



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

**Washington, DC 20515**

**John L. Mica**  
**Chairman**

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

October 28, 2011

James W. Coon II, Chief of Staff

James H. Zoia, Democrat Chief of Staff

**BRIEFING MEMORANDUM**

**TO:** Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management  
**FROM:** Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff  
**SUBJECT:** Oversight Hearing on "A Review and Analysis of the Proposed \$400 Million Los Angeles, California, Federal Courthouse Project."

**PURPOSE**

The Subcommittee on Economic Development, Public Buildings and Emergency Management will meet on Friday, November 4, 2011, at 10:00 a.m., in 2167 Rayburn House Office Building to receive testimony from the U.S. Courts, the General Services Administration (GSA) and the Government Accountability Office (GAO). The hearing will focus on the current justification of a third courthouse in Los Angeles, California, including the size, scope, compliance with courtroom sharing guidelines, and cost implications of the entire courthouse complex in Los Angeles.

**BACKGROUND**

*General Services Administration*

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

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

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

excess funds generated by the rental system are used for building repairs and new construction. Each year, GSA submits to the House Committee on Transportation and Infrastructure and the Senate Environment and Public Works Committee its Capital Investment and Leasing Program (CILP) for the subsequent fiscal year. The CILP submission includes what are known as prospectuses for each project, detailing the project scope, need, and estimated costs. For FY 2011, a prospectus is required for any project in excess of \$2.79 million.

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

In addition to the approvals through Committee resolutions, the Appropriations Committees appropriate funds each year from the FBF. Typically, major capital projects are specifically detailed in the appropriations bills. In this Congress, however, GSA's budget for construction has been significantly reduced. The pending House version of the Financial Services Appropriations bill for FY 2012, which includes funding for GSA, recommends no construction funding in FY 2012. As a result, it is even more critical that GSA prioritize existing construction dollars and focus those dollars only on the highest priority projects.

#### *Federal Courthouse Construction Program*

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

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

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<sup>1</sup> GAO-10-417.



## Over Estimating the Future Number of Judges

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

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

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

## Lack of Courtroom Sharing

The lack of courtroom sharing has also been an ongoing issue. Using information provided in a study completed in 2008 issued by the Federal Judicial Center (FJC)<sup>3</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.

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

In addition, the 2010 GAO report shows that there could be significantly more sharing than proposed in the U.S. courts' revised policies. Using information provided by the Administrative Office of the U.S. Courts (AOUSC) and FJC, GAO found that three district judges could share two courtrooms, three senior judges could share one

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<sup>2</sup> *Federal Judiciary Space: Long-Range Planning Process Needs Revision* (GGD-93-132).

<sup>3</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.

courtroom, and two magistrate judges could share one courtroom all while still providing approximately 20 percent of unused time.

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

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

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

#### Construction Exceeded Authorized Limits

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

More specifically, the GAO found that:

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

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

#### *Recent Subcommittee Actions on Courthouses*

In May of 2010, the Subcommittee held a hearing on the findings of the GAO report. And, on August 2, 2010, the Subcommittee sent a letter to President Obama indicating that the Committee intended to withhold authorizing any new courthouses until such time as the Federal Courthouse Construction program was reformed.

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<sup>4</sup> The GAO included times used for public tours, law school moot courts, local bar associations, and other civic organization activities.



## Los Angeles, CA (LA) Courthouse

### Background

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

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

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

### Lack of Capacity

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

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

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

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

### Security

Another justification the U.S. Courts have raised is security. In particular, the courts maintain the Spring Street Courthouse (constructed in 1938) lacks the proper

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

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

#### Existing Courtrooms Are Small

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

#### *History of Project Authorizations*

The proposal for a new courthouse in Los Angeles, California, was originally submitted to the Committee as part of GSA's FY 2001 Capital Investment Program. At that time, the courts and GSA, in the prospectus submitted to the Committee, proposed a 712,102 gross square foot courthouse be built to meet the 10-year requirements of the District Court and court-related agencies at a total project cost of \$266 million.

Subsequently, GSA revised the request to more than 1 million square feet. The proposed plan was to consolidate all district judges into the new courthouse, with the bankruptcy and magistrate judges consolidated into the Roybal Courthouse. The



Committee approved site acquisition and design of a 1,016,300 gross square foot courthouse at a combined cost of \$35 million in July of 2000, with a requirement that GSA design for and configure for utilization of a courtroom sharing model and that to the maximum extent possible ensure continued use of all courtrooms in the Roybal Courthouse.

Subsequently, GSA submitted a prospectus in its FY 2005 Capital Investment Program to the Committee requesting approval for the construction of the new courthouse. The total cost of the project had increased by more than \$100 million from \$266 million to \$399 million. In addition, the U.S. Courts and GSA estimated there would be 81 judges in the following 10-years. The Committee approved construction in July of 2004 and again reiterated the requirement for courtroom sharing and the maximum continued use of the Roybal Courthouse. GSA also submitted a prospectus in 2008 that proposed construction of a new courthouse and alterations to the Roybal Courthouse for a total of 66 courtrooms and 75 chambers. Neither the House nor the Senate took action on that prospectus.

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

Without additional funds, the Committee understands that now the U.S. Courts and GSA plan to proceed with the existing funding, despite the fact that the LA courthouses currently house fewer judges than they did in 2000. It is also clear GSA would proceed with a design and scope significantly different than what was submitted and approved by the Committee. In light of this, Subcommittee Chairman Denham included provisions in H.R. 1734, the Civilian Property Realignment Act, reported by the Committee on October 13, 2011, that would cut funding for the new courthouse and sell the vacant property acquired for the building. In addition, on October 21, 2011, Subcommittee Chairman Denham and Ranking Member Norton co-signed a letter to GSA urging GSA not to proceed with construction pending submission of a new prospectus to the Committee and new authorization. **[See Attachment 3]**

**WITNESSES**

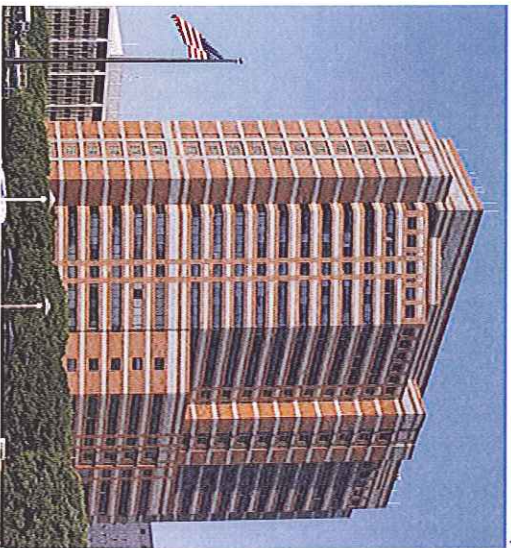
The Honorable Margaret M. Morrow  
United States District Judge  
U.S. District Court, Central District of California

Mr. Robert Peck  
Commissioner, Public Buildings Service  
U.S. General Services Administration

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



# Current Los Angeles Federal Courthouses



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

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

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



312 N. Spring Street Courthouse

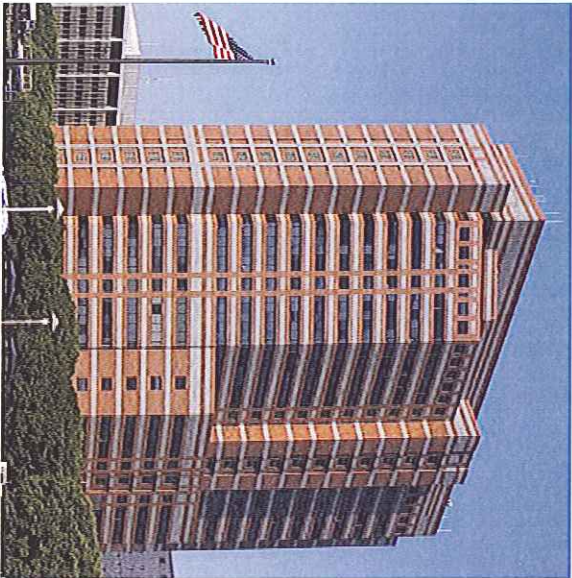
Opened: 1938  
Major Tenants: U.S. District Court, U.S. Attorneys, USMS

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

**Total: 59 Judges 61 Courtrooms**



# Pending \$400 Million GSA Proposal



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

32 Current Courtrooms

32 Courtrooms



Proposed L.A. Courthouse  
(\$400 million total)

0 Current Courtrooms  
+24 July 2011 Proposal

24 Courtrooms



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

29 Current Courtrooms

29 Courtrooms

Total: 59 Judges 85 Courtrooms





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Washington, DC 20515

**John L. Mica**  
Chairman

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

October 21, 2011

James W. Coon II, Chief of Staff

James H. Zola, Democrat Chief of Staff

The Honorable Martha Johnson  
Administrator  
General Services Administration  
1800 F Street, NW  
Washington, DC 20405

Dear Administrator Johnson:

It has come to our attention the General Services Administration (GSA) would like to proceed with the construction of a new courthouse in Los Angeles, California. Given the absence of new judges to fill additional courtrooms, the reported change in the scope of the proposal, and the Committee on Transportation and Infrastructure's October 13, 2011 vote to cancel the project and sell the vacant site, we write to urge GSA not to obligate any funds for this purpose. In addition, on November 4, 2011, our Subcommittee intends to hold a hearing specifically on the cost implications and current need for an additional Los Angeles courthouse.

As you know, our Subcommittee and the Government Accountability Office (GAO) fully documented the dramatic overbuilding in courthouses GSA constructed over the last ten years. The primary causes of this overbuilding and waste of hundreds of millions of taxpayer dollars were a reliance on unrealistic projections of new judges and the absence of courtroom sharing. In this case, we know the projections on which the new courthouse was authorized are completely inaccurate. For example, the prospectuses authorized by the Committee on July 26, 2000, and July 21, 2004, projected an increase of 12 and then 14 new judges, respectively. Yet, since that time, there are six less judges than in 2004 and five fewer district judges than in 2000. None of the projections have been realized, and much of the information included in the prospectuses authorized by the Committee is outdated and inaccurate.

In addition, it is not clear to the Committee how the latest GSA proposal would comply with the authorizing resolutions – which require courtroom sharing and maximum use of the existing courtrooms – or the AOUSC's courtroom sharing policy. We are deeply concerned the construction of a third courthouse will result in either dozens of vacant courtrooms or the abandonment or extreme underutilization of the existing Spring Street and Roybal courthouses.

The Honorable Martha Johnson  
October 21, 2011  
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At a time when GSA is halting critical projects across the country, we believe GSA must carefully prioritize the use of the construction funds it does have. In this case, the Committee authorized the project more than ten years ago and the last appropriations occurred six years ago. Since that time, the primary justification for the courthouse – a significant increase in the number of judges – never materialized and the scope and design parameters changed dramatically from those on which this Committee and the Committee on Appropriations based its approvals. Given these changes we do not believe proceeding would be a wise use of scarce taxpayer dollars or consistent with GSA's legal authority under 40 U.S.C. 3307. In light of this, we expect GSA to refrain from obligating funds for this purpose pending submission of a new prospectus and the specific authorization for the project as currently planned.

Thank you for your attention to this matter. We look forward to working with you on this in the near future.

Sincerely,



Jeff Denham  
Chairman  
Subcommittee on Economic Development,  
Public Buildings, and  
Emergency Management



Eleanor Holmes Norton  
Ranking Member  
Subcommittee on Economic Development,  
Public Buildings, and  
Emergency Management

Cc: Mr. Robert Peck, Commissioner, Public Buildings Service  
The Honorable Jo Ann Emerson  
The Honorable Jose Serrano