mr. WEBSTER. Is there any guideline that determines that—Mr. Goldstein just said it is all over the board—between whether or not you would be focused on something that is functional and frugal or something that is elaborate?

Ms. ROBYN. Well, I believe that the—I think we don't do very many things that are extremely high—well, the cost of a project, the square-footage cost, and that is, I think, a very good thing to focus on, that is subject to a lot of analysis. And we submit—we have a very rigorous process of going to OMB and then the committee, and lots of back and forth over the proposed cost of a project and, you know, taking into account cost per square foot and other attributes of the project. So that is subject to a lot of vigorous discussion with this committee, with OMB.

So, I think that is—you don't see many elaborate projects because of all the very appropriate discipline that that process is subject to. I think you do see some—you know, we have tried in recent years to have—to build Federal buildings that are not ugly, you know, that are not like the J. Edgar Hoover Building. We went through a very bad period in the 1970s and the 1980s. We built a lot of Federal buildings that have—that don't stand the test of time.

And we subject everything to something called “design excellence,” so that we get basic designs for courthouses and other Federal buildings that are buildings that we can be proud of, buildings that stand the test of time, the way the buildings that were built in the 1930s do. That does not necessarily mean that they are elaborate and expensive buildings. And an atrium—and I share Congresswoman Norton's love of atriums—that is unusable space, but it may very well, by bringing in daylight, reduce the energy consumption of a building.

So, it is—you know, you have to be careful not to assume that something that looks beautiful necessarily is a sign of an elaborate, as opposed to a functional and frugal, building.

Mr. SHUSTER. Thank you, Ms. Robyn. Appreciate that.

Ms. ROBYN. Sorry.

Mr. SHUSTER. The gentleman's time has expired. Before I recognize next Ms. Hahn, I was mistaken. Mr. DeFazio has appeared. So—but before I recognize Mr. DeFazio, I just want to say I am going to turn the chair over to Mr. Barletta who is the chairman of the subcommittee and done a lot of work on this.

And again, this is a very difficult situation. This is—for me, it is all about the taxpayers and making sure that they are getting their best bang for their buck. As I said before, you could administer justice with a piece of plywood and milk crates. I mean I understand there are security reasons and all that, but—we are not telling you how to administer justice, but we have got to take our

responsibility serious here, in making sure that every dollar, every precious taxpayer dollar, is spent in the best way. And if judges have to share courtrooms and reduce the size of courts—we do it here in Congress.

This building was built 50 years ago, and it is the last congressional building that—office building that we built. And if you go to our offices, which I said in the meeting to the Judge earlier—we got people crammed into corners and what used to be closets. So, again, we are at a serious juncture here, with trillions of dollars of debt and deficit.

So, again, with that, I am going to turn the chair over to Mr. Barletta, and recognize Mr. DeFazio for 5 minutes for questions.

Mr. DEFAZIO. Thank you, Mr. Chairman. I was at another hearing and I have got to go back to that, but I appreciate—was here earlier.

So, I have a couple of questions. On the 10 proposed courthouses, as I read the GAO report, only 2 have clearly been subjected to the AMP process, is that correct? Can anybody answer that?

Judge PONSOR. I am Michael Ponsor, and I am here for the Space and Facilities Committee. We disagree with that. Our position is that four of the projects—

Mr. DEFAZIO. OK. So 4 of 10, 6 haven't been. How did you come up—

Judge PONSOR. Four—

Mr. DEFAZIO. How did you come up with the scores, if they weren't subjected to the AMP process? Are those scores under the old process?

Judge PONSOR. Yes.

Mr. DEFAZIO. OK. So we had some big problems with the old process, and that is why we adopted a new process. So I don't see how you can propose to go forward under those terms. I think you are—now, here is a another question which probably goes to GSA.

I moved into our new palace, beautiful building, but—and my entire staff and I occupy a space that is about the size of a judge's library, a little bigger than a robing chamber for the chief judge. I have observed, and I walk around this building on a lot of days. There is no one in the building. Huge building, beautiful building, but there is no one there except the workers. So, I question the criteria that led us to build in this form, in this size, in this area.

But beyond that, when I went to move in, because we very much wanted security, which we didn't have—we had been above bankruptcy in our previous building and they would provide security as needed, but they moved over—so we moved. But I saw this absolutely astronomical extortionate rent that you wanted per square foot, and we managed to negotiate that down to the average for class A office space in the area, and so we moved in. Thank you.

But, my question is, are the judges in the court system paying that extortionate per-square-foot rent for all of the tens of thousands of interior space that is not usable? The grand design? Right next door to my office is the clerk of the court. The clerk of the court's office, there is about six people in there. They have sort of set it up so they have multiple little living room sitting areas, and all the unused space in the back. It is about 5 times bigger than

my office, which is occupied by 10 people. And there is six people in there. It might be more crowded.

So, is the court paying that square foot for all that unused space? And, if so, how much of our annual budget is going to pay rents in these sorts of buildings?

Ms. ROBYN. The court's annual rent to GSA is on the order of \$1 billion. And I have forgotten now exactly how many million square feet that is. They are our first—our second-largest Federal tenant. We—

Mr. DEFAZIO. And now they have the highest per-square-foot—

Ms. ROBYN. We have a—well, we have—you know, as you can imagine, we have had some interesting debates about this over the years. We—our—I would take issue with your use of the word “extortionate.” Our rents are—

Mr. DEFAZIO. No, it was extortionate. I could have moved into class A, brand new office space in Eugene and hired private security, and it would have been less than the rent you wanted to charge me. And we said, “Why is it so high?” They said, “Oh, you are paying for all the interior space,” which is not a space which is—as you described an atrium that provides heat-gain or whatever, it is just a grand space on the inside, where you walk around, it kind of echoes, and it is very empty.

So, you wanted me to pay for that, and I said, “No. You want me as a tenant, I am not paying for that”—

Ms. ROBYN. Yes.

Mr. DEFAZIO [continuing]. “But I would be happy to pay class A office space.” So, yes, I would say it was extortionate. So we can disagree, but no sane person would pay that rent who wasn't—but the judges are paying that much, apparently. So I would find that—and what is an amortization period for a courthouse, in terms of rent?

Ms. ROBYN. I don't know.

Mr. DEFAZIO. Twenty, thirty years? I mean—

Ms. ROBYN. Yes, something like that. I mean I think we have a methodology that we use on some of these buildings. And I don't—you know, I don't want to say that we would—

Mr. DEFAZIO. Mr. Goldstein has a quick response. I don't have much time left. Mr. Goldstein?

Mr. GOLDSTEIN. I believe it is 30 years. Most of the courthouses, you are absolutely correct, sir, they—the rent is about \$1 billion a year for the judiciary to—for GSA space. And the—many of these courthouses are—they are rented on return of investment. It is an ROI process over the life of—the expected life of that building.

Mr. DEFAZIO. OK. So—but fully amortized in 30 years?

Mr. GOLDSTEIN. Yes, sir.

Mr. DEFAZIO. OK, thank you. I think that would be another subject to look into, Mr. Chairman, which is how much unused space are they paying how much rent for within the existing system, and what that costs the taxpayers on an annual basis.

Mr. BARLETTA [presiding]. The Chair recognizes Mr. Perry for 5 minutes.

Mr. PERRY. Thank you, Mr. Chairman. And thanks to you folks for being here and answering some questions for us. I have the privilege of representing the folks of—the good folks of Harrisburg,

Pennsylvania. And we have got a courthouse project that goes kind of almost as long as I can remember. But I just want to make sure I set the table right so I got my mind wrapped around this correctly.

Is it the—you folks, Mr. Ponsor, that suggest that we need a new courthouse, and then GSA constructs it per the guidelines, whatever they be at that time? Right?

Judge PONSOR. Essentially, yes, that is correct. We do a long-range facilities plan for the district, we do an evaluation of the urgency for that courthouse, either pursuant to our pre-2008 or our post-2008 AMP process, and then we refer it to GSA for a feasibility study. And then, if GSA recommends a new courthouse, it goes to the Judicial Conference for approval.

Mr. PERRY. OK. So GSA has to recommend. Is that correct, Dr. Robyn?

Ms. ROBYN. Yes.

Mr. PERRY. OK. So, with that, we have got 38 of 43 properties now have been purchased for the construction of a new courthouse, and we have spent about \$25 million. And, as I understand it, we are moving forward with design right now. But yet there is kind of almost no plan to construct this courthouse, based on it not being in the criteria, or under the new AMP criteria, which, you know, as a tax-paying citizen and somebody that is not sitting here, anybody else would say, “What in the heck are you folks at the Federal Government doing,” I think.

Is there a way to implement the AMP—or does the current AMP program implement some of the facets of the old program, so that you are not duplicating the effort to determine the size and the scope of the courthouse? Is that in there, or not?

Judge PONSOR. It is in there. And this is the point that I was trying to make, perhaps clumsily, before. Harrisburg is a courthouse project that was not evaluated under the AMP process. And I was talking to Congresswoman Norton and we were having an interesting exchange, because I was taking the position that we would prefer not to have to go through, with Harrisburg and the other projects that haven’t been through the AMP process, an AMP process.

The reason that we would prefer not to do that is that we are satisfied that the process that we went through in selecting Harrisburg for the 5-year plan appropriately identified Harrisburg as an urgently needed project. The repetition, or the overlay of the AMP process, would just be a further analysis that is likely to only confirm the need to have Harrisburg on our 5-year plan. And the repetition of the AMP process would result in an additional delay, we estimate, of a number of years. It could be as many as six—certainly as many as two—that would be added to the process for the citizens of Harrisburg who have already waited, I think, since the late 1990s—

Mr. PERRY. Right.

Judge PONSOR [continuing]. For their courthouse, where there are already parcels of real estate that have been purchased for the construction of that process. It would just slow things down.

We recognize that in this fiscal situation the President is not putting new courthouses into his budget. But the fiscal situation

will not last forever. And when the time comes that we are again able to build new courthouses, we believe that we have adequately assessed the need for the courthouse in Harrisburg. Certainly San Antonio, Anniston, Chattanooga, and—

Mr. PERRY. Excuse me, Doctor, let me just follow up here. So we have spent \$25 million. And according to the AMP, Harrisburg doesn't fall within the criteria. And you folks know this stuff, we don't, so we are taking, I guess, your lead on that. But we have got this money. We don't want to waste the taxpayers' money, and we know this is important. We don't know if it is right-sized or not. That is GAO and GSA's responsibility, I think.

But what do we do from here? Do we walk away from our \$25 million investment? Do we engineer so that it is right-sized, so—as courtroom sharing, as has been enumerated in AMP? What is the plan? What can we expect in Harrisburg from you good folks that are trying to do the right—and we want the taxpayers' money to be spent wisely.

Ms. ROBYN. Sure, yes. We will—I mean that is one of the ones that—there is a lot of history on Harrisburg that I don't—that I am not aware of. Judge Smith just alluded to me on some issues over the choice of a site. So I apologize, there is a lot I don't know about that project. But I would agree with Judge Ponsor that we think it is one that is appropriate to remain on the list. There are circulation issues with secure circulation in the existing building. There is a lack of space for U.S. Marshals.

We are, by the way, going to backfill the existing building with other Federal tenants that are in leased space in Harrisburg, so we think there is a savings there. But this project, like the others on the list, is subject to our ongoing process of right-sizing, ensuring that we can do it as inexpensively as possible.

Mr. PERRY. Thank you. And as my time has expired, Mr. Goldstein, do you have any statement regarding Harrisburg, particularly, from the GAO's perspective?

Thank you, Mr. Chairman.

Mr. GOLDSTEIN. No, at the end of the day it is really a policy decision whether to go forward or not. Our sole point is you need to make sure that the priorities that are on that plan are really the courthouses that you need to build. And the priorities on that plan continue to shift.

And so, until you can understand what is really your most urgent priority, it makes some sense to wait and see, spend a little of money now, and not billions of dollars, and wait and figure out what is the best use of the Government's money at this point in time. That is all we are saying here.

Mr. BARLETTA. The Chair recognizes Ms. Hahn for 5 minutes.

Ms. HAHN. Thank you. So, I have one. So my bad story is from Los Angeles. And in 2000, Congress appropriated \$400 million for a 41-courtroom building in downtown L.A. But it had repeated delays, cost overruns, and then that project was ultimately canceled in 2006. Then, in 2011, GSA announced a revised plan for a smaller, 24-courtroom facility at the same site. And we are hoping construction will be completed by 2016. So, once this building is hopefully completed on time, on budget, it will have taken 16 years

from the moment GSA originally requested funding for this project to the time that it is to be completed.

The judge commented briefly on one thing in Harrisburg that you thought would prevent some delays, but what else can you tell us that we have got in place now that will prevent these kinds of really egregious delays, when and if we do begin constructing courthouses in the future?

Judge PONSOR. Well, one of the things that we are very proud about—and I don't want to run away from it—is our AMP process. It is a good process. Mr. Goldstein and I have done battle many times—this is our third go-around here—and I have a great deal of respect for the GAO. We have, in fact, adopted a number of their recommendations, and I am pleased to hear the GAO say that they also feel that we are making progress with that. We have only had that since 2008. I mean we developed it in 2006; we started using it in 2008. We have a very good relationship with GSA right now.

But the situation is—in my opinion, it is a fiscal problem, looking into the future, in terms of the new courthouses. I do think we can convince this committee. I hope we can convince this committee, as new projects become buildable, fiscally buildable, that we are doing it in a responsible way, that we are building frugal, sensible courthouses that are also a tribute to the community and to the values of the courthouses—

Ms. HAHN. So you think the AMP program will take care of—

Judge PONSOR. It certainly will help.

Ms. HAHN [continuing]. The delays and cost overruns that we saw in Los Angeles?

Judge PONSOR. Yes. And we will be folding into the cost—the courtroom sharing policies that we have adopted already. We have taken the recommendation of GAO to not build for projected courtrooms. Even though we believe they will be necessary, we don't put them into our plans now.

And I have honestly tried to figure out what the heck happened in L.A., and I think—I don't think you could—

Ms. HAHN. What the heck did happen?

Judge PONSOR. I don't think anybody could replicate it. It is its own story.

But the only thing I can say is I remember being here for the hearing in May of 2010, and Congressman Diaz-Balart, who was the ranking member at that time, talked to me about this \$1 billion courthouse in Los Angeles, and I said to him—and I reread my transcript before I came in here—it was probably the simplest, most direct thing I said was, “That isn't going to happen.” And it didn't happen. And we heard you, and we are building the facility there within the funds that were appropriated by Congress. And I hope there will be no more L.A.'s in the future. We will do everything we can—

Ms. HAHN. Well, there could be a lot of L.A.'s in a lot of other issues in this country. Good L.A.'s.

Judge PONSOR. Yes.

Ms. HAHN. Well, thank you. But I do think that is frustrating for taxpayers, not just how we spend our money, but taxpayers want to know that, you know, when we have appropriated money, when we have requested it, that it actually does happen in a timely fash-

ion. I think that is what frustrates people the most, is to see these kinds of really unbelievable, egregious delays in these projects. There is just really no excuse for those.

Did you have anything to say on preventing—

Ms. ROBYN. The only thing I will say is you used the term “cost overruns.” There will be no cost overruns on the L.A. courthouse. It will come in on budget, \$400 million. It will not cost a dime over that.

Ms. HAHN. Thank you.

Mr. BARLETTA. Mr. Goldstein, in your previous report, you identified two major causes of overbuilding in Federal courthouses: the absence of courtroom sharing and the flawed projections of future judges. Do you believe the judiciary’s new process adequately solves these problems?

Mr. GOLDSTEIN. I think it is a start. We are pleased, as Judge Ponsor mentioned, that the current 5-year—when they are now putting new projects on the plan, that they are not including projected judgeships. As we indicated from the last report we did, of those 33 courthouses from 2000 to 2010, there were roughly 119 judges that had been projected that they would have that they did not have that they built space for. So we are pleased that that process is changing.

With the issue of sharing, we still differ. We do believe that the data that was compiled by the judiciary itself that we modeled shows an ability to share at greater levels than they are doing today. We did not, however—and it is important to note this—recommend that they adopted our model or any model. We simply recommended that they look into doing a better job at sharing at whatever level they felt was necessary. We simply developed a model that we would help to engage in conversation and discussion, and we certainly did.

Mr. BARLETTA. Judge Ponsor, as you pointed out in your testimony, the judiciary adopted sharing policies for senior, magistrate, and bankruptcy judges, and you highlight that they are being implemented. How many of the 446 Federal courthouses fully comply with the courtroom sharing policies now?

Judge PONSOR. I can’t give you a number. I cannot give you a number. I know that we are looking at it, and I certainly know that, prospectively, and with regard to renovations, we are looking at it carefully. We are looking to try to get entities that are in leased space back in the courthouses, and we are applying courtroom sharing to them. But I cannot give you a number.

Mr. BARLETTA. How many Federal judges are currently sharing? Do you have a number?

Judge PONSOR. Well, there are about 2,000 Federal judges in the country. Trial judges, such as myself, U.S. district court judges, appeals court judges, and Supreme Court justices make up about 1,000 of those. Those 1,000 judges, under current Conference policy, are not sharing courtrooms. Appellate court judges do, because they sit in panels of three.

There are bankruptcy judges, senior judges, and magistrate judges who make up the other 1,000 of our cohort of judicial officers in the Federal judiciary. They are all subject to the policy. That doesn’t mean that they are all sharing, because many of them

are in courthouses that have enough courtrooms, so they don't need to share. We are not turning out the lights and locking courtrooms up, and not letting people into the courtrooms when they are already there. So, there is a great deal of sharing.

I guess I would say one thing. I don't know how your branch of the Government works in terms of changing deeply rooted patterns that they have been following for hundreds of years. It is a little slow. I know that you are frustrated that we aren't moving fast enough on courtroom sharing. But from where I sit, since 2008 we have put half the judiciary under courtroom sharing policies. That is at least progress. And we are pleased that we are doing that, we are implementing it.

I will tell you, you know, nothing is more bearable than someone else's pain, so we might not get any sympathy for it, but imposing courtroom sharing on senior judges and bankruptcy judges and magistrate judges was hard. It was hard. It took a lot of work. Perhaps we don't deserve any credit for it. But it wasn't nothing. It wasn't nothing. We heard you, we knew you wanted us to courtroom share, and we took initiatives that brought half of the judiciary, just in the last 5 years, under courtroom sharing policies that will be applied consistently in the future.

I think you were the inspiration for that—your committee. I have to say—you can call it nagging, you can call it encouraging, you can call it inspiring, or you can call it whatever you want—we heard you, and we adopted those policies, and we are continuing to think about the problem.

We aren't ready yet, the Judicial Conference has not yet taken the step of insisting on courtroom sharing for active district court judges. And I know that is frustrating to members of the committee. I recognize it and I respect it. But it is difficult for us. We have made a lot of progress, and I hope that we will get at least a glimmer of sympathy for the work we have put in doing that, just in the last 4 or 5 years.

Mr. BARLETTA. Well, I can tell you, change doesn't come easy on this side, either. I certainly understand what you are saying.

Dr. Robyn, how many courthouses are currently vacant?

Ms. ROBYN. I don't—that is a good question. I don't know the exact number. I think your Dyer is certainly one in Miami. I don't believe there are a large number. I think it is a relatively small number, but I don't have the exact number.

Mr. BARLETTA. Can you provide the committee with a list, location, and any plans for their reused or disposal?

Ms. ROBYN. Sure, yes.

Mr. BARLETTA. OK, thank you. The Chair recognizes Mr. Williams for 5 minutes.

Mr. WILLIAMS. Thank you. First of all, I would like to say, just a point of reference, I had the same issue in Texas that we heard with trying to rent space in a Federal building, and you might want to take a look at your rent factors. We would love to be there.

Dr. Robyn, I just want to also reiterate simply I think that all of—as you certainly said, that it is going to be important on these cost overruns to come back and see Congress. In the private sector, if we have a cost overrun we go see our lender, our banker, before

we proceed. And I think it is—that is what you need to consider, also.

And, Dr. Robyn, the judiciary included in their testimony earlier an example of a courthouse with maintenance and repair issues. Why wouldn't the first recommendation in such cases be to repair and renovate, rather than building a brand-new courthouse? And then, if you choose to build a brand-new courthouse, what happens to the old one? We have already talked about an inventory, a vacancy.

Again, in the private sector, where I come from, inventory is a good thing when you can sell it. It is not a good thing when it sits on the shelf. So—

Ms. ROBYN. I—first of all, let me just clarify on the first point. We do—we—by statute, we are required to come back to you and the appropriators if we are at risk of going 10 percent or more over budget. So that—so we absolutely do that.

With respect to—I share your view. I am relatively new to GSA. I am a—I live in a 100-year-old home on Capitol Hill. I am a deep believer in historic preservation. And I think we have been too quick in recent years to build the shiny, new building, or the shiny, new courthouse, and not think hard about preserving the old building. And these old buildings are typically built in the 1930s and they are beautiful, and they have a lot of cultural significance to the community. So, we have made a change there, and do look first at how we can preserve the old building.

In cases where—you take San Antonio, the old building, not so old, built as a World's Fair pavilion, windowless. Arguably, the court needs a new building, and we are going down that path to build a new building in San Antonio. And the city is taking over the old one. But it can be hard to find a reuse for an old courthouse. Typically, you know, you can't just turn it into a hotel. So that is one reason that we work so hard to try to preserve the existing buildings.

Mr. WILLIAMS. Well, I think that is important for historical, but also sometimes it can be less money.

Ms. ROBYN. Well, yes, that is—

Mr. WILLIAMS. Which we are all interested in right now.

Ms. ROBYN. Yes, it is—yes. No, the economics drive it.

Mr. GOLDSTEIN. If I may, Congressman, we are now studying that particular issue for this committee, what happens to the old courthouses once a new courthouse goes up. So we will have some answers in the not-so-distant future.

Mr. WILLIAMS. I would like to see those.

Mr. GOLDSTEIN. Yes, sir.

Mr. WILLIAMS. Thank you. I yield back.

Judge PONSOR. In fact, Mr. Goldstein's staff is going to be visiting my courthouse in Springfield next week, and I am looking forward to showing him what happened to our old courthouse in Springfield, Massachusetts, which is now fully occupied by a hospital and the department of education for the city of Springfield. There are good stories where the inventory turns over, and Springfield is one of them.

Mr. WILLIAMS. And a good business deal made by the Government.

Judge PONSOR. Absolutely. And for the people of Springfield, yes.

Mr. WILLIAMS. I yield back.

Mr. BARLETTA. The Chair recognizes Mr. Rice for 5 minutes.

Mr. RICE. Thank you. I also want to concur with these other gentlemen about the issue with renting the space. There is an old and dilapidated Federal office building in Florence, South Carolina, in which Lindsey Graham has his office—and I would have loved to have put my office there—and I tried to get a rent quote from GSA for 2 months. When I finally got it, it was about 2½ to 3 times the prevailing rate. Ended up going into a much nicer office building for about a third of the space. Would have kept the Federal dollars in the Federal Government if I could have, but I couldn't afford it under my MRA. So this is a very clear issue that we need to deal with. That is 3 congressmen out of 10 that you—facing this issue.

Dr. Robyn, doctor of?

Ms. ROBYN. Public policy.

Mr. RICE. Public policy. From?

Ms. ROBYN. Berkeley.

Mr. RICE. Berkeley. Judge Ponsor? Your judicial degree was from?

Judge PONSOR. Yale.

Mr. RICE. Yale? And Mr. Goldstein?

Mr. GOLDSTEIN. I have a public policy masters from George Washington.

Mr. RICE. We have three brilliant people sitting here on this panel, and honored to be here in front of you.

Judge PONSOR. Never mistake credentials for intelligence.

[Laughter.]

Mr. GOLDSTEIN. I think we agree again.

Mr. RICE. Certainly far more intelligent than I. But the fact that, you know, the three of you can sit here with these very detailed criteria and disagree about whether or not this given courthouse was built—overbuilt, and by how much, is a very clear indication about how far awry we have gone with all this, with the congressional micro—attempts to micromanage, with the bureaucratic attempts to manage all these things, and with good intent. I mean with intent to save taxpayer dollars. I think the—in fact, what happens is that the reverse occurs, and that we have vast losses of taxpayer dollars through gross attempts to micromanage all these things.

My opinion is that this ought to be run as if—you run any other business, and you lay out basic criteria, you put good people in charge. If they don't deliver, then you find another good person who can deliver, and you continue on down the road. I think these massive bureaucracies that we build are hamstringing the entire country. I think we are the best Nation on earth, we have more capacity than anyone on earth. Nobody can beat us, but we can sure beat ourselves. And we are doing a pretty doggone good job of it.

This page 20, this list in the GAO report of courthouses, is this the one that we are talking about?

Mr. GOLDSTEIN. Yes, it is, sir.

Mr. RICE. The most recent one that has come up recommended to be built, which one would that be, do you know?

Judge PONSOR. I think Mobile is at the top of the list, Mobile.

Mr. RICE. That was the one that was most recently recommended to be built? I want to know how long each of these projects have been in process. That is what I am curious about.

Judge PONSOR. Oh, I see, sorry. It is at the other end of the list. Chattanooga and Des Moines both came on the list in mid-2000. Those are the last two items. We actually don't have a 5-year plan any more, we have a 4-year plan, and they are the fourth year, Chattanooga and Des Moines, and—

Mr. RICE. Mid-2000?

Judge PONSOR. Mid-2000, yes, because they were—I know that they were post-AMP, our AMP process which we began using, and I believe it was invented in 2006 and came on in 2008. So—

Mr. RICE. And what is the oldest one on this list?

Judge PONSOR. Oh, my God. I think Savannah claims to have been on the list for 22 years, but the 5-year plan has only existed 18 years. So they go way back. We have projects that have been on the plan for a very, very long time.

Mr. RICE. Well, you know, another extremely glaring example of how these attempts at micromanagement and other management are hamstringing our entire country. And I am afraid that it bodes very, very poorly for our future if we can't bring these things back into the realm of reason, to put some common sense back into this.

I have dealt with commercial real estate a fair amount in the past. My history is a CPA, a tax lawyer. And I have personally seen and helped with bids on GSA projects where—the specifications being so very, very lengthy, detailed, and people being afraid of what they are going to have to deal with have resulted in very large—you know, much higher than any other normal project would be.

So, I would say that sitting in these committee hearings, and particularly on the Transportation and Infrastructure Committee—I have been a congressman for 3 months now—and seeing these massive delays, and these confusions over regulation, we have got to do some basic rethinking of this process, or I am afraid we have—we are going to hold back this country's future.

That is all I have. I yield back the rest of my time.

Mr. BARLETTA. All right. The Chair recognizes Mr. Duncan, who has been tackling this issue for many years.

Mr. DUNCAN. Well, thank you, Mr. Chairman. I have been at this a long time. This is my 25th year on this committee, and I have been interested in this issue from the start, because I did spend 7½ years as a circuit court judge just before coming to Congress.

And, Judge Ponsor, I will tell you that I really like almost every judge I have ever met, but I will tell you that I spent the 2 months between when I took the bar exam and when I was sworn in almost full-time at the Knoxville Courthouse watching jury trials. And there were jury trials going on in every courtroom. And then I tried my first jury trial, I think—I know it was in my first week in practice. And we were just trying them right and left back in the early 1970s.

Then I became a judge in 1981, and I tried 78 jury trials in my court alone that first year. I was trying—I came from a largely civil practice, but I had gotten into some big criminal cases also, and a lot of people thought I did more criminal work than I did, and I

became judge of the criminal court and tried the felony criminal cases. Tried the attempted murder of James Earl Ray, and my court was the only court he ever testified in. I had a lot of interesting cases.

But the law practice has totally changed now. And one of the civil court judges in Knoxville told me at a Christmas party a couple of years ago that he had tried six jury trials that year. And they are still having a few jury trials in the State courts, but in the Federal courts they are having—it is becoming so rare that I remember a few years ago Senator Jim Inhofe of Oklahoma, who was on this committee and sat right beside me, he said one time at one of our hearings, he said, “You could shoot a gun down the hallway of any Federal courthouse at 3:00 on any weekday afternoon and not hit anybody.” And I don’t know where he came up with that kind of example, but I remember him saying that to me.

I appreciate your testimony, what you were saying, but it seems to me that we are going to have to get more than just testimony, we are going to have to get action on sharing these courtrooms because the jury trials, I think, unfortunately, are becoming a thing of the past. Would you have your people get me a—the statistics on how many jury trials were in all the Federal district courts in the past year?

I have mentioned it here before. That is really the only significant statistic that we can look at. Because, for instance, I know that people who do forgeries, for instance, they typically would do many of them. And so they would come in and plead guilty to 20 or 25 forgeries. And then the clerk’s offices would put out that 20, 25 cases had been disposed of. But a judge who had spent a week in a jury trial had actually worked a lot harder and done a lot more, but he—maybe if he didn’t finish that case that week, I mean, you see what I am getting at, that—

Judge PONSOR. Yes. I did a 5-month death penalty trial, and I got credit for disposing of one case.

Mr. DUNCAN. Right.

Judge PONSOR. Yes.

Mr. DUNCAN. So, really, the only meaningful statistic to me is days spent in trial. Because that is when you are using a courtroom. So—

Judge PONSOR. You want jury and jury waived, or just—

Mr. DUNCAN. Yes—well, jury and nonjury. Yes, right. That would be—because a nonjury trial can take just as much time as—in fact, that year I said I had tried 78 jury trials, I tried 5 nonjury trials.

Judge PONSOR. Right.

Mr. DUNCAN. Now, even the criminal courts are not doing anything remotely close to that now.

Judge PONSOR. No.

Mr. DUNCAN. But it just—we are just going to have to do more on that. And I have been concerned about—I also was concerned because the Federal courts, we were paying about double the square-footage cost that the States were who were building beautiful State courts that were just as nice.

But, at any rate, I appreciate your testimony. But we need to follow up on this, Mr. Chairman, and see if we are getting some action, also. Thank you very much.

Mr. BARLETTA. Thank you, Mr. Duncan. Are there any further questions from any members of the committee?

Ms. NORTON. I just—

Mr. BARLETTA. Yes, sure.

Ms. NORTON. Just for the record, Mr. Chairman, Judge Ponsor suggested that there might be repetitiveness in redoing the courthouses under the AMP process. And I have this question for all of you. If you are using only the process that brought us here, you are using a discredited process. That is the process, the old process that the judges used, which was discredited by the GAO report. That is one of the problems that this committee has.

But let's say you did what the committee said to, and looked at—applied the AMP process. Isn't the essence of that process courtroom sharing? When you look at what happened in Greenbelt and San Jose, wasn't that the essence of the change that was made? Mr. Goldstein?

Mr. GOLDSTEIN. Well, you know, we have a little bit of a chicken-or-egg problem. Both the judge and the Commissioner say that they reduced the size of the courthouses for sharing purposes and they didn't really go under the AMP process, but the point is really the same, that they went from very high on the list to 117 and 139, respectively. So, yes. Quite clearly, the impact of making changes and reducing costs and sharing was a major factor here—

Ms. NORTON. That was the final result there.

Mr. GOLDSTEIN. Yes. They are now 117 and 139 on the list.

Ms. NORTON. And—

Mr. GOLDSTEIN. When they had been in the top 15.

Ms. NORTON. And what brought them to that point was the decision to share?

Mr. GOLDSTEIN. A reduction in the amount of space that they needed, in part, because of sharing, yes.

Ms. NORTON. I know that you, Judge Ponsor, said that somehow the committee is frustrating—frustrated that there is no position from the Judicial Conference on active courtroom sharing. I want to assure you the committee is not frustrated. The committee has a remedy of its own, and that is simply not to authorize any more courthouses.

Judge PONSOR. Right.

Ms. NORTON. I want you to know that while every community wants a courthouse, that is not what our constituents are most clamoring for. If you go down the list and you were to put courthouses on it, I think you would find a courthouse at the bottom of the list. And I think that is not just a matter of the recovery we are in, and the great recession we have come out of. That is what it would always have been.

There are always a few people who want courthouses led by, often, the Member from the district because the judges keep on the Member and the judges. But this just is of no priority. So do rest assured we are not frustrated. Because the ultimate remedy is in our hands. Unless we are satisfied that the AMP process, whatever you call it, including courtroom sharing, is applied, I don't see any disposition on either side of the aisle to authorize the construction of courthouses. And you are not building any courthouses that are not authorized.

Now, let me finally say to Ms. Robyn, because, really, GSA is an unindicted coconspirator in everything that the courts have done. The courts have run the GSA. That has been what is frustrating us, that it has not husbanded the taxpayers' dollars, but has simply built whatever mausoleum that the courts wanted to have happen. It is a disgraceful record of the courthouse—of the GSA. And it is what the GSA has often done with building, period. You know, what the agencies want, GSA has tried to build. And that is what we have tried for years to put a stop to.

But I have got a note here that in your testimony you say that the GAO opposes a moratorium on building courthouses. The GSA opposes, I am sorry, a moratorium on building more courthouses. On what base—no. You do it on the basis, essentially, that it undermines “our ongoing maintenance of the Federal inventory.” In other words, you want some more money in order to keep up courthouses. And if you get a great, big courthouse, you know, then that pays more rent to be managed by the GSA.

But considering what happened even if we buy Judge Ponsor's notion—and I do, because I don't care how he does it, as long as he shares—that even given what happened in Greenbelt and San Jose, why would you urge this committee to go ahead, willy nilly, and build courthouses that have not undergone something close to the AMP process?

Ms. ROBYN. To say that I oppose the moratorium does not mean I think the committee should go ahead, willy nilly. This committee does not go ahead—

Ms. NORTON. Well, what is in between opposing the—

Ms. ROBYN. But I think—

Ms. NORTON. What is in between opposing it and not opposing it?

Ms. ROBYN. I think there is a fundamental misunderstanding here about the AMP process versus courtroom sharing. They are very different. They are not—the AMP process did not institute courtroom sharing. There may be some—the timing may be coincident, but the AMP process shifted the weights on—the essential thing, my understanding, is that it shifted the weights on the importance of the need for additional courtroom space, relative to other issues: security issues, condition of the building, operational deficiencies. It puts—the AMP process increased the importance placed on the need for additional courtrooms. In fact, there is a business rule that says something doesn't get on the list unless there is a need for two or more additional courtrooms.

I am going to get in trouble for saying this, but I don't think I agree with that rule. I think there are—if you look at why Mobile, Savannah, and some of the other projects are on the 5-year list, they got on that list—they may have needed additional courtrooms at the time, before we applied courtroom sharing and other approaches to right-sizing, but they typically have other problems, inability—lack of secure circulation—

Ms. NORTON. Those other problems, Dr. Robyn, might be handled by some kind of rehabilitation—

Ms. ROBYN. Yes, exactly. But that is kind of—

Ms. NORTON. So the moratorium is on new courthouses, Dr. Robyn.

Ms. ROBYN. Well, it is—but it could be an annex. So in the case of Mobile, we can't solve it—believe me, I wish we could—but entirely within the confines of the existing building, the Campbell—

Ms. NORTON. Are you saying that the AMP process does not give appropriate consideration to the deteriorating condition of a courthouse, but only looks at some figures and not at others?

Ms. ROBYN. I—look. I am not an expert on the AMP process, so I don't want to—

Ms. NORTON. Let me ask the expert, Mr. Goldstein.

Ms. ROBYN. But it is not—

Ms. NORTON. Mr. Goldstein, would you just—

Ms. ROBYN. Yes.

Ms. NORTON. Just for the record, before we leave this hearing, would you explain the AMP process, and why the AMP process was—is being promoted?

Mr. GOLDSTEIN. There is two major—there are several major changes that are important to note, in terms of the criteria, from the old process to the new process. Some of it is good and some of it maybe not so good. And it is very interesting.

Under the old capital planning process, under the old process, there were four weights: the year in which courthouses would run out of space, it got 30 percent; security deficiencies, 30 percent; operational concerns, 25 percent; current and future courtroom and chamber need, 15 percent.

Now, the major difference here under the new process, and it is one where I am a little concerned about the kind of comments that the judiciary made in telling GAO that we didn't look at operational or security concerns, but those weights, by their own process, become a minuscule part of what is examined today.

So, what has happened is that security deficiencies and operational deficiencies, which were more than 50 percent, are now only a small part of one bucket which has 40 percent, and it is called facility benefit assessment. And the majority of what is looked at, the criteria, are courtrooms needed by judge type and chambers needed by judge type, which is 50 percent. In other words, what the judges actually get has gone from 15 percent to more than 50, because they also get a portion of what is considered under the facility benefit assessment, as well. So, that is the major change in how things are weighted.

And so, I am concerned, because while we are talking about trying to improve the efficiency, part of what we are seeing here is that a greater emphasis on the needs for courtrooms and chambers, as opposed to operational and security elements, which—obviously, are extremely important, as well.

Judge PONSOR. Could I insert a comment?

Ms. NORTON. Certainly.

Judge PONSOR. I was feeling quite sympathetic to Dr. Robyn as she was trying to express the AMP process.

The AMP process was created by the judiciary. It wasn't created by the GSA. GSA is not the expert on the AMP process. That is our process.

There are four factors in the AMP process right now. Thirty percent is whether the courthouse is big enough to hold the judges

that are there. In some cases, it just isn't. Thirty percent has to do with the systems in the building, whether it is falling apart.

In Savannah, we don't have a problem with room. The courthouse is falling down. It was built in 1899. The corbels are falling off the building and hitting people on the head. They have got a big fence around it so people don't get hit on the head. They have got hall corridors that dead end with no fire egress. They have got no sally port. They have got no secure lockups, they have got no secure elevators. The Marshals Service says it is a catastrophe waiting to happen.

Twenty-five percent is security. So we got 30 percent for size, we got 30 percent for building systems, we got 25 percent for security, and we got 15 percent for compliance with the Design Guide, which means we don't have 1,000-square-foot courtrooms, which are too tiny to really do anything. So we look at that. But that is 15 percent.

So that is the AMP process. The courts developed that as a way of refining our rankings of urgency. But I can only repeat that I do believe the process that we had prior to that was adequate to identify urgency for other courthouses.

You all have already appropriated \$188 million for the courthouses that are on the plan. Eight of them have sites. Do we want to waste that? Two of them have land swaps already, San Antonio and Charlotte, where the municipalities have swapped land, and they are waiting for the courthouses to be built.

I am not going to be chair of this committee 5 months from now. My community has a nice courthouse. But I feel like I am speaking for the people of Chattanooga, the people of San Antonio, the people of Charlotte, the people of Harrisburg, who have been waiting, sometimes for 15 years, with courthouses that are falling to bits. And the courthouses, they are clearly needed. And I am just hoping that, when the times comes, that there are funds to build these courthouses, and we can come back to you and persuade you—

Ms. NORTON. Mr. Chairman, so long as the judiciary supplies the committee with evidence that it has met all of the criteria that it itself created, I am sure this committee would be willing to proceed. I thank you, Mr. Chairman.

Judge PONSOR. Thank you.

Mr. BARLETTA. I would like to thank each of our witnesses for your testimony today. Your contribution to today's discussion has been very informative and helpful.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing, and I ask unanimous consent that the record remain open for 15 days for additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

[No response.]

Mr. BARLETTA. Without objection, so ordered. If no other Members have anything to add, the committee stands adjourned.

[Whereupon, at 12:33 p.m., the committee was adjourned.]



Statement of Rep. Jim Cooper  
Committee on Transportation and Infrastructure, U.S. House of Representatives  
May 16, 2013

Chairman Shuster, I admire your efforts and the efforts of our colleagues to rein in wasteful federal spending, particularly by halting plans to build extravagant, and sometimes unneeded, federal courthouses. You have correctly identified several past abuses and are taking steps to prevent them from recurring. I congratulate you because very few members have your courage to cut wasteful spending.

As you well know, Mr. Chairman, your critics have not always been fair. Your position is not to stop all courthouse construction, as some have claimed, only to establish a moratorium until better planning can be conducted. The recent GAO report focused on the shortcomings of the Judiciary's 2008 AMP capital planning system, as well as failure to meet the AMP guidelines themselves. The GAO has done an excellent job of showing areas for improvement.

As America grows and as buildings age, we owe it to the Judicial Branch and to ourselves to meet the genuine, not the exaggerated, needs of everyone who encounters the federal court system: judges, jurors, prosecutors, attorneys, witnesses, plaintiffs, defendants, staff, and, most important, members of the public who want America's system of justice to continue to be a model for the world.

The proposed federal courthouse in Nashville, Tennessee, is in an awkward position in the midst of your reform efforts. Even before you began your reforms, Nashville tried to do everything right. The project was initiated in 1992 during the tenure of my predecessor, Rep. Bob Clement, and we have tried to play by the rules. During my tenure in Congress since 2003, I even helped found the bipartisan "Courthouse Caucus" with Rep. Jo Bonner, now co-chaired by Rep. Mike D. Rogers, in an effort to persuade our colleagues that the days of pork-barrel spending are over, and that no one should try to cut in the line of worthy projects. Extravagant courthouse designs are just another way of cutting in line by taking advantage of limited funds for selfish purposes.

The situation in the Middle District of Tennessee is that we are now second on the Judiciary's list of most-needed new courthouses (with a score of 67, at least several points of greater need than anyone else in America, including the city that is first on the list) due to our antiquated and unsafe Estes Kefauver federal building. I believe that whether under the pre-AMP criteria, today's AMP criteria, or under an improved AMP process, the real need for a new Nashville courthouse is among the most pressing in the nation.

An estimated \$26 million has already been spent to buy the land and design the new Nashville federal courthouse. As the GAO pointed out in their testimony

before you, Nashville's new courthouse design is current and efficient, with the modification of not building out one floor of the proposed courthouse's space. Although I completely support your efforts to save money, I am worried that further delays and altered criteria will harm taxpayers, not protect them as you intend. This would merely be an argument to be grandfathered under the old rules if we had not made every effort, over many years, to be fair to taxpayers.

Nashville's need has been documented under all conceivable criteria; I just ask that that need be recognized and handled in the responsible way in which you are already leading the Committee.

United States Government Accountability Office

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**GAO**

Testimony  
Committee on Transportation and  
Infrastructure, House of  
Representatives

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For Release on Delivery  
Expected at 10:30 a.m. EDT  
Wednesday, April 17, 2013

## FEDERAL COURTHOUSES

### Most Recommended New Construction Projects Do Not Qualify Under Improved Capital-Planning Process

Statement of Mark L. Goldstein, Director  
Physical Infrastructure Issues





United States Government Accountability Office  
Washington, DC 20548

Chairman Bill Shuster, Ranking Member Nick J. Rahall, II, and Members of the Committee:

I am pleased to be here today to discuss the federal judiciary's (judiciary) capital-planning efforts for new courthouses. Since the early 1990's, the judiciary and the General Services Administration (GSA) have undertaken a multibillion-dollar federal courthouse construction program. To date this program has resulted in 78 new courthouses or annexes<sup>1</sup> and 16 projects that are currently in various stages of development. However, rising costs and other budget priorities have slowed the construction program. In addition, we previously found that recent federal courthouses had been constructed larger than necessary because of poor planning, oversight, and inefficient courtroom use.<sup>2</sup> In 2008, the judiciary began using a new capital-planning process, called the Asset Management Planning (AMP) process, to assess, identify, and rank its space needs. Judiciary officials said that the AMP process addresses concerns about growing costs and incorporates best practices related to capital planning.

Today, we are releasing a report that addresses the (1) the extent to which the judiciary's capital-planning process aligns with leading practices and provides information needed for informed decision making related to new courthouses and (2) the extent to which courthouse projects recommended for funding in fiscal years 2014 to 2018 were assessed under the judiciary's AMP process.<sup>3</sup> My statement highlights the key

<sup>1</sup>An annex is an addition to an existing building. For the purpose of this testimony, projects that include construction of an annex are considered new courthouse projects.

<sup>2</sup>See GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417 (Washington, D.C.: June 21, 2010). Specifically, we found that 33 federal courthouses completed from 2000 to 2010 included 3.56-million square feet of extra space that cost an estimated \$835 million to construct and \$51 million annually to operate and maintain. We recommended that GSA should: (1) ensure that courthouses are within their authorized size or notify congressional committees; and that the judiciary should: (2) retain caseload projections to improve the accuracy of its 10-year judge planning and (3) establish and use courtroom-sharing policies based on scheduling and use data. GSA and the judiciary agreed with the recommendations, but expressed concerns with GAO's methodology and key findings. GAO believes these to be sound, as explained in the report. Our recommendations have not yet been implemented.

<sup>3</sup>GAO, *Federal Courthouses: Proposed Construction Projects Should Be Evaluated under New Capital-Planning Process*, GAO-13-263 (Washington, D.C.: April 11, 2013).

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findings and recommendations of this report. Our review focused on courthouse projects on the judiciary's current 5-year plan for fiscal years 2014 to 2018. As part of this work, we analyzed judiciary and GSA documents, interviewed judiciary and GSA officials in their Washington, D.C., headquarters and visited federal courthouses in Anniston, Alabama, and Macon and Savannah, Georgia. We selected these sites because the courthouses were highly ranked by the judiciary for replacement. We conducted this performance audit from March 2012 to April 2013 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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**AMP Process  
Represents Progress  
in Capital Planning  
but Does Not Provide  
Needed Information  
to Decision Makers**

The AMP process, which the judiciary has applied to about 67 percent of its courthouses, represents progress by the judiciary in aligning its capital-planning process with leading capital-planning practices, but the document the judiciary uses to request courthouse construction projects from Congress lacks transparency and key information. For example, the AMP process better aligns with leading practices for identifying real property needs by establishing a comprehensive, nationwide 328-factor analysis of every courthouse, whereas the previous process only assessed courthouses when requested by a local judicial district. However, the AMP process does not fully align with several leading practices due to, for example, its lack of linkage to the judiciary's strategic plan. Two courthouse projects illustrate how the AMP process has changed the way the judiciary evaluates its need for new courthouses. Specifically, two projects listed on a previous 5-year plan (covering fiscal years 2012 through 2016) were re-evaluated under AMP—San Jose, California, and Greenbelt, Maryland. Both had ranked among the top 15 most urgent projects nationwide under the previous capital-planning process, and as such, the judiciary prioritized them for new construction in 2010. However, after the judiciary evaluated the San Jose and Greenbelt projects under the AMP process, their nationwide rankings fell to 117 and 139, respectively. Judiciary officials explained that this drop was largely because of the completion of additional AMP assessments, coupled with reduced space needs in both locations because of

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courtroom-sharing.<sup>4</sup> Following the change in rankings, GSA and the judiciary determined that repair and alteration projects that reconfigure existing space in these two locations could alternatively address the judiciary's needs. The judiciary added that its decision saved taxpayers money. As a result, at the request of the judiciary, the Judicial Conference of the United States removed the two projects from the 5-year plan.

However, the judiciary's current 5-year plan—the end product of its capital-planning process—does not align with leading practices for a long-term capital plan in several ways and, as a result, lacks transparency and key funding information. Specifically, judiciary's one-page 5-year plan, as shown in figure 1, does not provide a summary of why each project is more urgent than others, information on complete cost estimates, and alternatives to new construction the judiciary considered. Although the 5-year plan lists about \$1.1 billion in estimated costs, which are the funds described as needed for that specific 5-year period, these costs only include part of the project phases. The estimated cost of all project phases—site acquisition, building design, and construction—comes to \$1.6 billion in 2013 dollars.<sup>5</sup> In addition, while no longer included in the 5-year plan, the judiciary estimated that it would need to pay GSA \$87 million annually in rent, or \$1.6 billion over the next 20 years,<sup>6</sup> to occupy these courthouses if constructed. Although a \$3.2-billion combined project cost and rent estimate provides a more complete presentation of the project costs, that estimate could change based on GSA's redesign of projects because of changes in the judiciary's needs. In addition, the \$3.2-billion estimate does not include life-cycle costs, such as furniture and GSA disposal of existing facilities, which would also have to be included for the cost estimates of life-cycle costs<sup>7</sup> are necessary for accurate and informed capital planning.

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<sup>4</sup>The judiciary's courtroom-sharing policies for senior district, magistrate, and bankruptcy judges allow it to reduce the scope of its courthouse projects.

<sup>5</sup>Inflated to current year based upon averages of monthly indexes from U.S. Department of Labor, Bureau of Labor Statistics.

<sup>6</sup>GSA charges judiciary rent based upon the 20-year return on investment of the cost of courthouse construction. Our analysis of rent is based on OMB's published discount rate. OMB, *2013 Discount Rates for OMB Circular No. A-94*, Memorandum M-13-04 (Washington, D. C.: Jan. 24, 2013).

<sup>7</sup>OMB's *Capital Programming Guide* defines the cost of a capital asset as its full life-cycle cost, including all direct and indirect initial costs for planning, procurement, operations, maintenance, and disposal.

**Figure 1: Judiciary's 5-year Courthouse Project Plan for Fiscal Years 2014 to 2018, as of September 12, 2012**

**Five-Year Courthouse Project Plan for FYs 2014-2018**  
**As Approved by the Judicial Conference of the United States**  
 September 11, 2012  
 (estimated dollars in millions)

FY 2014			Cost	Score
1	Mobile, AL*	Addl. C	\$54.9	59.8
2	Nashville, TN	Addl. S&D / C	\$144.0	67.3
3	Savannah, GA	Addl. C	\$95.5	61.3
4	Norfolk, VA	Addl S&D	\$12.0	57.4
			<b>\$306.4</b>	

FY 2015			Cost	Score
1	San Antonio, TX	Addl. S&D / C	\$117.4	61.3
2	Charlotte, NC	C	\$165.7	58.5
3	Greenville, SC	C	\$78.8	58.1
4	Harrisburg, PA	C	\$118.6	56.8
			<b>\$480.5</b>	

FY 2016			Cost	Score
1	Norfolk, VA	C	\$104.7	57.4
2	Anniston, AL	Addl. D / C	\$41.0	57.1
3	Toledo, OH	C	\$109.3	54.4
			<b>\$255.0</b>	

FY 2017			Cost	Score
1	Chattanooga, TN	S&D	\$21.5	37.3
2	Des Moines, IA	S&D	\$43.0	35.3
			<b>\$64.5</b>	

FY 2018			Cost	Score
			\$0.0	

*S = Site; D = Design; C = Construction; Addl. = Additional*  
 All cost estimates subject to final verification with GSA.

\* Congress provided \$50.0 out of \$104.9 million needed for Mobile, AL in December 2009

Source: Federal Judiciary.

Note: The higher the "score," the greater the space need urgency.

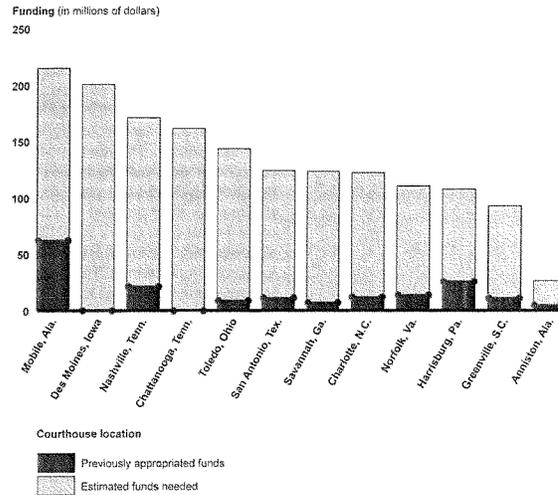
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Since fiscal year 1995, Congress has appropriated about \$177 million of the estimated \$1.6 billion needed for 10 of the 12 projects on the 5-year plan, mostly for site acquisition and designs (see fig. 2). None of the projects has begun construction, and only the Mobile project has received any construction funding. According to GSA officials, the agency has not received funding for the design of two projects (Chattanooga and Des Moines). Of the remaining 10 projects that have design funding, one is in the design process and nine are on hold. According to GSA officials, some of the projects on hold must be re-designed to accommodate policy and other requirements relating to, for example, changes such as courtroom-sharing and energy management.<sup>8</sup> For example, the design of the Savannah courthouse project was completed in 1998 and now needs extensive re-design to accommodate changes mandated by policy shifts, including improved security and a reduced number of courtrooms needed. GSA officials said that only the design of the Nashville project—though oversized by one floor—is likely to remain largely intact because it would be more cost-effective to rent the additional space to other tenants than to completely re-design the project.

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<sup>8</sup>See, e.g., Exec. Order No. 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, 72 Fed. Reg. 3919 (Jan. 26, 2007) (Executive Order 13423 was codified into law by section 746 of the Omnibus Appropriations Act, 2009 (Pub. L. No. 111-8, 123 Stat. 524, 693)); Exec. Order No. 13514, *Federal Leadership In Environmental, Energy, and Economic Performance*, 74 Fed. Reg. 52117 (Oct. 8, 2009); and the Energy Independence and Security Act of 2007 (Pub. L. No. 110-140, 121 Stat. 1492).

**Figure 2: Funding Status of Judiciary's 5-year Plan for Courthouse Projects, 2013**



Source: GAO analysis of federal judiciary and GSA data.

**Most Courthouse Projects Were Not Evaluated under AMP Process and Do Not Meet AMP Criterion for New Construction**

The judiciary has not applied the AMP process to 10 of the 12 construction projects on the current 5-year plan dated September 2012. These 10 projects were evaluated under the judiciary's prior capital-planning process and approved based on their urgency levels as determined under that process. Judiciary officials said that they did not want to delay the projects or force them to undergo a second capital-planning process review because the judiciary had already approved the projects. Only 2 projects on the current 5-year plan were assessed under the AMP process—Chattanooga, Tennessee, and Des Moines, Iowa. Judiciary officials said these projects were added to the 5-year plan in September 2010 because they had the highest priority rankings of the projects that had undergone an AMP review at that time. Judiciary

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officials explained that these projects also had GSA feasibility studies that recommended new construction. However, the Chattanooga and Des Moines projects have not retained their top rankings as the judiciary has continued to apply the AMP process to additional courthouses. Specifically, judiciary documents show that more than a dozen other projects not included on the current 5-year plan now rank above the Chattanooga and Des Moines projects, six of which recommend new construction. For example, we visited the federal courthouse in Macon, Georgia, which now ranks higher than either the Chattanooga or Des Moines projects. The Macon courthouse suffers from numerous operational and security issues typical of historic courthouses, but it is not included on the 5-year plan. As we previously noted, the judiciary also applied the AMP process to 2 other projects that were included on an older 5-year plan (2012 to 2016)—San Jose and Greenbelt—and subsequently removed them after the projects received substantially lower priority rankings. The change in the rankings of the 4 projects calls into question the extent to which the projects remaining on the 5-year plan represent the judiciary's most urgent projects and whether proceeding with these projects while hundreds of AMP reviews remain to be done represents the most fiscally responsible path.

We recognize that conducting AMP reviews of the 10 projects on the 5-year plan would involve additional costs; however, not conducting AMP reviews on these projects could involve spending \$3.2 billion over the next 20 years on courthouses that may not be the most urgent projects. While the AMP process only partially aligns with leading practices in capital-planning, it is a significant improvement over the capital-planning process the judiciary used to choose 10 of the 12 projects on the 5-year plan.

We found that 10 of the 12 projects the judiciary recommends on the current 5-year plan do not qualify under the AMP process criterion of requiring two or more additional courtrooms to qualify for new construction. The judiciary's previous capital-planning process for new courthouse projects had no minimum additional courtroom requirement. In contrast, the AMP process stipulates that a new courthouse is justified when an existing courthouse has a deficit of two or more courtrooms, based on the number of judges located there after applying courtroom-

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sharing policies.<sup>9</sup> The judiciary bases its estimates for the number of courtrooms needed on the number of existing judges and the projected number of new judges it will have in 15 years.<sup>10</sup> We found that 10 of 12 cities with projects on the 5-year plan currently have enough courtrooms in existing courthouses in those cities based on the judiciary's standards, and 3 of those cities have more courtrooms than needed. Only 5 of the 12 projects on the 5-year plan currently need additional courtrooms, and of those, only the Charlotte and Greenville projects would qualify under the AMP criterion because both need three additional courtrooms.

We visited two courthouses on the current 5-year plan that were selected as new construction projects under the prior capital-planning process that do not qualify under the AMP courtroom shortage criterion—Savannah and Anniston that were built in 1899 and 1906, respectively. These historic courthouses qualified for new construction under the previous process because of space needs and security and operational deficiencies because of their age, condition and building configuration. According to judiciary and GSA officials, neither courthouse meets current standards for (1) the secure circulation of prisoners, the public, and courthouse staff and (2) the adjacency of courtrooms and judge's chambers. Nevertheless, neither of these courthouses would qualify for new construction under the AMP criterion as both have a sufficient number of existing courtrooms for all the judges.<sup>11</sup>

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<sup>9</sup>We did not assess if the shortage of courtrooms alone is the most appropriate criterion for requesting new construction from GSA, but the establishment of a clear criterion adds an element of transparency that was lacking in the judiciary's previous capital-planning process.

<sup>10</sup>GAO-10-417. We previously found that the judiciary has overestimated the number of judges it would have after 10 years. However, the judiciary's estimate of the number of future judges for the current 5-year plan projects does not affect the number of courtrooms needed for those projects.

<sup>11</sup>According to GSA officials, regardless of whether a project is on the 5-year plan, GSA is responsible for ensuring that courthouses are adequately maintained.

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**Judiciary Needs to  
Take Actions to Better  
Align AMP Process  
with Leading  
Practices and  
Evaluate 5-Year Plan  
Projects**

In the report that we are releasing today, we are making several recommendations to improve the judiciary's capital-planning process, enhance the transparency of that process, and allow for more informed decision making related to the federal judiciary's real property priorities. We are recommending that the Director of the Administrative Office of the U.S. Courts (AOUSC), on behalf of the Judicial Conference of the United States, take the following actions:

- Better align the AMP process with leading practices for capital-planning. This should include linking the AMP process to the judiciary's strategic plan and developing and sharing with decision makers a long-term capital investment plan. In the meantime, future 5-year plans should provide comprehensive information on new courthouse projects, including:
  - a summary of why each project qualifies for new construction and is more urgent than other projects, including information about how the AMP process and other judiciary criteria for new courthouse construction were applied to the project;
  - complete cost estimates of each project; and
  - the alternatives to a new project that were considered, including courtroom-sharing, and why alternatives were deemed insufficient.
- Impose a moratorium on projects on the current 5-year plan until AMP evaluations are completed for them and then request feasibility studies for courthouse projects with the highest urgency scores that qualify for new construction under the AMP process.

AOUSC agreed with our recommendation to link the AMP process to the judiciary's strategic plan, but cited concerns that additional information would duplicate information that GSA already provides Congress. While we agree that the judiciary already provides some information on its recommended projects and funding estimates to stakeholders in the form of the 5-year plan, implementing our recommendation would better align that information with leading practices by making it more complete and transparent. AOUSC disagreed with our recommendation for a moratorium on all projects currently on the 5-year plan because completing AMP evaluations for those projects would unnecessarily delay the projects and exacerbate existing security and structural issues with the existing courthouses. We recognize that the AMP process represents progress by the judiciary in better aligning its capital-planning process

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with leading practices. As a result, we believe that it is imperative for the judiciary to complete AMP evaluations before proceeding with any 5-year plan projects.

Chairman Bill Shuster, Ranking Member Nick J. Rahall, II, and Members of the Committee, this concludes my prepared statement. I would be happy to answer any questions that you may have at this time.

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### Contacts and Acknowledgments

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**JUDICIAL CONFERENCE OF THE UNITED STATES**

**STATEMENT OF**

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



**BEFORE**

**THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**“GAO REVIEW: ARE ADDITIONAL FEDERAL COURTHOUSES  
JUSTIFIED?”**

**APRIL 17, 2013**

*(Includes corrections made on May 22, 2013)*

Good morning, Mr. Chairman and members of the Committee. 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. I appreciate the opportunity to appear before the Committee today to discuss the April 2013 Government Accountability Office (GAO) report on the Judiciary's capital planning process. My comments will address two points. First, I will summarize the process by which the Judiciary manages its courthouse construction program in coordination with the General Services Administration (GSA). Second, I will try to convey to you how wasteful, unfair, and dangerous the implementation of one of the GAO's suggestions would be to the districts that currently have a courthouse construction project on the Judiciary's *Five-Year Courthouse Construction Plan (Five-Year Plan)*.

Before addressing these points, however, I want to extend the Judiciary's appreciation to this Committee for the courthouses that have been authorized and built over the years, including the courthouse in Springfield, where I work. These buildings are examples of secure, dignified, and efficient facilities that allow the Judiciary to perform its mission for the people of this country: the administration of justice in a safe and well-functioning physical environment.

As you know, much has changed in the way the Judiciary plans for space since you were Chairman of the Subcommittee on Economic Development, Public Buildings, and Emergency Management during the 109<sup>th</sup> Congress. In pursuit of its goal to reduce courthouse costs, the Judiciary implemented your suggestion that courtroom-sharing policies be adopted for senior district judges, magistrate judges, and bankruptcy judges. Another important change is the adoption of a GAO suggestion contained in its 2010 report *FEDERAL COURTHOUSE CONSTRUCTION: Better Planning, Oversight, and Courtroom Sharing Needed to Address*

*Future Costs*, that we not include in our courthouse planning space for projected new judgeships that have not actually been approved by the Judicial Conference of the United States. These changes have already resulted in a reduction in the number of courtrooms being designed in projects on the *Five-Year Plan*.

**The Judiciary's Courthouse Planning Process**

The Judiciary was one of the first entities in government to establish a systematic and objective approach to identify and prioritize space and facilities needs. We have continued to improve and refine this process with an openness to suggestions and recommendations made by outside entities, including those made by this committee, those made by the GAO, and those contained in guidance that embodies applicable elements of leading industry practice, including OMB Circular No. A-11 (2011) titled *CAPITAL PROGRAMMING GUIDE: Supplement to Office of Management and Budget Circular A-11: Planning, Budgeting, and Acquisition of Capital Assets*.

In 1988, the Judicial Conference of the United States (JCUS) directed each of the 94 federal district courts to develop a long-range facilities plan to document space needs within each district. The Space and Facilities Division of the Administrative Office of the U.S. Courts (AOUSC) supported the districts in these planning efforts. The original long-range facilities planning program developed from this directive. The mission of the program was to assess the short- and long-term housing needs of each court. This assessment was performed by evaluating space shortages, security deficiencies, general facility condition, and future space needs for each court unit. These assessments and projections were published by each district in the form of a long-range facilities plan.

The Judiciary's long-range facilities planning process progressed through three distinct phases as it evolved into the current Asset Management Planning (AMP) Process. This evolution was based on the need for cost-containment in the Judiciary's space planning, and in part on recommendations made by the GAO. The first phase began in 1988 and lasted through 1995. During this phase, on-site workshops were conducted in each of the 94 federal district courts. The workshops were facilitated by AOUSC personnel and consultants under the direction of the district clerk of court. This resulted in a completed long-range facilities plan for each district.

The second phase extended from 1995 to 2001, during which time, the original long-range facilities plans were updated. By incorporating suggested changes made by GAO to the judiciary's long-range facilities planning process, this phase employed more rigorous statistical methods to analyze the growth trends presented by each court. Typically, planning workbooks containing court-related background and personnel and caseload statistics were sent to a district, feedback was provided to the AOUSC and discussed with the court, and an updated long-range facilities plan was produced for the court's final approval.

Beginning in FY 2001, the long-range planning process evolved into a third phase. This phase was designed to capitalize on the strengths of the prior phases: the on-site visits, the team approach, and the detailed facility assessments from the first phase, and the rigorous analytical approach from the second phase. The primary difference between the second and third phases was that the plans not only focused on identifying major new repair and alteration projects, but they also considered whether or not there was a need for a potential new courthouse construction project.

**The Judiciary's Planning Process 2006 to Present**

The third phase of the planning process described above was halted in 2004 when the JCUS imposed a moratorium on all new space projects due to federal budget constraints. Between 2004 and 2006, the current AMP Process was developed, along with its formalized planning guidelines called the *AMP Business Rules*, which explored various housing solutions in a location, including building a new courthouse or renovation of an existing building. The process included: 1) the Facility Benefits Assessment (FBA) with 328 factors to measure a court's operational needs; 2) the FBA scoring methodology; and 3) the Urgency Evaluation rankings, updated annually and identifying space needs sequenced by degree of urgency. The AMP Process, *AMP Business Rules*, FBA factors and weights, and Urgency Evaluation methodology were all approved by the JCUS in 2008, and the first plans utilizing the new process were begun that same year.

The two processes – AMP and the earlier long-range planning approach – are virtually identical in substance and end result. The process subsequent to completion of a long-range facilities plan is also very similar: the JCUS requests that the GSA complete a feasibility study to further identify, analyze, and provide cost-estimates for options; the feasibility study concludes with a project recommendation; and, the JCUS must approve the feasibility study and placement of the resulting project on the *Five-Year Plan*.

The absence of any essential difference between the two planning protocols strongly supports the position of the JCUS that the current *Five-Year Plan* requires no re-consideration. Indeed, re-analysis of projects already justified through the long-range planning approach, by a time consuming overlay of the very similar AMP Process, would be a waste of taxpayer funds

and generate further delays for districts awaiting crucial new courthouse projects. The *Five-Year Plan* should remain in place, with new qualifying projects added to it as GSA Feasibility Studies are funded, completed, and approved by the JCUS.

**Comparison of Outcomes for Projects Assessed Under Both Processes**

The table at Attachment I provides a comparison of the two processes and their key elements. It clearly shows that both are comprehensive and objective in their approach. Furthermore, the differences between the two are insignificant in terms of outcomes related to identification of needs.

To date, all U.S. district courts have been assessed under either the current AMP Process or the previous long-range planning process, including districts with projects on the current *Five-Year Plan*. Four of the 12 projects<sup>1</sup> on the current *Five-Year Plan* have been assessed using both the AMP and the previous process. I will now talk about four specific examples where project locations were assessed under both the previous long-range planning process and the current AMP Process with similar results.

By way of example, two projects – Chattanooga, Tennessee and Des Moines, Iowa – were placed on the *Five-Year Plan* by the JCUS as a result of assessments completed using the current AMP Process. They were also previously assessed using the earlier process. When they were recommended for completion of a GSA feasibility study, they were respectively ranked Number 1 and Number 3 among all locations on the Urgency Evaluation list with an AMP-recommended

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<sup>1</sup> The 12 projects on the current *Five-Year Plan* are: Mobile, AL; Nashville, TN; Savannah, GA; San Antonio, TX; Charlotte, NC; Greenville, SC; Harrisburg, PA; Norfolk, VA; Anniston, AL; Toledo, OH; Chattanooga, TN; and, Des Moines, IA. The current *Five-Year Plan* covers only four years; due to budget constraints, no new projects have been added since 2010.

housing strategy involving new construction.<sup>2</sup>

When Chattanooga was assessed using the older scoring methodology its score was 73.9. When Des Moines was originally assessed, its score was 58.5. In looking at the current *Five-Year Plan*, projects have scores that range from 54.4 on the low end, to 67.3 on the high end. Des Moines' original score of 58.5 is well within that range and Chattanooga's score actually exceeds it. The bottom line is this – under either scoring process, both Des Moines and Chattanooga qualify for placement on the *Five-Year Plan*.

Two more test examples are found among the other ten projects placed on the plan by the JCUS based on assessments performed using the previous planning process. The two locations – San Antonio, Texas (Western District of Texas), and Anniston, Alabama (the Northern District of Alabama) – have also been studied as part of new long-range facilities plans developed for their district using the AMP Process. Of particular significance is that even today – 15 years after its original placement on the *Five-Year Plan* – the San Antonio project ranks Number 2 among all projects on the current Urgency Evaluation list with an AMP-recommended housing strategy involving new construction. Anniston, Alabama, which has been on the *Five-Year Plan* for 14 years based on the prior process, ranks Number 5 on the current Urgency Evaluation list.

The four examples above demonstrate that the two scoring methodologies produce substantially identical assessments of space need urgency. The outcomes of this comparison for courthouses located in Des Moines, Chattanooga, San Antonio, and Anniston all conclusively

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<sup>2</sup> Number 2 was Greenbelt, MD, which was already on the *Five-Year Plan*; but has since been removed because the court's space needs changed and another tenant moved from the building, allowing reconfiguration of the existing structure and negating the need for new construction.

demonstrate the absence of any need to engage in further time-consuming, expensive urgency assessments for courthouse projects currently on the *Five-Year Plan*.

**The Roles of the Judiciary and the GSA**

It is troubling that throughout the course of this engagement, the GAO has failed to understand the purpose of the Judiciary's *Five-Year Plan*, confusing it with what is known among facilities planning professionals as a long-term capital investment plan. The result is a GAO draft report recommendation that appears to suggest that the Judiciary should develop its own long-term capital investment plan, essentially replicating work already completed by the GSA. Furthermore, in multiple instances the GAO report erroneously states that the Judiciary uses the *Five-Year Plan* as a means to "document" and "transmit" courthouse construction project requests to the Congress, implying that the Judiciary utilizes the *Five-Year Plan* as a long-term capital investment plan, and that as a result, the process lacks transparency and omits key information. The GAO report appears to posit that the only information Congress receives prior to making a courthouse funding decision is the Judicial Conference's one-page *Five-Year Plan*. This assertion is unfounded. The GSA provides Congress with detailed justifications for all courthouse projects for which appropriation and authorization is requested. Indeed, the \$188.29 million already provided by Congress for projects on the current *Five-Year Plan* was thoroughly justified by extensive, detailed submissions to the pertinent Congressional committees and subcommittees by the appropriate Executive Branch agency – the GSA.

It is the responsibility of the GSA to seek authorization and funding from Congress for federal construction projects. In so doing, the GSA develops a comprehensive package for use by the Office of Management and Budget (OMB) and the Senate Appropriations

Committee, Subcommittee on Financial Services and General Government; the Senate Committee on Environment and Public Works, Subcommittee on Transportation and Infrastructure; the House Appropriations Committee, Subcommittee on Financial Services and General Government; and the House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings, and Emergency Management. Project-related analysis and materials that the GSA provides to decision-makers on behalf of and in coordination with the Judiciary include: 1) a detailed project feasibility study that assesses existing facility conditions and present and future space needs, identifies the range of alternatives to meet those needs, evaluates the costs of each alternative, and recommends a housing solution; 2) a Program Development Study (PDS) which updates and refines the feasibility study, and includes a more detailed development of alternatives and costs; 3) a Prospectus for site acquisition, design, and construction that contains the full project budget, authorization requested, prior authority and funding, project schedule, project scope, and project justification; and 4) a Congressional Justification document for a given year's appropriation request, which includes full disclosure of prior-year appropriations and additional funding required.

In sum, the GAO's recommendation appears to be that the Judiciary should expend its limited resources duplicating analyses already provided to the OMB and Congress by the GSA. If the report intends something else – if it is suggesting that there is specific information related to new courthouse construction not being provided to Congress by the GSA – then the report has failed to identify what that information is. The Judiciary, of course, stands ready as it has in the past to provide any information Congress desires to

justify courthouse projects, but it should not be required to replicate data already assembled and submitted by the GSA, or suffer criticism for declining to do so.

**A Further Moratorium on Congressionally-Approved Courthouse Projects Would be Unfair to the Communities Affected, Would Waste Taxpayer Funds, and Would Increase Risk to Court Staff and the Public.**

Of greatest concern in the draft report is the GAO's second recommendation stating that the Judiciary should impose a moratorium on projects on the current *Five-Year Plan* until AMP evaluations are completed for each of them, and then request GSA feasibility studies for courthouse projects with the highest urgency scores that qualify for new construction under the AMP Process.

In effect, this recommendation would mean that courts on the current plan that were analyzed under the planning process that preceded the AMP Process, and which Congress has supported by providing \$188.29 million in funding for site acquisition, design, and/or construction, would need to wait approximately two years at a minimum to determine if the project would again qualify for placement on the plan. Furthermore, based on current timelines, it would be approximately four more years beyond that for the GSA to complete feasibility studies (if funding for the study were available) for any new projects resulting from the updated Urgency Evaluation, and to secure the approval of the JCUS for placement on the revamped *Five-Year Plan*. GSA has not funded a feasibility study for the Judiciary since 2010. The end result could in effect be a six-year moratorium on all courthouse and annex/addition construction projects on the current plan that qualify to remain on the revamped plan, and even longer than that for any new projects because of the time it takes to secure funding for design,

site acquisition, and construction. Ten of the 12 projects have been on the *Five-Year Plan* since 1999 or earlier.

The *Five-Year Plan* document that the Judiciary sends to the GSA for consideration in its Capital Plan has in large part remained unchanged. Congress and the GSA have lauded the Judiciary's efforts to prioritize its courthouse priorities with its *Five-Year Plan*. Creating more data, completing more research, taking more time and spending more money for studies, will not alter the Judiciary's need for these projects. Alternatives have been considered, scopes have been adjusted for all projects in response to courtroom-sharing policies, and in eight cases, sites have been acquired. What has not changed is the declining condition of the courthouses, the aging building systems, the massive roof leaks, the large cost to house court components in leased space, the backlog of maintenance and repair projects, and the lack of secured circulation for prisoners, which puts the judges, their staff, and perhaps most egregious of all – the public and jurors – in harm's way.

It is disturbing that the GAO report appears to have completely ignored the security issues that exist at the courts on the *Five-Year Plan*. Courts are places where dangerous 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. We know from tragic experience that the security concerns are real, not hypothetical; the GAO team itself saw first-hand the sub-standard courthouse conditions in districts awaiting new facilities. Budget constraints have already resulted in unfortunate, but understandable, delays and the Judiciary understands this may continue. But it is unfair, and dangerous, to expect these communities to endure further delays caused by needless additional analysis and data

collection, particularly as it was already pointed out that in at least two cases (San Antonio, Texas, and Anniston, Alabama) where the courts needs were reassessed under the AMP, the projects' priorities remained among the top five overall, warranting a place on the *Five-Year Plan* under either process.

In response to the GAO report, Chief Judge Lisa Godbey Wood of the Southern District of Georgia has written a letter (see Attachment 2) voicing her court's concerns about the conclusions of the GAO report and the impact that it might have on the Savannah courthouse, which was evaluated under the previous long-range facilities planning process and is listed on the *Five-Year Courthouse Construction Plan*. The courthouse has serious structural, security, and space issues as described in Judge Wood's letter. Photographs included in the Attachment vividly substantiate the unsafe conditions and disrepair plaguing the Savannah courthouse. These deficiencies are typical of shortcomings existing in various ways in all the courthouses currently on the *Five-Year Plan*.

**The GAO's Recommendations are Based on Incorrect or Incomplete Information and Erroneous Assumptions**

The rationale the GAO used to justify its recommendations is based on incorrect data and/or incomplete information. The report incorrectly states that ten out of 12 recommended courthouse construction projects do not qualify for placement on the *Five-Year Plan*. The GAO justified this statement by referencing data in the draft report's *Table 2. Courtroom Counts, Judiciary's 5-Year Courthouse Plan*, and citing the AMP Business Rule that establishes a baseline need for two or more additional courtrooms as a prerequisite for recommending construction of new courthouse. The report further states that these conditions call into question the extent to which the projects on the *Five-Year Plan* represent the Judiciary's most urgent

projects and whether proceeding with these projects represents the most fiscally responsible path.

First, there are a number of errors in the data presented in Table 2 of the draft report. Specifically, for seven of the twelve *Five-Year Plan* projects, the report includes inflated numbers for courtrooms present in the existing courthouse. The seven locations are: Mobile, Alabama; Nashville, Tennessee; San Antonio, Texas; Chattanooga, Tennessee; Des Moines, Iowa; Toledo, Ohio and Greenville, South Carolina. This is significant because the number of existing courtrooms is one of two metrics used to calculate the number of courtrooms needed in a new courthouse.<sup>3</sup> The cause of the inflated numbers appears to be the erroneous inclusion of courtrooms currently located in leased or federally-owned space that will remain in their current location after the proposed new courthouse or courthouse annex is constructed; or, the erroneous inclusion of courtrooms that will be relocated from their existing location, (e.g., a leased building, a separate federally-owned building, or a different city) to backfill vacated space in the existing courthouse. Such courtrooms that will not be housed in the new courthouse should not be included in the existing courtroom count that is used to calculate the additional number of new courtrooms needed.

Table 2 of the GAO draft report also under-counted the additional number of courtrooms needed to meet court needs after Judicial Conference courtroom sharing policies are applied. This occurred in three cases: Chattanooga, Des Moines, and Charlotte. Specifically, in the case of Chattanooga, the report states that no additional courtrooms are needed after Judiciary courtroom sharing policies are applied, when in fact, four more courtrooms are needed. The Judiciary is unable to determine how the GAO report calculated the incorrect number that is cited in Table 2. The other two errors pertain to the project in Des Moines, where the report's data

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<sup>3</sup> The second metric, which is subtracted from the first, is the number of courtrooms needed after Judiciary courtroom sharing policies are applied – a number that per JCUS policy, excludes courtrooms that may be required in the future to house projected judgeships.

was short by three courtrooms,<sup>4</sup> and the project in Charlotte, where the GAO count was short by one courtroom.<sup>5</sup>

The issue of erroneous numbers in Table 2 was previously identified in the Judiciary's response to the GAO's "Statement of Facts." In addition, the draft report's version of Table 2 raises additional questions regarding accuracy because it is unclear as to what time period is being used to calculate the figures – a 10-year planning window, current need, or some other benchmark. If not identified and consistently applied, this issue can create disparities and inaccuracies in the data provided. As was offered at the exit conference with the GAO team, the Judiciary remains willing to meet with team members to review Table 2 line-by-line to ensure its accuracy.

Second, the AMP Business Rule requiring a space need of two or more additional courtrooms in order to be recommended for a new courthouse pertains to the strategy recommendations contained in a given district's long-range facilities plan. This guideline is not a prerequisite to placement of a project on the *Five-Year Plan*.

To further explain, before the Judicial Conference considers placement of a project on the *Five-Year Plan*, two major steps must occur. First, a District-wide long-range facilities plan must be completed and approved. This was the case under the earlier planning process and it remains the case with AMP. The next step before a new project is added to the *Five-Year Plan* is completion of a GSA feasibility study. As already mentioned, the GSA feasibility study contains a more in-depth analysis of alternatives and their cost effectiveness. If the completed GSA feasibility study recommends new construction as the most viable and cost effective solution to a court's facility needs – whether those needs are related to space shortages, building condition, security, or any combination of the three – the feasibility study's recommendation

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<sup>4</sup> Table 2 cites the need for one additional courtroom; the correct number is four.

<sup>5</sup> Table 2 cites the need for three additional courtrooms; the correct number is four.

prevails. The recommendations contained in any given long-range plan serve as a starting point for discussion and further analysis; they are not the end-all conclusion. As cases in point, there are six projects on the current *Five-Year Plan* that have a shortfall of one courtroom as opposed to two – and one that has no shortfall at all; however, even after applying courtroom sharing, it has been concluded that replacement of the existing courthouse or construction of an annex/addition is the most cost-effective way to address existing space needs, security issues, operational inefficiencies, and systemic building condition issues. The GAO draft report clearly failed to articulate this important point despite it having been included in the Judiciary’s February 4, 2012, written response to the GAO’s “Statement of Facts,” and again in the Judiciary’s April 1, 2013, agency comments on the draft report.

The report also makes other erroneous assertions previously pointed out in the Judiciary’s agency comments. One example is on page 11, where the report indicates that the Judiciary removed two projects from the *Five-Year Plan* because their rankings dropped. This is not accurate. The two referenced projects – San Jose, California, and Greenbelt, Maryland – were removed from the *Five-Year Plan* because circumstances changed and the space needs of the two courts could be alternatively addressed by reconfiguring existing space and thus saving taxpayer money. In the case of Greenbelt, additional relief was realized when in combination with courtroom sharing, space in the existing courthouse became available when another tenant – the U.S. Attorney’s Office – moved out of the building. In the case of San Jose, courtroom-sharing alone facilitated the new approach.

Similar to the comments about Greenbelt and San Jose, the GAO report’s criticism of the Judiciary’s capital planning process also misconstrues basic facts. The report suggests that the Judiciary needs to align its capital planning with practices summarized in the OMB’s *Capital Programming Guides* and the GAO’s *Executive Guide* and that it should be doing a better job with cost-estimating. This criticism, as the Judiciary has repeatedly pointed out, misses the mark, because the Judiciary does not generate its own cost estimates, but rather, it

relies properly on cost estimates supplied to it by the GSA. Further clarification of this point should hardly be needed, but to insure no confusion, the Judiciary will include in all future renditions of the *Five-Year Plan* an explicit indication that all cost estimates for courthouse construction come from the GSA.

While criticizing the Judiciary for failing to develop cost estimates that are, in fact, the responsibility of the GSA, the GAO report compounds confusion by ignoring detailed planning documents the Judiciary has actually worked very hard to develop. The GAO team chose not to consider either the long-range facilities plans developed prior to 2004, nor the long-range plans generated by the AMP Process after 2008, despite the Judiciary's having brought these documents to the team's attention at the January 29, 2013, exit briefing. A review of these materials would have satisfied the GAO that planning documentation it has claimed is missing from the process in fact exists in abundance.

Other criticisms offered by the GAO are also anchored on misconceptions about the role of the GSA and ignorance of the Judiciary's basic planning documents. First, the claim that the AMP Process does not align snugly with "leading capital planning practices" lacks credence, since the GAO team appears never to have reviewed the Judiciary's long-range plans and continues to ascribe to the Judiciary responsibility for cost estimating that belongs to the GSA. Similarly, the contention that the Judiciary fails to evaluate alternatives to courthouse construction ignores the GSA feasibility Studies and the AMP Process, both of which examine lower-cost options scrupulously and at length.

The estimated project costs and estimated annual rent costs in *Table 1* on page 15 of the draft report are not only all incorrect (either too high or too low), they have also been further inflated from what was contained in the "Statement of Facts" without explanation. Corrected amounts were previously provided to the GAO in our February 2013 response to the "Statement of Facts" document. For example, the GAO originally reported that the estimated cost for the Mobile, Alabama, project is \$215.1 million, then the amount was escalated to \$218.0 million in

the draft report. At the time, GSA's cost estimate was \$131.7 million. A second example is the Savannah, Georgia, project, which in its "Statement of Facts," the GAO said the estimated project cost is \$110.4 million, and in the draft report, a figure of \$111.9 million was published. GSA's cost estimate is \$105.0 million. In other cases, the GAO's published cost estimates were much lower than the GSA's cost estimates. This is the situation with the Anniston, Alabama, project, which the "Statement of Facts" cited an estimated cost of \$25.5 million. The GSA's current estimate is \$45.3 million.

The project costs provided to the GAO by the Judiciary were based on information from the GSA and noted in the current *Five-Year Plan*. On March 14, 2013, the Judiciary received updated cost estimates in preparation for development of the draft *Five-Year Courthouse Construction Plan for FY's 2015-2019* to be considered by my Committee in June and the Judicial Conference in September 2013. To ensure consistency in the final report, it is suggested that the GAO put a date on its figures and tables and use only the project cost estimates provided by the GSA. The title of the table should also be corrected to state that the project cost estimates are developed by the GSA and the rent estimates are developed by the Judiciary.

#### **The 2010 GAO Report**

The GAO has criticized the Judiciary for failing to adopt two recommendations contained in the 2010 GAO report: 1) that the Judiciary establish courtroom-sharing policies; and 2) that the Judiciary retain caseload projections to improve planning. These criticisms are neither fair nor accurate. The Judiciary, it is true, strongly believes that the 2010 GAO report was badly flawed; it has expressed this belief repeatedly, vigorously, and in detail. Nevertheless, the Judiciary took the recommendations in the 2010 report seriously and made great strides to adopt them, to the extent consistent with the Judiciary's mission.

First, I will address the issue of courtroom sharing. Courtroom-sharing policies are in effect nationwide for senior district judges, magistrate judges, and most recently, bankruptcy judges. Beginning in 2008, and based on your 2005 request as the Chairman of the

Subcommittee on Economic Development, Public Buildings and Emergency Management, the Judiciary developed courtroom-sharing policies that we believe balance the Judiciary's duty to be good stewards of the taxpayers' money with our primary responsibility to provide access to justice and ensure that cases are handled in an expeditious and effective manner. The Judiciary implemented courtroom-sharing policies for senior judges (one courtroom for every two senior judges) and magistrate judges (one courtroom for every two magistrate judges in courthouses with three or more magistrate judges, plus one courtroom for magistrate judge criminal duty proceedings).

More recently, in response to the 2010 GAO report, the Judiciary implemented courtroom-sharing in bankruptcy courts and subsequently plans to determine the feasibility of sharing courtrooms by active district judges in courthouses with 10 or more active district judges. In addition, the Judiciary has removed projected judgeship space needs (courtrooms and chambers) from the project requirements that the GSA refers to when programming and designing a new courthouse.

The GAO correctly refers to current courtroom-sharing policies and their implementation within the body of the draft report; yet a statement to the contrary was made in the letter transmitting the report to the chair of the Committee on Transportation and Infrastructure, the chair and ranking member of the Subcommittee, and Representative Denham. The Judiciary requests that the letter transmitting the final report contain the corrected information.

The draft report also incorrectly states that the Judiciary has not implemented a prior GAO recommendation to retain caseload projections to improve the accuracy of its 10-year judge planning.

In fact, the Judiciary completes caseload and personnel forecasting on an annual basis. All forecasts completed since 2004 are available in an AOUSC forecasting database. In response to the GAO's concerns in 2010, we modified the forecasting

process to include additional analyses of caseload forecasts. These analyses included:

1. Calculating the absolute percent error (APE), percent error (PE), and one-year mean absolute percent error (MAPE) for each forecast versus the actual value for all caseload forecasts completed since 2004;
2. Analyzing the MAPEs to determine trends, such as identifying districts and/or caseload series that are the most difficult to forecast (i.e., the ones with large MAPEs) and identifying trends by location, region, or court size; and,
3. Completing scenario testing to include population trends as a factor influencing forecasts for bankruptcy and weighted bankruptcy filings.

Also modified in response to the GAO recommendations was the inclusion of additional analyses of the district judge, senior district judge, magistrate judge, and bankruptcy judgeship projections. These analyses include calculating the absolute percent error (APE) and percent error (PE) for each forecast versus the actual value for all caseload forecasts completed since 2004.

As a result of these analyses, the forecasts are increasing in accuracy. We intend to continue calculating and analyzing the absolute percent error (APE), percent error (PE), and one-year mean absolute percent error (MAPE) as part of the annual forecasting task to monitor and further improve forecast accuracy.

To this end, the Judiciary asserts that the report should be amended and the record corrected to reflect that the Judiciary has complied with the GAO's recommendations as set forth above.

**Conclusion**

Mr. Chairman and members of the Committee, thank you again for the opportunity to address these critical issues. If I could leave you with just three thoughts, they would be these.

First, the Judiciary is committed to providing Congress with any and all documentation or information it desires to support new courthouse construction initiatives. Our goal is complete transparency, both with regard to information and process. We recognize the Judiciary can only accomplish its goal of obtaining safe, efficient, economical facilities by working cooperatively with Congress. We are open to suggestions about how the Judiciary might do this better.

Second, the Judiciary takes very seriously its responsibility to plan for its facilities needs carefully. As my testimony has indicated, much of the criticism contained in the GAO report related to facilities planning is misdirected. On the one hand, it ignores the important role of the GSA in supplying the vast majority of data and analysis that the report says is absent from the Judiciary's planning process. On the other hand, the report fails to consider the enormous effort the Judiciary has put into developing the long-range planning and AMP processes that are objective, thorough, mindful of GAO's past criticisms, and cost conscience. I am personally proud that the Judiciary has taken the lead in developing truly objective planning criteria that insure that projects with the greatest urgency come first.

Finally, and perhaps most importantly, any delay in proceeding with the *Five-Year Plan* to require yet more expensive and time-consuming analysis – analysis that has already occurred – would be grossly unfair to the communities that have been waiting many years for desperately needed new courthouse facilities. The Judiciary does not believe that anything

would be gained by this re-processing. The Judiciary recognizes that delays have occurred due to financial constraints and that these constraints may only slowly loosen. But to add further delay for superfluous re-analysis would waste taxpayer money and work a heartbreaking injustice on communities that have already waited too long and often in unsafe conditions where judges, litigants, and the public may be at risk. When the fiscal environment permits, the Judiciary, in cooperation with Congress and the GSA, should be permitted to promptly resume construction of the projects on the *Five-Year Plan*.

**Guidelines for Long-Range Facilities Planning: Comparison of Current and Previous Processes**

	Phase 2	Phase 3	AMP Process
<b>Planning Timeframe and General Points</b>			
Housing solution developed for the period beyond the projected point of design funding	•	•	•
Workload and personnel forecasts projected out 30 years	•	•	•
AOUSC was the facilitator of the planning effort	•	•	•
Plans required chief district or chief circuit judge approval	•	•	•
Planning results compiled into <i>Five-Year Courthouse Project Plan</i>	•	•	•
<b>Workload and Personnel Forecasting</b>			
Time series analysis used to forecast court workload	•	•	•
Statistical techniques used to group districts with similar trends	•	•	•
Assumed that district and circuit judges will elect senior status upon eligibility	•	•	•
Assumed that the retirement age of a district or circuit judge is 85	•	•	•
<b>Courthouse Assessment</b>			
Architects conducted on-site physical assessment of current building conditions based on facility assessment checklist		•	•
Space data for all court components included, whether in the courthouse or in a leased facility	•	•	•

## Guidelines for Long-Range Facilities Planning: Comparison of Current and Previous Processes, cont.

Results of process identified both new capital construction and major renovation projects	•	•	•
Need for a project was identified when the courthouse could no longer house the space and operational needs of the court	•	•	•
District Court space should not be fragmented into multiple facilities in the same court city, unless by court policy	•	•	•
Bankruptcy Court space should not be fragmented into multiple facilities in the same city, unless by court policy	•	•	•
Circuit Court headquarters space should not be fragmented into multiple facilities in the same city, unless by court policy	•	•	•
<b>Courtroom and Chambers Allocation</b>			
Courtrooms and chambers allocated based on Judicial Conference policy	•	•	•
Circuit Court judges were allocated courtrooms at the headquarters location and both resident and non-resident chambers were allocated for each judge and senior judge	•	•	•
Circuit Court judges could hold court in more than one location throughout the circuit, according to court policy	•	•	•
Each roving judge was allocated a chambers at his/her resident location and a visiting chambers at his/her non-resident location	•	•	•
The need for a chambers for a senior district judge was allocated from the date of senior status eligibility until age 85, absent specific documented exceptions	•	•	•

Guidelines for Long-Range Facilities Planning: Comparison of Current and Previous Processes, cont.

<b>Trial Preparation Suite</b>			
When needed, the Federal Defender was allocated a trial preparation suite in the courthouse	•	•	•
When needed, the U.S. Attorney was allocated a trial preparation suite in the courthouse	•	•	•
<b>Housing Options</b>			
Existing space deficiencies were accounted for in the planning process using the U.S. Courts Design Guide	•	•	•
A housing statement that presented the current personnel and space was developed for each facility	•	•	•
When multiple facilities were present in the same city, each facility had an individual housing statement and all the facilities were combined into one housing statement for the city	•	•	•
Disparity between the existing space in the courthouse and in the <i>U.S. Courts' Design Guide</i> was used as justification for repair and alteration projects	•	•	•
District-wide space options were developed to address specific needs that extended beyond a single court city	•	•	•



LISA GODBEY WOOD  
CHIEF JUDGE

**United States District Court**  
SOUTHERN DISTRICT OF GEORGIA

FRANK M. SCARLETT FEDERAL BUILDING  
801 GLOUCESTER STREET, ROOM 207  
BRUNSWICK, GEORGIA 31520

March 15, 2013

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Mr. Mark Goldstein  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Greetings:

I have been asked to review the draft report titled **Federal Courthouses: Proposed Construction Projects Should Be Evaluated Under New Capital Planning Process**. I have shared this draft report with Judges Moore and Edenfield in the Savannah Courthouse. Their observations are included in this response.

First let me thank the GAO for reviewing these projects. The report highlights the serious need to address space issues and properly allocate precious federal resources.

As you are aware, the Savannah Courthouse Project has been on the 5 year plan for 21 years. Everyone who visits the current structure recognizes the safety, security and space challenges that necessitate the long needed addition to this Historic and cherished building which many consider an architectural focus point of an architecturally focused city.

The main concern of the GAO team appears to be that on the day they visited in Savannah, there were only four Judges located in the Courthouse. They counted Judges and Courtrooms and, based on that count, recommended a complete change in process. I write to make dual points. First, a snapshot count is not necessarily accurate. Second, it is most assuredly incomplete. An active district judge in Savannah, Judge Moore, will most likely take senior status in the foreseeable future. Furthermore as I write, an additional Bankruptcy Judge is

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undergoing background checks and, once completed, that Judge will join the others in the Savannah Courthouse as well. The point is, more Judges are most assuredly on the way. Second and moreover, the layout of the building and the security concerns of escorting judges in and around hostile parties present true security hazards. Indeed, the GAO team had to vacate the public hallway during the transfer of a prisoner from the public elevators to Judge Moore's courtroom. No one believes such dangerous conditions can hold.

We strongly believe that it is inappropriate to now subject the Savannah courthouse annex project to undergo an Asset Management Plan. Quite simply, we are out of space, we are already in the re-design phase, and we have replacement judges coming on board. Over \$6 million has been spent on design services, with the on-going Feasibility Study for redesign already in process. Our country is simply not in a position to waste that money.

In this regard please consider the following additional background facts not contained in the GAO report:

1. **Building Condition:** In 1989, the initial need to evaluate the courthouse was undertaken as a Long Range Facility Plan, prior to the Asset Management Plan process (AMP). It was obvious from the outset that the Savannah Courthouse had not been maintained over the years. Even today, GSA outlines in a recent memo that the courthouse has had several years of neglect in maintenance requirements in anticipation of a new courthouse annex and a renovation of the present facility. The same memo states that there is an "eminent danger" that exterior design elements such as corbels and balconies may fall off the building. Structural cracks are visible in several parts of the building. This is all part of a repair and alteration future prospectus of over \$4 million, and will include many more additional scope items once uncovered by the current contractor's investigations. The GAO was shown the effects of the deferred maintenance and structural repairs needed while touring the Savannah Courthouse. We were disappointed these observations were not mentioned within the report. Attached please find a few photos to illustrate these issues.

2. **Design Guide Standards and Building Codes:** This building was built in 1899. Over the years, building standards have changed to accommodate the business of the court. The U. S. Court Design Guide establishes building requirements for courtrooms and office space. In most cases we are materially deficient in this area, including the need for two additional fire egress stairways within multiple dead-ended public corridors. Three of the existing four courtrooms do not meet usable square footage or ceiling height requirements. Courtrooms should have space for witness rooms and holding areas for prisoners, which all Savannah Courtrooms currently lack. There is a need to segregate witness and prisoners for many reasons and there is no space to accommodate this need. Office space remains as designed over a century ago, without the same code compliance and standards which should be applied for the maximum efficiency of running court business. Again, these observations were made during the GAO tour of the building but were not mentioned within the report.

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3. Security: The need for better marshal, judicial, juror and public access and movement within the building is critical. There is no secure sally port and no restricted elevator. The public, jurors, judges and prisoners all share the same hallways. There are no courtroom holding cells adjacent to the three district courtrooms. The U.S. Marshal Service recognizes this danger and has characterized it as "a disaster waiting to happen." This situation was explained to the members of the GAO tour, but the report also failed to mention this observation.

4. Space Requirements: The Court has exhausted all the usable square feet within the existing courthouse. The basement and attic, which are not suitable for anything other than storage and mechanical space, are charged at premium rental rates and are currently housing some of the court staff. This attic space is not ADA compliant. GSA has been tasked with accommodating not just the ten year space requirements of the court, but those for thirty years, as well. Only a new courthouse annex will address this need.

5. Money previously spent: Congress has authorized and appropriated \$10.5 million for site and design for a new courthouse annex. To get a building redesigned and completed within a city cited by The United Nations as a "World Heritage Site" is very costly and requires many approvals including two historical review committees. The selected site is the only viable alternative for an annex, with Congress authorizing the demolition of the current federal buildings upon the site. These two buildings, toured by the GAO, were noted by them to be inefficient and badly constructed in 1983. Nearly all federal offices that leased the two federal buildings have been moved, including a congressman who years ago left for better commercial leased space. In fact, one of the buildings was so ill conceived that nothing remains in it.

The Robert A.M. Stern designed courthouse annex has undergone serious scrutiny and has met all the approvals, both locally and with the GSA Public Buildings Service. Currently, the GSA and the courts are reviewing these plans and modifying them to meet new standards including courtroom sharing along with reduced space requirements, which have been revised, twice.

In conclusion, the Asset Management Planning process (AMP) was not in place, nor was courtroom sharing, when this project was approved by Congress for funding. The AMP process defines both current and future housing assumptions for the court, district wide. The AMP process identifies housing options, not new construction, for district locations that have either grown past the current usable square footage of the present facility, or have approved judgeships and new staffing formulas. Since the funding for the Savannah courthouse annex, there have been newly appointed judgeships for replacement judges in Savannah, Brunswick and Augusta. However, due to existing constraints of the present Savannah courthouse, only Brunswick and Augusta could accommodate these replacement judgeships, leaving Savannah without a replacement judge's chambers and courtroom. Again, courtroom sharing for senior judges, post the 1999 design of the annex, will provide a senior courtroom.

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As a court, we have done, and will continue to do, our part as good stewards of our space. Ultimately this decision needs to be based on carrying out of our mission to the public and keeping a safe environment so that all parties can interact in the proper fashion. Judges, jurors and the public need to be separated from the dangers of prisoner movement. This is impossible under the current conditions.

After over one hundred years, this court is in need of a new, secure, modern facility, and the courthouse annex is our only hope. Anything done to change the rules for evaluating this need will, at this point, be wasteful, dangerous, and unfair. Thank you for considering our plight.

With kindest regards, I am

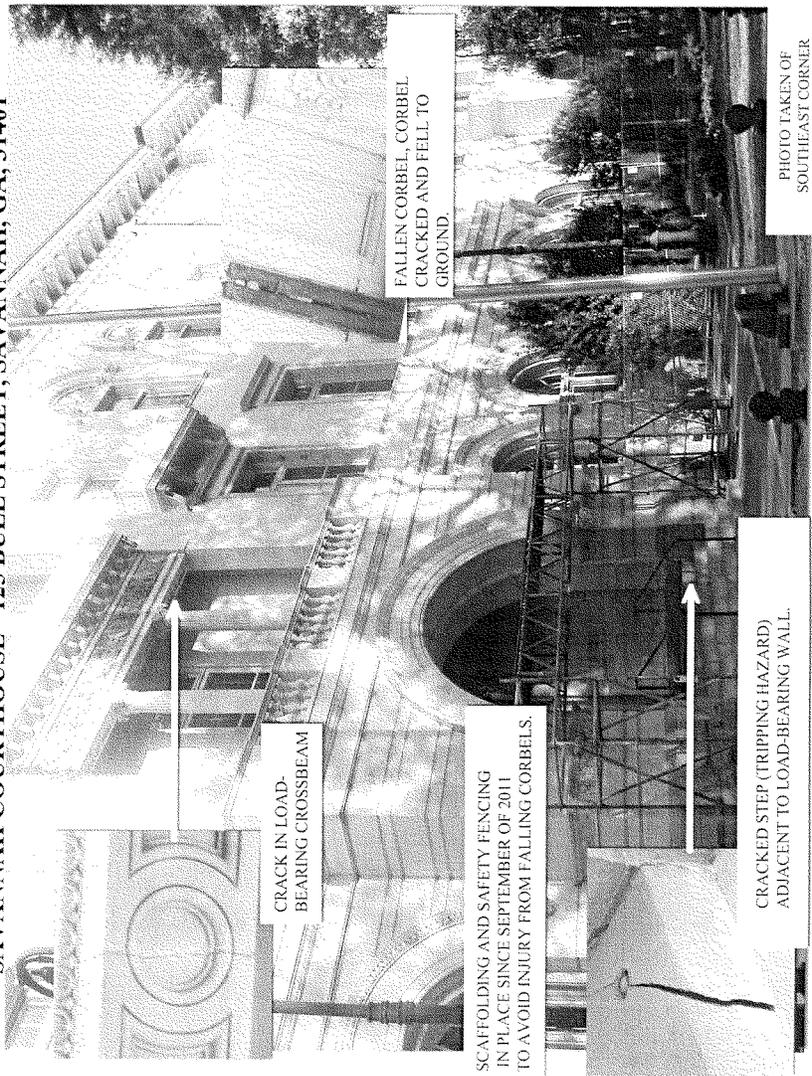
Sincerely,



Lisa Godbey Wood, Chief Judge  
United States District Court

cc: Honorable William T. Moore, Jr.  
Honorable B. Avant Edenfield  
John J. Myers

SAVANNAH COURTHOUSE - 125 BULL STREET, SAVANNAH, GA, 31401



CRACK IN LOAD-BEARING CROSSBEAM

SCAFFOLDING AND SAFETY FENCING IN PLACE SINCE SEPTEMBER OF 2011 TO AVOID INJURY FROM FALLING CORBELS.

FALLEN CORBEL, CORBEL CRACKED AND FELL TO GROUND.

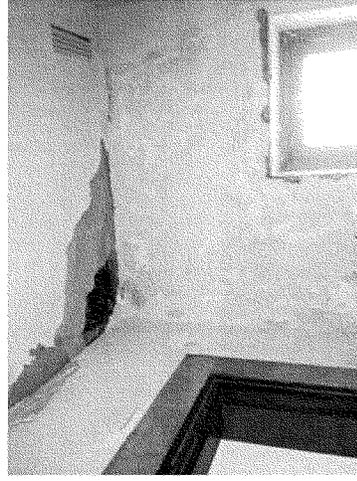
CRACKED STEP (TRIPPING HAZARD) ADJACENT TO LOAD-BEARING WALL.

PHOTO TAKEN OF SOUTHEAST CORNER

SAVANNAH COURTHOUSE, 125 BULL STREET, SAVANNAH, GA, 31401  
INTERIOR



Major floor crack which runs perpendicular to the support wall of the Bell Tower. The Bell Tower also has cracks.



Third floor bathroom, southside of building. Photo shows intrusive water damage.



Fourth floor in Computer Department. Photo shows stress crack in plaster around door frame.



U.S. General Services  
Administration

Dorothy Robyn  
Commissioner  
Public Buildings Service

Committee on Transportation and Infrastructure  
"GAO Review: Are Additional Federal Courthouses Justified?"  
April 17, 2013

*Introduction*

Good morning Chairman Shuster, Ranking Member Rahall, Chairman Barletta, Ranking Member Norton, and members of the Committee. I am Dorothy Robyn, Commissioner of GSA's Public Buildings Service. I appreciate being invited here today to discuss GSA's investment in U.S. Courthouses.

Under new leadership, GSA has refocused on its mission of delivering the best value in real estate, acquisition, and technology services to government and the American people.

In the real estate area, GSA faces major challenges. Our inventory's average age is 47 years—close to the 50-year life expectancy of most commercial office buildings. Yet, unlike a private building owner who can borrow money for renovation or new construction, we are limited to the rents our customer agencies pay into the Federal Buildings Fund. In recent years, moreover, we have not had access to all of the annual revenues collected by the Fund, limiting resources available to meet customer needs. As a result, we have increasingly relied on leased space to house our federal colleagues, even though leasing is often more expensive than ownership.

GSA is taking a threefold approach to these challenges. First, we are working with agencies to reduce their space requirements. We do so by helping our partners adopt new workspace arrangements. This itself is a multipronged task: For example, we ensure that redesigning a floor plate for greater density also improves user productivity and satisfaction; while assisting and agency to develop a telework strategy to accompany such a physical reconfiguration. In instances where the consolidation results in a vacant building, GSA prepares to dispose excess property as these and similar plans come to fruition. Second, we are reducing our buildings' operating costs. Investments here include "smart" building technology and energy-efficiency retrofits. Third, GSA is leveraging private capital to deliver better and more efficient space to our partner federal agencies through the use of our exchange authority. One example is our proposal to consider an exchange of the FBI's aging J. Edgar Hoover Building for a new, consolidated headquarters within the National Capital Region.

My overview of Federal courthouses will focus primarily on the first of these initiatives: controlling costs through space reduction.

*Federal Courts*

U.S. courthouses are often prominent historic landmarks. They represent the stability and dignity of the Federal government. GSA works with the United States Courts to create and maintain facilities that expedite the dispensation of justice in a secure manner. Like GSA, the Judiciary also is keenly aware of these buildings' importance as symbols and community anchors, and our partnership takes those civic values into deep consideration.

Since Congress began funding a nationwide courthouse construction program nearly 20 years ago, GSA has completed construction of 79 new courthouses or annexes across the country. Federal courthouses today comprise nearly a quarter of GSA's federally owned portfolio.

*Constructing New Courthouses*

In selecting courthouse construction projects, the Judiciary identifies its most pressing space, security, and other needs, and since 1996, the Judiciary has used long-range facilities planning to prioritize its proposed new construction. GSA incorporates the finalized 5-year plan into our Capital Investment and Leasing Program. For the projects that Congress approves and appropriates, we pursue design solutions that maximize the positive civic impact of budgeted resources.

While the Judiciary's planning process has evolved over the last two decades, GSA and the court family have continually refined the selection, management and oversight of projects. Take the Judiciary's recent policy of requiring judges to share courtrooms. The Judiciary has also revised estimates of future judgeships.

For its part, GSA has developed controls that ensure our courthouses are constructed within budget. By incorporating BIM, or Building Information Modeling, we can detail the physical and functional characteristics of a facility so we can continually monitor its size and efficiency from the inception of design. Toward that same end, we previously committed to notifying this committee and our Senate authorizers in those rare instances when a project risks exceeding square footage in an approved prospectus by 10 percent or more.

*The Courts' New 5-Year Plan*

The U.S. Courts recently incorporated a number of best practices for capital planning into their 5-year plan. Although GSA has not sought or received appropriations for any new courthouses

since 2010, in the meantime we have worked with the Judiciary to right-size proposed projects according to the Administration's effort to reduce the federal footprint.

In San Jose, California, GSA worked with the Judiciary to reassess new construction in light of courtroom sharing. As a result, the Judiciary was able to remove San Jose from the 5-year plan. GSA is developing a revised prospectus to pursue select upgrades to the existing Robert F. Peckham Federal Building rather than all-new construction.

Likewise, GSA worked with the U.S. Courts to rethink the proposed annex at the U.S. courthouse in Greenbelt, Maryland. Congress originally approved and appropriated \$10 million for this 263,000-square-foot expansion. GSA developed a new prospectus for a modest renovation after the Judiciary adopted the courtroom-sharing policy. We have submitted the new prospectus to this Committee and the Senate Committee on Environment and Public Works for approval.

Mobile, Alabama, tops the U.S. Courts' most recent 5-year plan. Here, efforts to reduce space requirements and increase courtroom sharing have resulted in significant projected savings. The 5-year plan had proposed a standalone courthouse at a FY 2010 estimated cost of \$190 million. Now we are proposing to modernize the 1932 courthouse, and to expand it with an annex that enhances the useful and symbolic meaning of the original historic resource and maintains Federal use of this important facility.

GSA has worked with the Courts to revise and reduce the requirements for almost every courthouse on the 5-year plan. We will continue collaborating with the Courts to reduce courthouses' costs while maximizing their functionality and civic benefit. We look forward to providing further updates to this Committee on these and future achievements.

#### *GAO's New Report*

The Government Accountability Office (GAO) has developed a new report that recommends improvements to the Judiciary's capital planning practices. While GSA has objected to the space- and cost-measurement methodology of past reports, we have incorporated GAO's prior recommendations into our ongoing project planning process. We have established guidance on "void space", required BIM in new construction, and directed regional offices to use third-party analysis of BIM data to confirm project scope, to name just a few areas of additional focus.

In addition, GAO's new report calls for the Courts to impose a moratorium on projects on their 5-year plan until they complete capital planning evaluations for each one. While we support

GAO's efforts to encourage more efficient management of the courthouse program, we do not support a moratorium. A moratorium would potentially undermine our ongoing maintenance of the Federal inventory and our mission to provide the Courts with safe and secure, quality courthouse space. GSA will continue to work with the Courts to refine these projects throughout the planning and construction processes, and we will vigilantly manage projects for the Courts.

*Conclusion*

Thank you for inviting me to appear before you today. I appreciate the opportunity to discuss GSA's management of federal courthouse construction and modernization. And on behalf of GSA and the Public Buildings Service, I welcome the Committee's oversight of this essential program. I am pleased to take your questions.