

**A REVIEW AND ANALYSIS OF THE PROPOSED
\$400 MILLION LOS ANGELES, CALIFORNIA,
FEDERAL COURTHOUSE PROJECT**

(112-59)

HEARING
BEFORE THE
SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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

John L. Mica
Chairman

Washington, DC 20515

Nick J. Rahall, III
Ranking Member

October 28, 2011

James W. Coon II, Chief of Staff

James H. Zeig, 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.*"¹ The GAO provided testimony to the Subcommittee on May 25, 2010, on its findings. Specifically, the GAO examined 33 courthouses that were constructed during the ten-year period from 2000 to 2010. The GAO found that 3.56 million square feet of *extra* space was built because of the following reasons:

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

¹ 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.²

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)³, the GAO created a model for courtroom sharing that showed significant amounts of unscheduled time in courtrooms for judges such that the sharing of courtrooms could be at significantly higher levels than were in practice.

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

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

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

³ The FJC is the Judiciary's research and educational arm, which conducted an in-depth study involving six months' worth of daily scheduled and actual use for 602 courtrooms in 26 of the nation's 94 Federal district courts.

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.⁴ The FJC study shows that approximately 50 percent of all scheduled events do not take place.

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

- 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.

⁴ 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]

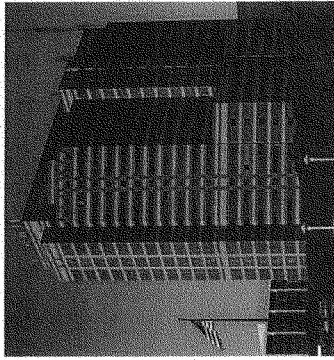
WITNESSES

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

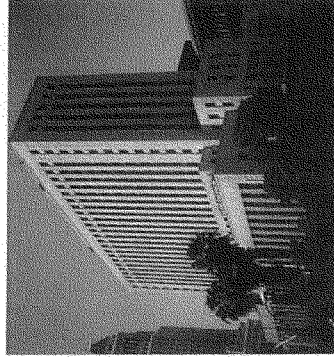
Current Los Angeles Federal Courthouses



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)



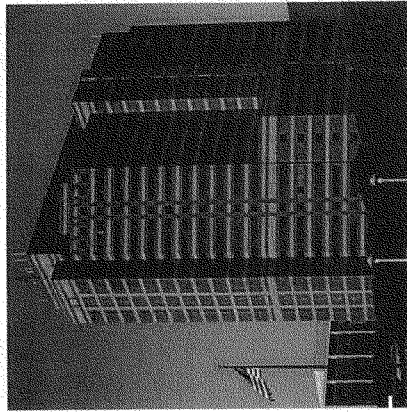
312 N. Spring Street Courthouse

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

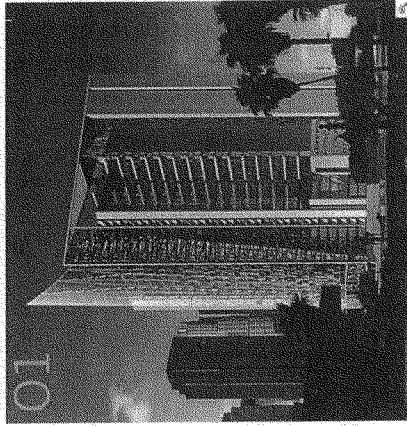
Pending \$400 Million GSA Proposal



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

32 Current Courtrooms

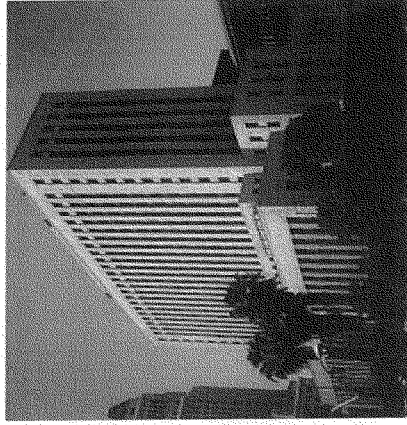
32 Courtrooms



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

0 Current Courtrooms
+24 July 2011 Proposal

24 Courtrooms



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

29 Current Courtrooms

29 Courtrooms

Total: 59 Judges 85 Courtrooms



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

John L. Mica
 Chairman

Washington, DC 20515

Nick J. Rahall, III
 Ranking Member

October 21, 2011

James W. Coon II, Chief of Staff

James H. Zinfel, Democratic 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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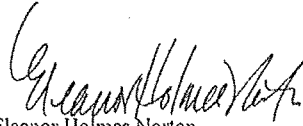
At a time when GSA is halting critical projects across the country, we believe GSA must carefully prioritize the use of the construction funds it does have. In this case, the Committee authorized the project more than ten years ago and the last appropriations occurred six years ago. Since that time, 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

**A REVIEW AND ANALYSIS OF THE PROPOSED
\$400 MILLION LOS ANGELES, CALIFORNIA,
FEDERAL COURTHOUSE PROJECT**

FRIDAY, NOVEMBER 4, 2011

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

The subcommittee met, pursuant to call, at 10:06 a.m., in Room 2167, Rayburn House Office Building, Hon. Jeff Denham (Chairman of the subcommittee) presiding.

Mr. DENHAM. The Subcommittee on Economic Development, Public Buildings, and Emergency Management will come to order. We are going to be challenged this morning with a very aggressive floor calendar. So my goal is to get through opening testimony before the first round of votes. I know we have a number of questions. We will probably reserve those to try to get those through between the first and second series of votes.

Let me first thank our witnesses for being with us today. The purpose of today's hearing is to review the latest GSA proposal for a new courthouse in Los Angeles, and to consider if the project is a wise use of taxpayer money given the well-documented overbuilding in the courthouse program and the current fiscal crisis in our Government.

Last Congress, at the request of the subcommittee, the GAO completed a review of the 33 courthouses constructed between 2000 and 2010. What the GAO found was incredible. GSA built over 3.5 million square feet of courthouse space that we don't need at a cost of \$800 million. As a result, the judiciary abandoned existing courthouses across the country and severely underutilized every new courthouse. The GAO identified three reasons for this waste: First, GSA built courthouses bigger than Congress authorized; second, the judiciary's 10-year projections of the number of judges were not worth the paper they were written on; and third, if the judges shared courtrooms we wouldn't need as much courtroom space as we have.

As a result, the subcommittee sent a letter to the President indicating we would not authorize any new courthouses until there were significant reforms in the courthouse construction program. We also demanded the judiciary conduct a real courtroom utilization study so that a third party could figure out how many judges can share a courtroom, because without the data or analysis, it is

very difficult for us to determine if these projects are a good idea or a waste of taxpayer dollars. So it is in this context the GSA and the judiciary want to resurrect the Los Angeles courthouse proposal.

Over the last 11 years, the judiciary projected there would be somewhere between 72 and 81 judges in Los Angeles by 2011 or 2014. The judiciary declared Los Angeles the number one judicial space emergency in the United States, and proposed a massive new courthouse. However, today we know the primary justification for a new L.A. courthouse is wrong. There are fewer judges in L.A. now than there were in 1997.

Let's put up slide 1, please.

Today, we have two buildings with 61 courtrooms and only 59 judges.

Put up the second slide.

In 2004, they projected 81 judges, and today we have 59.

It seems to me that the projections on which the judicial space emergency and the new courthouse were based never really materialized. I am also concerned the remaining funds are not near enough money to build the courthouse you are proposing. And we certainly don't want to see big cost overruns.

In 2008, when GSA proposed an even smaller courthouse, the judges of the Central District of California unanimously rejected it, citing the GSA's cost estimates were unrealistic, and that the new plan would not address their capacity concerns. If there wasn't enough money to build a 414,000-square-foot building in 2008, how is it possible to build a 650,000-square-foot one today? And if the funds are sufficient, would there be enough money to convert the abandoned courtrooms in the Roybal or Spring Street Buildings? I am afraid that this will have to be—where GSA spends all of the money—

Let's put up slide 3.

Eighty-five courtrooms for fifty-nine judges, half of which should be shared courtrooms under the judiciary's own sharing policy. We have seen this before in at least seven other cities where new courthouses were built and the ones sit vacant as a burden to the taxpayer and eye sores to the community. To avoid this, I think GSA will have to ask for a lot more money.

Slide 4, please.

Over \$700 million will be needed to build a new courthouse and convert the abandoned courtrooms into office space. Yet GSA's construction budget is zero. GSA has no money for other critical projects. A half a billion dollars for the Coast Guard headquarters is being constructed, but there is no money for a road to actually get to the building. Critical infrastructure work at the White House is being delayed indefinitely because the building fund is empty. So again, that is the reason to ask those couple of questions on how we are going to come up with the extra money on Spring Street and the Roybal Buildings and the third new courthouse for the amount of money that is already out there. At this time I feel like it is unwise to use taxpayer money to build a third L.A. courthouse.

Before I close, I would like to raise one last point. Yesterday morning GAO briefed me on the judiciary's courtroom utilization study and the courtroom sharing models it developed with an out-

side expert. Among other things, the simulation company GAO used works with hospitals to determine how many operating rooms they need. Apparently hospitals don't have operating rooms for every single surgeon. It is far too expensive to do that. Yet hospital needs have an operating room available for emergencies. So GAO had the computer simulation modified to incorporate the judiciary's courtroom utilization data, and now it can figure out how many courtrooms you need, so there will always be a courtroom available. GAO ran this centralized sharing model for Los Angeles, and it appears all of the judges can fit in just the Roybal Building, no new courthouse would be needed, and Spring Street could be sold.

I look forward to hearing from GSA and the U.S. courts today to understand their current proposal, its cost, and its justification. I also look forward to hearing from GAO.

I now would like to recognize Ranking Member Norton from the District of Columbia for 5 minutes to make any opening statement she may have.

Ms. NORTON. Thank you very much, Mr. Chairman. I appreciate today's hearing on the status of the Los Angeles, California, Federal courthouse construction project, if you can call it still a project since it has sat in abeyance for half of my time in Congress, and of course its compliance with current courtroom sharing policies and the General Services Administration's current asset management strategy in Los Angeles.

Today's hearing on the long-delayed Los Angeles courthouse has as its necessary context a Government Accountability report that this committee commissioned in 2008 to examine courthouse planning and construction, including management and costs. The GAO report, issued last year, contained astonishing findings of mismanagement by GSA and the judiciary, of the courthouse program, and documented wasted funds as well as space. GAO determined that the 33 courthouses constructed by the GSA since 2000 included 3.56 million square feet of space above—3.56 million square feet above the congressionally approved specifications, a frequent overestimation of the number of judges that courthouses would need to accommodate, and failure to implement courtroom sharing despite the committee's mandate. In essence, virtually every mandate of this committee has been routinely and systematically ignored by GSA and by the judiciary.

The GAO found that the total value of the extra space was \$835 million in construction costs and \$51 million annually in rent and operating expenses. The GAO report confirmed what this subcommittee had indicated during almost 15 years of oversight of the courthouse program; namely, reducing the size of courthouses through more accurate projections of the number of future judges and using courthouse sharing could save the Federal Government significant amounts of money.

Every courthouse authorized by this committee since 2007 has required courtroom sharing and has restricted the use of projections of new judges. In fact, in some cases, as a result of reducing the number of courtrooms, we have been able to plan to move Federal agencies out of expensive long-term leases and into owned space.

The Los Angeles courthouse was first approved by this committee in July 2000. The project's budget, originally supported by GSA, has ballooned over the past decade from \$266 million to almost \$1 billion simply because of the refusal to build the courthouse as mandated by this committee and by the Congress of the United States.

The most recent official action occurred in March 2008, when the GSA administrator wrote to the chief judges in California to propose constructing a scaled down, 400,000-square-foot courthouse with 20 courtrooms and 20 chambers, in addition to renovating the Roybal Courthouse for \$700 million. On March 26, 2008, the judges rejected GSA's proposal, requesting a larger courthouse with 36 courtrooms and 45 chambers, which would have been significantly more expensive.

It is as if this committee didn't matter. The judges say they reject the courthouse. I don't know what this subcommittee is supposed to do. But that is not the way it works up here. Although one of the judges' primary justifications for their request is the lack of security in the current Los Angeles courthouses, they rejected the GSA proposal that would have addressed the security concerns.

This is the very same conversation we have long been having with GSA and the judiciary about sharing, projections of additional judges, and maximizing the use of existing assets. There are empty courtrooms across the country because of resistance to congressional directives to share courtrooms whenever possible. This subcommittee has been clear in its mandate that all new courthouse construction be reconsidered under the sharing guidelines. And the Los Angeles courthouse should be no exception.

I emphasize that although we require courtroom sharing, we are also, and always have been, sensitive to issues of security, and will examine these concerns carefully today in an effort to make sure members of the judiciary are not at risk in carrying out their duties. The American taxpayer has no stomach for waste, especially for waste on new large courthouses where judges insist that they decide, not the taxpayers, the size of the courthouse and whether sharing will occur; and especially when vital Federal programs are being scaled down or eliminated.

We intend to work with GSA and the judiciary to ensure that good asset management decisions are made in the courthouse program. We certainly appreciate the testimony of each of today's witnesses, and we welcome any thoughts and suggestions they may have. Thank you, Mr. Chairman.

Mr. DENHAM. I ask unanimous consent that Mrs. Napolitano of California and Ms. Richardson of California, who are both members of the Transportation and Infrastructure Committee, be permitted to participate in today's committee hearing. Without objection, so ordered. Ms. Napolitano, you have an opening statement?

Mrs. NAPOLITANO. Yes, I do, Mr. Chair. Thank you very much, and Ranking Member Norton, for allowing me to participate. And I do ask unanimous consent to submit a letter signed by 19 Members of the California delegation, including Senators Boxer and Feinstein, in support of the Los Angeles courthouse project, and also urging GSA to proceed immediately with construction of the

project. For the record, without objection, unanimous consent to submit the letter for the record?

Mr. DENHAM. Without objection.

[The information follows.]

Congress of the United States

Washington, DC 20515

October 28, 2011

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

Dear Administrator Johnson:

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

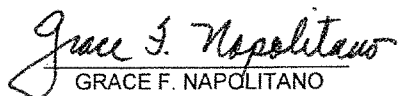
Located in one of the busiest metropolitan areas in the nation, the Los Angeles court handles a high percentage of complex criminal cases related to drugs, murder, mafia, and terrorism. A request to create new permanent judgeships for the district, many of which will be placed in Los Angeles, is currently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

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

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

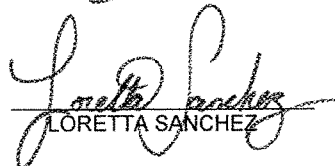
Sincerely,

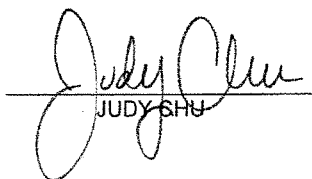

 DIANNE FEINSTEIN BARBARA BOXER LUCILLE ROYBAL-ALLARD


GRACE F. NAPOLITANO


LAURA RICHARDSON


HENRY A. WAXMAN


LORETTA SANCHEZ


JUDY SHU


BARBARA LEE


HOWARD L. BERMAN

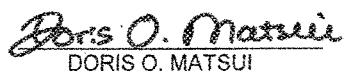

BOB FILNER


LOIS CAPPS


ADAM B. SCHIFF


JOHN GARAMENDI


JANICE HAHN


DORIS O. MATSUI


LINDA T. SANCHEZ


XAVIER BECERRA


KAREN BASS

Mrs. NAPOLITANO. Thank you. Mr. Chairman, I strongly support the Los Angeles County courthouse project. I live in Los Angeles County. The current Los Angeles County courthouse has been declared a space emergency by the Judiciary Conference, and continues to be its top priority for a new courthouse. This has been maybe what, a decade in the making? And I think it is time we remove all the obstacles and move forward, because they have complied with all the requirements that this subcommittee has imposed upon the Central District of California, which is the largest district in the Nation, covering seven counties and over 17 million people. The division serves four counties with a population of 13 million.

This court has dramatically outgrown the existing Spring Street facility built in 1938. That is just 2 years after I was born. The court has been forced to divide its operations between this courthouse and the Edward R. Roybal Federal Building and the courthouse three blocks away. This split operation creates countless inefficiencies and critical security concerns. I am under the understanding that there are prisoners in orange uniforms traveling in the same areas that judges and other members of the courthouse are in transit to their offices.

The new courthouse is necessary to accommodate an increase in the number of active and senior district judges, as well as magistrate judges from 59 to 65, and an increase in bankruptcy judges from 10 to 14 over the next decade. After a longstanding dispute over the size of this project, the judiciary and GSA have come to a cost-effective compromise. The building will have 24 courtrooms, 32 chambers. This is 17 courtrooms and 8 chambers smaller than the authorized plan. The project has been fully funded, with no additional funding needed. The current market conditions in L.A. will allow the Government to maximize value in building the courthouse now. The local economy will be stimulated by infusion of funding and new jobs with a construction project of this size.

The unemployment rate in the L.A. metropolitan area is 12.5 percent. Most of that rate is attributed to the construction sector. So this project incorporates courtroom sharing policies, it incorporates the directives of this committee to maximize the use of the Roybal Building, and not to request any additional funding for the project.

Mr. Chair, Ranking Member, I hope that we will support this project, and I yield back.

Mr. DENHAM. Thank you. I would like to welcome again our witnesses here today, and just remind them we already have a vote underway. So we are going to try get through as much of the opening testimony as possible before we take a short recess.

On our first and only panel today, we have the Honorable Margaret M. Morrow, a United States district judge, U.S. District Court, Central District of California. Welcome. And Mr. Robert Peck once again, commissioner, Public Buildings Service, General Services Administration. And Mr. Mark Goldstein, director of physical infrastructure, Government Accountability Office.

I ask unanimous consent that our witnesses' full statements be included in the record. Without objection, so ordered. Since your written testimony has been made part of the record, the sub-

committee would request that you limit your oral testimony to 5 minutes.

TESTIMONY OF HON. MARGARET M. MORROW, DISTRICT JUDGE, UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA; ROBERT A. PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION; AND MARK L. GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. DENHAM. Judge Morrow, you may proceed.

Judge MORROW. Good morning, Chairman Denham, Ranking Member Norton, and Congresswoman Napolitano. I am Margaret Morrow, and I am a district judge in the Central District of California, resident in Los Angeles. I appreciate the opportunity to appear before this subcommittee today to discuss the Los Angeles courthouse project, which has been and remains the judiciary's number one courthouse priority.

Over the past 18 months, the judiciary has worked closely with the General Services Administration at both the national and local levels to develop a plan for a functional and cost-effective facility that will provide long-term, secure housing for the Los Angeles District Court and for the public that uses the building. As I will describe, the courthouse that is planned has 350,000 square feet less than the project that this committee considered in prior years. It has 17 fewer courtrooms and eight fewer chambers. The plan does not require any additional appropriations. It does not provide space for projected judgeships. And it includes courtroom sharing for senior and magistrate judges.

The Central District of California is one of the largest and busiest courts in the Nation. It handles a high percentage of complex criminal cases involving drugs, murder, street gangs, prison gangs, and terrorism. The court currently operates in the Spring Street Courthouse and the Roybal Federal Building two blocks away. Active and senior district judges and magistrate judges have chambers and use courtrooms in both facilities. Between now and 2019, 14 judges will be eligible to take senior status. Nine of those will become eligible in the next 5 years. In addition, if the two judgeship bills currently pending before the Congress as S. 1032 and H.R. 2365 were to pass, the district would have nine new district judgeships.

I want to emphasize, however, that despite the pendency of these bills, and consistent with the concerns that have been expressed by this subcommittee, by the full committee, and by the GAO in its June 2010 report, the project that the judiciary and GSA have developed does not include any space for projected judgeship positions.

All those familiar with the existing facilities in Los Angeles agree that there are serious operational, infrastructure, and security concerns that must be addressed. The Spring Street facility was built in 1938. There are serious seismic problems with the building. The building is also riddled with asbestos, which makes improvements complicated and costly. Due to its age, the existing infrastructure

does not support modern-day technology, and the building systems are old and need upgrades or replacement.

In addition, the Spring Street location has many serious security issues that affect the safety of the public, parties, jurors, witnesses, and victims, as well as the safety of the marshals, court employees, and judges. It is critical to recognize that many of these problems cannot be resolved by modifying the building given its particular footprint. This is why it has always been anticipated that the court would vacate the Spring Street facility. Every day prisoners are brought into Spring Street in vans that are unloaded in the judges' parking garage. As a result, judges frequently encounter prisoners as they are being unloaded and moved into the building. Because there are many courtrooms that do not have adjacent cellblocks or any secure prisoner access, and because the secure prisoner corridor that serves the balance of the courtrooms is so small that it places both the marshals and the prisoners in danger, prisoners are often moved to the courtrooms through public corridors and elevators where they cross paths with parties, with jurors, with victims, and with witnesses.

The United States Marshal for the Central District of California has written a letter dated November 2, 2011, which details these security deficiencies. And I would like to submit that letter for the record.

[The information follows:]

To be inserted after line 378 on page 17:

[CLERK'S NOTE.— The Judiciary requested the following information be submitted for the record:]



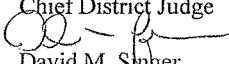
U.S. Department of Justice

United States Marshals Service

*Central District of California
United States Marshal David M. Singer
Los Angeles, CA 90012*

November 2, 2011

MEMORANDUM TO: Audrey B. Collins
Chief District Judge

FROM: 
David M. Singer
United States Marshal

SUBJECT: Security Issues at 312 N. Spring Street

You have asked me to describe the physical security deficiencies of the 312 North Spring Street Courthouse. We can provide you with photographs depicting many of these deficiencies, if needed.

The United States Courthouse located at 312 North Spring Street, Los Angeles CA, was built from 1937 to 1940. The age of this building and design has presented various logistical problems for The United States Marshals Service (USMS) in regards to Prisoner Operations, Court Operations, and General Courthouse Security.

Law Enforcement Gun Storage Lockers

- In the Central District of California certain law enforcement agencies are not authorized to remain armed after passing the USMS security screening sites. Because of this rule, there is a need for an area to secure the officers' and agents' firearms. The only USMS space available out of public view for the firearms locker, within close proximity to the screening site, is also the entrance for attorneys to speak with in-custody defendants. The officers and agents must remove their firearms in plain view of visiting attorneys and prisoners, showing where firearms are carried on their person.

Judge's Underground Parking at the Main Street Entrance

- Prisoners transported for court appearances at the courthouse must be off-loaded in the Judges' Main Street parking garage, in plain view of judicial

vehicles, license plates, make-model-color of judicial vehicles, and at times while Judges are walking to or from their vehicle.

- To reach the USMS cellblock, the prisoner must walk up the same ramp and pass the same doors as the Judiciary. It is not uncommon to encounter Judges or court staff while prisoners are approaching the cellblock area.
- There is always the potential for prisoners to attempt escape or be assisted by an outside threat because the Main Street garage gate entrance opens directly onto the public sidewalk and a heavily trafficked entry route to the freeways.

Movement of Prisoners

- The hallway that serves the USMS cellblock, as well as the only prisoner elevator, is also the only way for Judges to get to their vehicles.
- The area to wait for the prisoner elevator is a highly traveled common area for various agencies and contractors in the building. The court's procurement office is located off this hallway, and court staff, delivery personnel, and contractors constitute daily traffic.
- The prisoner elevator does not connect directly to any of the courtrooms in the courthouse; instead, USMS staff must escort the prisoner through the public hallway, passing potential victims, prisoner family members, witnesses, jurors, and other prisoners in protective custody.
- While walking to courtrooms located at the other end of the building, USMS staff must pass various entrance doors to judicial chambers.
- Only two courtrooms have usable adjacent prisoner holding cells. As a result, in-custody defendants sitting in the courtroom galley across from potential victims and prisoner family.
- The courtroom doors leading to judicial chambers cannot be secured due to the age of the doors' hardware and design, which cannot be altered due to the building's historic status.
- All prisoner movement is done through public hallways, creating unnecessary hazards for USMS personnel, court employees and the public.
- The routes from courtrooms back to the USMS cellblock require the use of

the public corridors providing the potential for inappropriate verbal contact with witnesses, jurors, family members, etc.

- The prisoner elevator is out of service at least once a week due to the age of the elevator. Prisoners must be escorted using the public elevators, walking through the main lobby.
- There is no secure circulation for judges. The elevator utilized by judges opens to the same public lobbies used to transport prisoners.
- Of the 29 courtrooms in the building, only 12 are accessible using a tunnel system which originates in the USMS cellblock.
- The tunnel access uses a combination of steep stairs and narrow, winding hallways with restricted head room in various areas. The hallways have numerous blind spots from camera coverage, and an elevator that is usually not operational. For this reason the tunnel system is not regularly used.
- If the tunnel access is used, prisoners must still be escorted through the rear secured judicial hallway that connects courtrooms and judicial chambers.

Physical Security Issues

- The screening stations located at the Main Street entrance, the Spring Street entrance, and the Spring Street loading dock were never designed to accommodate current upgraded security and the large crowds who visit the courthouse on a daily basis. Despite the additional concerns and potential threats posed by high threat criminal court cases and increased violence in society, we are not able to redesign these security sites due to the historic nature of the building, and the limited space available.
- The ground floor windows around the courthouse are continuously a target for vandalism due to the increasing population of homeless people, as well as anti-government protests occurring daily at surrounding local and state government buildings. The windows' general make-up is inconsistent around the building, with some windows being bullet resistant, some with a protective mylar film, and some with just solar tinting film. The historic status of the building makes it difficult, if not impossible, to install bullet resistant glass in all first floor windows. Three ground floor windows have been broken by vandals in the past year alone.
- The courthouse lacks available handicap access on the Main Street entrance,

the most heavily used access. The courthouse thus must have two entrances, Main Street and Spring Street, which requires staffing by six court security officers (CSOs) rather than just one entry where we can put less CSOs, concentrating staffing more effectively at a single controlled entry point.

High Threat Trials

The Spring Street Courthouse is an unsafe physical facility for the transport of even one prisoner. Here are examples of some of the high threat, multi-defendant trials held in downtown Los Angeles. They provide a vivid picture of the type of defendant, defendant families, witnesses, and victims involved in federal criminal proceedings held in the Spring Street and Roybal court facilities.

1. U.S. v. Orozco et al. The indictment names 53 defendants who are all members or associates of the 38th Street gang, and charges them with RICO, VICAR, drug trafficking/possession, firearms trafficking/possession, and conspiracy to tamper with witnesses.
2. U.S. v. Santiago Rios, et al. The indictment charges 51 defendants who are all members and associates of the Azusa 13 criminal street gang or validated members and associates of the Mexican Mafia. The charges are RICO conspiracy, civil rights violations, weapons and narcotics offenses.
3. U.S. v. Darbinyan. The case involved 70 defendants who were members or associates of the Armenian Power Criminal Enterprise. Approximately 15 of the defendants would be categorized as very dangerous based on their criminal histories and/or criminal conduct during the investigation.
4. U.S. V. Ron Hirsch. This is the synagogue bomber case. The defendant is charged with attempting to blow up a synagogue with a large pipe bomb. This case received considerable national media coverage.
5. U.S. V. Oscar Juarez, et al. The indictment charges 5 defendants, two of whom are Clanton 14 gang members, with Hobbs Act Robbery, 924 (c), and Conspiracy to Distribute Cocaine charges.
6. U.S. V. Edwin Mauricio Palacios. A 1326 case involving an MS 13 gang member whose criminal convictions included a 1995 conviction for second degree robbery, 2008 conviction for terrorist threats, and two arrests for participating in a prison riot.
7. U.S. v. Raul Mercado Mercado. This is a 1326 case involving a Sangra gang

member with a prior 1996 conviction for voluntary manslaughter and robbery.

8. Operation Silent Night. There were approximately 30 defendants arrested. Extra manpower was needed at all times for movement due to the high security risks. The defendants are charged with numerous homicides, including the murder of a Burbank Police Officer. They are also charged with narcotics trafficking, extortion, and racketeering. This is a capital offense case.
9. Twenty defendants in another case are all gang members of the East Side Wilmas, and were charged with murder, as well as conspiracy. They are also charged with distribution of illegal narcotics.

Terrorism Case

10. U.S. v. Mihalik. The indictment returned August 30, 2011 charges one defendant with making a false statement in a terrorism matter.

Multi-Defendant Courtroom in Roybal

The availability of this courtroom assists the USMS and judges in the Spring Street courthouse who need to be conducting high threat, multi-defendant trials as it was built out specifically for such proceedings. Use of the courtroom requires the USMS to provide security transportation from Spring Street, where the judge has parking, to Roybal, two blocks away from chambers.

On a regular basis, however, there are far too many criminal proceedings for the 21 district judges to hold their criminal calendars all in this one courtroom. In 2011, for example, 1,685 defendants had proceedings in downtown Los Angeles, or 48 criminal cases per judge. Virtually all judges hold criminal calendar on Mondays making use of the Roybal multi-defendant courtroom unavailable to more than one judge at a time. Roybal judges also use the courtroom.

Judge MORROW. Though GSA planned to award a contract to build a new courthouse in fiscal year 2006, due to unprecedented escalation of construction costs in Los Angeles at that time, the project budget exceeded the funds appropriated and authorized, and GSA withdrew its request for proposal due to lack of competition and inadequate funding. Since that time, the judiciary and GSA have devised a plan for a courthouse that is smaller than that actually proposed, that is cost-effective, functional, and safe, and that is responsive to congressional directives to maximize the use of the Roybal Building to the extent practicable, to share courtrooms, and to work within the funds that have already been appropriated for this project.

The new plan will contain 24 district judge courtrooms and 32 chambers, reduced space for the clerk of court and U.S. Marshals Service. The Roybal Building will continue to be used for courtrooms and chambers for senior judges who can't be accommodated in the new facility and for magistrate and bankruptcy judge courtrooms and chambers. The judiciary and GSA believe that they have found an efficient and cost-effective solution to the Los Angeles courts' housing problems that addresses congressional concerns and that will be safe for the public.

I would be happy to take any questions you have.

Mr. DENHAM. Thank you, Judge Morrow.

Mr. Peck, you may proceed.

Mr. PECK. Thank you, Mr. Chairman, Ranking Member Norton, and Congresswoman Napolitano. Thank you for inviting me here today to discuss the new Los Angeles courthouse project. And I would like to thank you also for continuing to support the administration's efforts to pass civilian property realignment legislation and improve our asset management.

The Federal courts play a critical role in our Nation's democracy by ensuring fair and impartial administration of justice for all Americans. GSA is proud to build courthouses worthy of that role, and we have developed a strong partnership with the Federal judiciary to do so. Since the inception of our Design Excellence Program 16 years ago, GSA has developed a strong track record of delivering high-quality buildings that support the courts' unique needs, while enhancing the building surroundings. GSA and the courts have continually improved and refined the management and oversight of these projects.

The judiciary has developed and implemented policies that require courtrooms to be shared among judges. The judiciary has also revised its estimates for projected future judgeships based on current data, reducing also their space requirements. GSA, likewise, has improved our management of the courthouse program and implemented strong space management controls. We ensure our courthouses are constructed within the budget and scope.

I have to say I am concerned to hear continued reference to the GAO report on which we held a hearing last year and the conclusions of which I thought we discredited to a large extent. For example, in their report GAO applied the courts' revised sharing standards retroactively to completed projects and then claimed the space was overbuilt based on those later standards. GAO took incorrect measurements of our buildings, assuming high-ceiling spaces and

atriums were in fact gross square footage of an asset that we somehow had to build, as if we were paying money to build empty high-ceiling space.

But to move on, today's hearing focuses on the Los Angeles courthouse. Due to security deficiencies in the existing buildings and courtrooms that do not meet the courts' space needs or functional requirements, the L.A. courthouse has been the courts' number one priority for the last decade.

Between fiscal years 2001 and 2005, the project received appropriations and was fully authorized. However, the project could not move forward for several reasons, including construction cost escalations and programmatic changes. Congress has made clear on numerous occasions that GSA should work with the courts to develop a viable solution for the project within the funding already appropriated.

The courts and GSA have worked closely over the last couple of years to develop a feasible solution for a smaller district courthouse that supports the judiciary and their mission needs, providing secure courtrooms and chambers. GSA and the courts have incorporated the sharing guidelines. We have eliminated projected judgeships and developed a solution to build this courthouse within the latest management guidelines and using lessons learned over the past several years.

We now have a plan to deliver this facility within the current appropriation and authorization. This proposal includes 24 district courtrooms and 32 chambers in the new courthouse, totaling approximately 650,000 gross square feet of space. This project is a worthwhile investment that will enable GSA to improve the security and meet the functional needs of the court while taking advantage of the unfortunate downturn in the market to deliver the project within the current appropriation and to create thousands of construction jobs in a hard-hit industry.

GSA is ready to move forward with this project. We already own and have cleared the site and are ready to issue a contract solicitation. The new courthouse, with the existing Edward R. Roybal Federal Building and Courthouse, will meet the courts' requirements for 49 courtrooms. That includes district, magistrate, and bankruptcy courtrooms. This project will increase space efficiency and consolidate court functions.

Moving forward, GSA will assess the potential reuse of the Spring Street facility and the possibility of modernizing it to accommodate executive branch agencies who are currently housed in over 1 million square feet of leased space in Los Angeles.

In conclusion, the L.A. courthouse project has idled far too long. GSA and the courts now have a plan that can be completed within the current appropriation, mobilize this funding to put people back to work, and help the courts meet their mission needs. GSA is ready to move forward with this project, providing the courts with a secure state-of-the-art courthouse, helping improve court functions and services, while keeping tenants and the visiting public safe. This project is not only important to GSA and the courts, but also to the congressional appropriations committees who have urged GSA to proceed with this construction over several years now.

Thank you for inviting me to appear before you today. I appreciate the opportunity to discuss our management of the courthouse program and to describe the new path forward for the Los Angeles courthouse, and I welcome your questions. Thank you.

Mr. DENHAM. Thank you, Mr. Peck. Thank you, Judge Morrow, for your opening testimony. We are going to break at this time for an estimated 15 minutes to vote, and then we will begin back immediately with Mr. Goldstein's testimony.

[Recess.]

Mr. DENHAM. The committee will reconvene back with opening testimony from Mr. Goldstein. You may proceed.

Mr. GOLDSTEIN. Thank you. Good morning, Mr. Chairman, Ranking Member Norton, and members of the subcommittee. We are pleased to be here today to discuss our recent work on Federal courthouse construction issues and on the L.A. courthouse in particular.

In 2000, as part of a multibillion-dollar courthouse construction initiative, the judiciary requested and the General Services Administration proposed building a new courthouse in Los Angeles to increase security, efficiency, and space. But construction never began. About \$400 million was appropriated for the project.

For this testimony, GAO was asked to report on the status of the courthouse project, challenges GAO has identified affecting Federal courthouses nationwide, and the extent to which these challenges are applicable to the L.A. courthouse project. This testimony is based on GAO's prior work on Federal courthouses, much of it for this committee, during which GAO analyzed courthouse planning and use data, visited courthouses, modeled courtroom-sharing scenarios, and interviewed judges, GSA officials, and others.

GAO reported in 2008 that GSA had spent about \$33 million on design and site preparations for a new 41-courtroom courthouse, leaving about \$366 million available for construction. However, project delays, disagreements between GSA and the judiciary about what to build, unforeseen cost escalation, and low contractor interest had caused GSA to cancel the project in 2006 before any construction took place. GSA later identified other options for housing the L.A. court, including constructing a smaller, new courthouse or using the existing courthouses, the Spring Street Courthouse and the Roybal Federal Building and Courthouse.

As GAO also reported, the estimated cost of a new courthouse option as of 2008 was over \$1.1 billion, significantly higher than the appropriation. All the other options were rejected by the courts because they believed that GSA underestimated the costs and created overly optimistic project schedules that they feared could not be met.

Finally, in a 2008 letter to the GSA signed by Judge Morrow, the L.A. court unanimously opposed a new 20-courtroom building, stating in part that the remaining appropriated funds were not adequate to construct a facility of this size. This situation has essentially been deadlocked ever since.

The challenges that GAO has identified in recent reports on Federal courthouses include increasing rent and extra operating, maintenance, and construction costs stemming from courthouses being built larger than necessary. For example, in 2004 the judiciary re-

quested a \$483 million permanent annual exemption from rent payments to GSA due to difficulties paying for its increasing rent costs. GAO found in 2006 that these increasing rent costs were primarily due to increases in total courthouse space. And in 2010, GAO reported that more than a quarter of the new space in recently constructed courthouses was unneeded.

Specifically, in the 33 Federal courthouses completed since 2000, GAO found 3.56 million square feet of excess space. This extra space is a result of courthouses exceeding the congressionally authorized size, the number of judges in the courthouses being overestimated, and not planning for judges to share courtrooms. In total, the extra space GAO identified is equal in square footage to about nine average-size courthouses. The estimated costs to construct this extra space, when adjusted to 2010 dollars, is \$835 million, and the estimated annual costs to rent, operate, and maintain it is \$51 million.

At the time of that report, GAO recommended that GSA ensure that new courthouses are constructed within their authorized size, that the Judicial Conference of the United States retain caseload projections to improve the accuracy of its 10-year judge planning cycles, and that the Conference establish and use courtroom-sharing policies based on scheduling and use data. GSA and the judiciary agreed with most of the recommendations, but expressed concerns with our methodologies and key findings.

Mr. Chairman, it is quite clear that each of the challenges GAO identified related to unnecessary space in courthouses completed since 2000 is applicable to L.A. First, as GAO reported in 2008, GSA designed the L.A. courthouse with 13 more courtrooms than congressionally authorized, which would have added more than 200,000 square feet of space to the project without legislative approval. This increase in size led to cost increases and delays.

Second, in 2004, GAO found the proposed courthouse was designed to provide courtrooms to accommodate the judiciary's estimate of 61 district and magistrate judges in the L.A. court by 2011, which as of October 2011 exceeds the actual number of such judges by 14. This disparity calls into question the space assumptions on which the original proposals were based.

Third, the L.A. court was planning for less courtroom sharing than is possible. While in 2008 the judiciary favored an option proposed by GSA that provided for some sharing by senior judges, according to our 2010 analysis there is enough unscheduled time in courtrooms for three senior judges to share one courtroom, two magistrate judges to share one courtroom, and three district judges to share two courtrooms. In 2011, the judiciary also approved sharing for bankruptcy judges.

Additional courtroom sharing could reduce the number of additional courtrooms needed for the L.A. courthouse, thereby increasing the potential options for housing the L.A. court.

Mr. Chairman, Ranking Member Norton, this concludes my testimony. We are pleased to answer any questions you may have. Thank you.

Mr. DENHAM. Thank you, Mr. Goldstein.

GSA has taken exception to some of the methodology you used such as applying sharing models retroactively, incorrect measurements. What is your response?

Mr. GOLDSTEIN. Mr. Chairman, I think it is disappointing. We have discussed this issue with Mr. Peck on a couple of occasions. The comptroller general has even sent a letter to GSA on these issues. So I have a couple quick comments I will make.

Regarding sharing, it is the role of GAO to look at budgetary consequences of Government policies. And it has been the policy of the courts for the most part to not share courtrooms. That policy has had a clear impact on increased and potentially wasteful spending of tax dollars, as our report showed. This is something the courts should have analyzed themselves so that the lawmakers could have a better understanding of the costs and benefits of this policy.

On gross square footage, Mr. Peck says that we measured incorrectly. GAO did not measure anything. Let me repeat that: GAO did not measure anything. We relied on GSA measurements and on GSA blueprints.

Mr. Peck says that we incorrectly included atriums. This policy is GSA's policy. It clearly states that atriums are included in gross square footage. That policy has been in place for the entire period of construction that we looked at. Regarding atrium costs, we did not impute the same construction costs to atriums as other spaces. We averaged the costs of all spaces, including very expensive courtroom space and less expensive atrium space. Our report notes that atrium space costs less to construct and maintain than other spaces. We asked both GSA and outside experts, including BOMA, about the suitability of this methodology. And all of them, including GSA, supported the approach.

And then finally, GAO applied appropriate generally accepted inflation factors to account for the cost growth in the construction market. And again, we validated this approach with both GSA and outside experts. Thank you, Mr. Chairman.

Mr. DENHAM. And Mr. Peck, I would ask you for a brief response. The prospectus that we see, especially in this case, the prospectus did not define the same square footage.

Real quickly, the one that I am looking at here, second-floor atrium area, even the roof line on the fourth floor, you know, we have done basic square footages for my office. You know, when we calculate square footage per employee in my office we consider the hallways, the restrooms, the meeting areas, every area. So when we get a prospectus, we are looking at the same thing. We are approving a building. Build a building, keep it within this cost, and meet the parameters. So the atrium I would assume would be in the same square footage as everything else that is in the building. We are leaving it up to you and the architects, but we expect the square footage to be maintained the same, which hasn't been done on every building.

Mr. PECK. Right. I believe—so if you want my answer, it gets complicated, because there are different ways of measuring space in the real estate industry. But GAO has basically fundamentally confused cubic square footage and linear square footage. For example, if you were to take the square footage of this room and you

measure the walls from wall to wall in a rectangle, you get one measure. If you then multiply it—

Mr. DENHAM. Let me stop you and ask you real quick, because the study that I am looking at here on atriums and closed courtyards and lobbies comes from your GSA Public Buildings Service National Building Space Assignment Policy, and it has that same square footage in there.

Mr. PECK. Yeah, the square footage. But what I am saying is they count a five-story atrium as if we had built five floors. And then he multiplies, as he just said, he multiplies the cost of that atrium by the average square footage cost in the building. And what I am objecting to, more than the measurement of the space, is multiplying by a dollar number to come up with an inflated and erroneous estimate of how much it costs us to build that space. You know, the committee's authorizations and the appropriations that we get give us a dollar budget for a building. And that is what we fundamentally focus on. For Mr. Goldstein and GAO to suggest that there was \$800-some million of overbuilding in the courthouse program, believe me, we would have known that and they would have known that a long time before he did that study.

Mr. DENHAM. But the problem is you come back to Congress and ask for more money, and you build a building after the fact that is much bigger than what was originally anticipated in the prospectus.

Before you answer, I am going to bring this down to you because in the gross square footage in your policy book it says B through 3 are all included in the gross square footage. So it is in your calculation. We will come back to that. I want to make sure you have a copy of that.

Mr. Goldstein, frequently GSA would request funds to construct a new courthouse or annex to supplement, not replace, the existing courthouse. However, it seems when a new courthouse is built, the old one is either abandoned or minimally used.

Can you put up slide number 6?

These courthouses right here, were these abandoned courthouses included in your 3.5 million square feet of extra GAO identified?

Mr. GOLDSTEIN. Some of them were and some of them were not, Mr. Chairman. We had visited over a number of years many of these buildings for a lot of our different reports. Some of them we identified as extra space in our rents report back in 2006. And some of them are included in the report that we issued last year. So it is a combination, sir.

Mr. DENHAM. Which ones, out of these courthouses, all of which have abandoned courthouses in major cities where we are leasing huge amounts of space, which of these courthouses have you considered in the 3.5 million square feet of wasted or unneeded space?

Mr. GOLDSTEIN. I believe we included Miami, Washington, Brooklyn, Tucson. For this particular report, we did not include Seattle or Richmond. But they were part of our study when we looked at the reasons why space and rent increased in the courthouses several years ago.

Mr. DENHAM. And Mr. Peck, on this same list, how many of these vacant or severely underutilized courthouses are on GSA's excess list or disposal list?

Mr. PECK. Mr. Chairman, I will have to provide that for the record. I don't know. The only one here at the moment that I have had conversations with people in GSA about recently is the Dyer Courthouse in Miami, which is vacant and which I am determined to move toward excess and surplus.

Mr. DENHAM. Is it on the surplus list today?

Mr. PECK. It is not today; no, sir.

Mr. DENHAM. OK. It is my understanding that none of these courthouses are considered in the 14,000 excess properties that we have today. And again, these are all hundreds of millions of dollars of real estate that could be sold, or space that could be leased; or, at a bare minimum, we could be doing the same thing that we have done with the Old Post Office.

Mr. PECK. Mr. Chairman, as you and I are in violent agreement about, there are assets that we need to move faster to excess and surplus in our inventory. I would have to—I would love to provide for the record where we are on all of these properties, because as I said, I am only familiar with one.

[The information follows:]

GSA Response to November 4th Hearing

December 13, 2011

This document provides clarification on the slide presented in the November 4th hearing entitled "Cities with Newly Constructed Courthouses where Old Courthouses are Abandoned or Significantly Underutilized."

The actual utilization of the old courthouses in cities where new ones have been built:

Dyer Courthouse, Miami, FL

- Currently has a vacancy rate of 100%. GSA looked at potential Federal government re-use for this property, and we are now starting the disposal process.

Prettyman Courthouse Annex, Washington, DC

- Currently has a vacancy rate of 1%.

Celler Courthouse, Brooklyn, NY

- Currently has a vacancy rate of 1%.

Nakamura Courthouse, Seattle, WA

- No vacancy; Fully occupied by the Court of Appeals, USMS, FBI, and Tax Court.

Walsh Courthouse, Tucson, AZ

- No vacancy; Fully occupied by the Bankruptcy Court.

Powell Courthouse, Richmond, VA

- The Powell Courthouse currently has a vacancy rate of 25% and the Powell Annex currently has a vacancy rate of 44%.
- The Office of Staff Counsel, currently in leased space, has signed Occupancy Agreements to backfill space in the Courthouse and Annex in 2015. After this backfill, the combined vacancy rate for the Courthouse and Annex will be 24%.
- GSA is working with the Courts and seeking other tenants to backfill the remaining space in the Annex.
- The build-out of additional space is currently being planned. Pending the availability of future funds, the combined vacancy rate of the Annex and Courthouse will be 8% after the modernization.

Federal Building and Courthouse, Phoenix, AZ

- Currently has a vacancy rate of 3%.

Mr. DENHAM. Thank you. And if you could provide other properties that might be in this same type of instance. We tried to pick out a few that we knew of. But obviously, your list would probably be much more inclusive than what we have.

But let me just point out, Mr. Peck, let's put up slide number 8.

Just the Miami courthouse that you just mentioned, I think there are some similarities here with the situation that we are seeing in L.A., the Dyer Federal Building.

Let's put up 9 real quick.

This is a beautiful courthouse, beautiful courtrooms, amazing historical building. It is empty. I called down there yesterday to see who was in the building. Apparently there is a security guard around there somewhere. We were unable to find him yesterday. So we are going to send some people out there just to see exactly who is there. But I am amazed to find out that we have got an abandoned, beautiful courtroom, entire facility here. It has been vacant ever since the new courthouse opened. I was amazed to find out, when I asked the question whether it was on the excess list, we have it listed as mission critical. So I want to make sure this doesn't end up like the Old Post Office that sits for two decades, and then it takes a congressional order to actually get the problem moved forward. Here you have got an amazing piece of property in an area where we are leasing a huge amount of space, same as L.A., and yet we have got this vacant.

Mr. PECK. First of all, in L.A. we have not yet built a new courthouse. So it is a little premature to describe the Spring Street Courthouse as underutilized, because it is utilized at the moment. But as I said in my testimony and will be prepared to brief you more, when we build the new Los Angeles courthouse we will be prepared, we will take a look at where we are on Spring Street. And we are going to look at one of two things. One, we will either find that we can efficiently retrofit the building and move Federal agencies out of leased space in Los Angeles and into that building, or we will declare it surplus and get rid of it.

Mr. DENHAM. Old Post Office we spend, what, \$6.5 million a year in maintenance costs?

Mr. PECK. I don't think it was \$6.5 million in maintenance costs. I think we were losing a couple million dollars a year between what we got in rent and what we were maintaining.

But Mr. Chairman, may I just say the Old Post Office is a little more complicated. And I want to report to you something. One is that the building itself, the office part of the building is in fact fully occupied. Not terribly well utilized. And I agreed, when I was at GSA before, that we ought to get it out. And can I just say that we have put out an RFP—

Mr. DENHAM. I am just using the Old Post Office as an example, because we have exhausted that as an example here in this. We are all very, very familiar with that one property. This property here we spent—

Mr. PECK. I am trying to declare victory, Mr. Chairman.

Mr. DENHAM. We spend \$1.2 million a year to operate this abandoned building. So again, this is something we are looking at. We want to make sure that the Spring Street Building doesn't end up in the same type scenario. If we are able to do courtroom sharing,

we would want to make sure that we move or utilize that property as well.

At this time my time has expired. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

You know, Mr. Peck, it is routine for Federal agencies to attack the investigator. Everybody does it. Nobody likes when GSA does a report and says what they don't want GSA to say. But in essence, you have attacked the subcommittee because you said that you thought that the report had been discredited by your testimony. Do you really believe that the GAO report was discredited when 33 courthouses were constructed above the specifications of this subcommittee without your ever coming back to the subcommittee to get new specifications? Where you have allowed frequent overestimation of the number of judges? And where, as the chairman has just shown, there are empty courthouses and empty courtrooms?

I mean, it bothers me if you think that the report has been discredited rather than that the GSA has been discredited.

Mr. PECK. I said, as Mr. Goldstein noted, we took exception to the methodology. We had this out last—we discussed this last year.

Ms. NORTON. My time is limited, the chairman has already indicated. And your notion of—if you believe that cubic—there is something called cubic feet and square feet—then it was your obligation to come to this committee to indicate that. And I have been on this committee for 20 years. I have never seen you come back to this committee and say to the committee, we have new specifications that we need.

Now, I was at the Prettyman Courthouse, a courthouse I supported. I was at the Prettyman Courthouse just the night before last. What a beautiful courthouse, the Prettyman Courthouse is.

Let me ask you, Mr. Peck, do you believe that this committee thought that in building the Prettyman Annex that the judges would completely abandon the existing courthouse and that there would be almost nothing happening in the existing courthouse? Do you believe that this committee believed that when it authorized an annex to the Prettyman Courthouse here in the District of Columbia? And how do you justify the fact that that courthouse is sitting in the middle of Washington as the major courthouse for the Federal courts in our city, and nobody is using a perfectly beautiful courthouse?

And instead, when the judges saw there was some brand-new courtrooms, they just all scooted over to the new courtrooms, leaving a perfectly usable courthouse without any activity occurring in it.

Mr. PECK. Ms. Norton, I am not sufficiently familiar with the current activities in the Prettyman Courthouse to answer your question. I don't know what the—

Ms. NORTON. I submit it as one I am familiar with, which illustrates my impatience with—your impatience with the GAO report. Because it just says to me, Mr. Chairman, since he thinks he is discredited, he is not going to follow it.

Mr. PECK. Ms. Norton, I should note, just so I can respond, we agreed last year when we had the hearing on the GAO report, we said two things. One, is it in the years previous? And in all the

years in which the prospectus system has been in effect, GSA and the committee have had the—have taken the position that when the costs of a project went up by a certain amount, GSA came back. Not when the square footage went up, because the square footage can sometimes increase within a budget. What we did agree to last year, I want to remind you, is that we—

Ms. NORTON. You don't have to remind me. I am aware of it, and I appreciate the practice has been changed. And the practice better have been changed. I don't think you were doing us any favor, Mr. Peck. It seems to me that was the professional thing to do. And that is what any agency ought do when it goes above what has been authorized. I mean that is just par for the course.

But let me ask you what you also agreed to. After the last hearing, GSA, you said you would go back to examine the GAO modeling, and that you would try to come up with a consensus recommendation that three active district court judges can share two courtrooms, or three senior district court judges could share one courtroom.

Let me ask you: Have those meetings occurred and has there been any consensus reached?

Mr. PECK. We have discussions all the time with the courts about—

Ms. NORTON. I am going to be very specific in my questioning. Have you met with Mr. Peck with respect to the issue I just described, the three-to-two and the senior judges, three senior judges to one courtroom?

Mr. GOLDSTEIN. No, ma'am, there has been no discussion about the model.

Ms. NORTON. So meeting with people all the time is not responsive to my question.

Mr. PECK. I said we were meeting with the courts.

Ms. NORTON. Because in your mind the report is discredited, even though when the report was—when the report was revealed here, the committee was of a different mind. It appears that you have not even done what you agreed to do when you testified before this committee.

Let me ask you, at our last hearing, for example, you agreed to study the Southern District of New York and its sharing practices involving active judges. Now, have you studied it? That is a real-time example. And are those sharing practices reflected in the plans for sharing in the L.A. courthouse proposal?

Mr. PECK. The sharing practice reflected in the L.A. courthouse proposal is the sharing practice that was adopted by the Judicial Conference of the United States. We are following their sharing practice in this proposal.

Ms. NORTON. Not the sharing practice that was in the GAO report.

Mr. PECK. No, ma'am.

Ms. NORTON. So the Judicial Conference of the United States controls how taxpayer money is going to be spent for courthouses.

Mr. PECK. Ms. Norton, for many years, and you know I have done this before, we have had lots of conversations with the courts about their sharing practices. And the courts have changed their sharing practices over the years. And in this case we have in our

program on the courthouses followed the judiciary's sharing practices. That is correct.

Ms. NORTON. Mr. Peck, this is what I mean. You follow the judiciary instead of this committee. Now, this committee was very impressed with the GAO report. And that was before we got in the fix we are in now. Imagine this committee going and saying to our colleagues, we ought not be doing sharing with courthouses, even though your constituents are sharing where they live these days. They are sharing food stamps these days. Imagine how we feel about courthouses not sharing.

Let me ask, Judge Morrow, is sharing—does your testimony involve courtroom sharing for active judges? And would you describe how that would occur?

Judge MORROW. The proposed plan does not presently include any sharing for active judges. It does incorporate the two-to-one courtroom sharing ratio for both magistrate judges and senior judges. And I should note that because this is probably the last building that will ever be built in Los Angeles, over time it is going to require active judge sharing as well, because there won't be any other space.

To be inserted after line 378 on page 17:

[CLERK'S NOTE.— Subsequent to the hearing, the Judiciary provided the following additional information to complete the record:]

The proposed housing plan for the district court described below is consistent with Judicial Conference courtroom sharing policies:

ROYBAL BUILDING	NEW COURTHOUSE	TOTALS
16 District Court Courtrooms – 12 Senior Judges will share 4 courtrooms. – 17 Magistrate Judges will share 9 courtrooms.	24 District Court Courtrooms –21 Authorized District Judges will be assigned 21 courtrooms. –11 Senior District Judges will share 3 courtrooms.	37 ¹ District Court Courtrooms for 61 Judges

Slide # 3, which was shown at the hearing, suggested that after construction of a new courthouse, the Los Angeles division of the Central District would occupy three courthouses that would have a total of 85 courtrooms. This is not correct. The district court plans to vacate the Spring Street building, and to occupy two courthouses (the Roybal building and the new courthouse), not three. The Spring Street courtrooms should not, therefore, be included in any total courtroom count. Additionally, bankruptcy courtrooms should not be included in any total courtroom count because bankruptcy courtrooms do not have prisoner access and do not have the type of juror facilities needed by the district court. The district court's housing plan for the Roybal building and the new courthouse will provide a total of 37 courtrooms for 61 district active, senior and magistrate judges.

¹ In order to comport with the Judicial Conference's courtroom sharing policies, three existing magistrate judge courtrooms will be released.

Ms. NORTON. You betcha, Judge Morrow. You betcha it is going to require it.

Let me ask Mr. Goldstein. Mr. Goldstein, you indicated that using the modeling practices that you vetted with outside experts that it was possible for 3 district court judges to share 2 courtrooms, and that even in courthouses with more than 10 courtrooms there could be even more sharing. Do you have any reason to believe that the L.A. courthouse, which would involve no sharing by active judges, should be an exception that should be granted by the Congress of the United States?

Mr. GOLDSTEIN. I wouldn't see a reason why, ma'am. In fact, as you know, the judiciary's data, which is what we based our models on, showed that at the highest level—which is the active district judges—that judges are only using their courts for court-related duties 2 hours a day. A third hour is used for tours and bar groups and things like that. The fourth hour is used for events that have been scheduled but canceled or postponed, and the other 4 hours a day the lights are out. For senior judges and for magistrate judges it is even less.

And that is why we developed the model. We did not, you must recall, tell the judiciary that they should use our model. We simply encouraged them to develop their own process to do this and to develop their own assumptions. But they have never done that.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. DENHAM. Mr. Goldstein, on that same line of questioning, your current model shows about 1.5 to 2 hours courtroom use per judge per courtroom?

Mr. GOLDSTEIN. For a district judge's courtroom it shows—this is the judiciary's own data that they did based on their studies several years ago, the Federal Judicial Center—it shows that the courtrooms are used for court-related duties 2 hours a day. They are used about an hour a day for senior judges, and slightly more than an hour a day for magistrate judges for actual court responsibilities.

Mr. DENHAM. Put up slide 10.

Mr. PECK, here is New York City, the Daniel Patrick Moynihan Building, Thurgood Marshall Building. You can see again the Patrick Moynihan Building in the background of the Thurgood Marshall Building. Are we running into any problems there right now with courtroom capacity?

Mr. PECK. In the Moynihan Building?

Mr. DENHAM. Well, there is only one that is being used today.

Mr. PECK. Correct. Thurgood Marshall is under renovation.

Mr. DENHAM. Correct.

Mr. PECK. Not that I am aware of.

Mr. DENHAM. OK. So we are renovating the Thurgood Marshall Building, which is vacant right now during renovation. All of the courtrooms are now being fully—or all the judges are fully into the Daniel Patrick Moynihan Building. Once the renovation is done in Thurgood Marshall, what is going to happen between the two buildings?

Mr. PECK. The Thurgood Marshall, if I remember correctly, and I would ask my staff to correct me, is mostly the appellate court for the Second District. The Moynihan Building has taken some of

the—we have moved some of the chambers of the judges from the Thurgood Marshall into the Moynihan Building, if I remember the whole scheme correctly.

Mr. DENHAM. Mr. Goldstein, do we have any utilization problems in the Daniel Patrick Moynihan Building to your knowledge?

Mr. GOLDSTEIN. Not that I am aware of, sir.

Mr. DENHAM. Do you know what the courtroom usage is in those buildings?

Mr. GOLDSTEIN. I am sorry, sir?

Mr. DENHAM. Courtroom usage right now, hours per day per courtroom?

Mr. GOLDSTEIN. We don't know for that particular one. We can get back to you. We can take a look.

Mr. DENHAM. Do you have the current cost-sharing ratio on that building?

Mr. GOLDSTEIN. We have just at this point with me today, just the general ratios.

Mr. PECK. And Mr. Chairman, the Moynihan Building was built before there was any court sharing at all, so it was built to a different standard; a different standard, I just say again, than we are going to use in the Los Angeles courthouse, the new building.

Mr. DENHAM. I think these are two good comparisons between the Miami building where you have got the Dyer Building that is sitting vacant and not even on the excess property list—which I would consider that similar to Spring Street—and here, where you have completely shut down one huge building, moved everybody into the second building, and actually have great security and courtroom usage.

Mr. Goldstein, when the renovations to the Marshall Courthouse are complete, what do you think the reutilization rate is going to be on this building?

Mr. GOLDSTEIN. Well, you know, I don't know exactly, sir, but it is interesting because, you know, as you know, all of the judges moved into Pearl Street while that renovation was going on. The Federal Judicial Center examined this several years ago and found that the judges were doing quite well, actually, in their sharing; that almost all of them said that it had gone very well. And the people who were involved in scheduling said that there were no issues and that no trials had been postponed; that anytime they needed a hearing room, one was obtained. So it seems to me that there may not be a huge need for them to go back into the other building if sharing is indeed working already.

Mr. DENHAM. So regardless of whether it was designed for that or not, it is happening today, it is working today, you have got everybody in one building. How many cases did you say have been lost or suspended?

Mr. GOLDSTEIN. None.

Mr. DENHAM. None? No problems that you have heard of?

Mr. GOLDSTEIN. According to the judiciary itself and their report.

Mr. DENHAM. I am looking forward to going to L.A. and seeing the Spring Street and the Roybal Buildings next week to see if we have got a similar-type scenario.

Mr. Peck, I wanted to go back to something you said when answering Ms. Norton's question. When we look at a prospectus, we

look at both the scope and the money. And it is my understanding you are no longer looking at both of those issues?

Mr. PECK. No. I said that principally over the many years that the prospectus system has been in effect, most of the focus has been on containing costs. Of course the scope is looked at, too. But with respect to coming back when a project gets underway, we have come back when there was a money issue. And I am saying once the project has been authorized and appropriated and the project gets underway, we have come back for a prospectus when the costs exceeded the amount that was—that had been appropriated by more than 10 percent.

Mr. DENHAM. So when it has been exceeded?

Mr. PECK. When it has been exceeded by more than 10 percent. Because our rule with the Appropriations Committee is that we can escalate the cost on a project up to 10 percent without going back to them. But if the cost escalation does exceed that, we have to go back.

Mr. DENHAM. Have you ever gone above 10 percent and not come back to this committee?

Mr. PECK. I don't think so. But I would have to check.

[Supplementary information submitted for the record by the General Services Administration follows:]

GSA has a longstanding practice of requiring multiple levels of reviews before exercising our authority to escalate projects up to 10 percent of the approved limits. After reviewing 5 years of internal escalations, we did not find any instances where we exceeded the 10 percent without congressional approval. To the best of our knowledge we have not exceeded our appropriations for projects by 10 percent without approval from the committees, as stated and allowed in our appropriation language.

Mr. DENHAM. I am going to double-check that, because I have heard differently.

Mr. PECK. On cost. On cost.

Mr. DENHAM. Well, on cost, yes. You should be coming back on scope or cost.

Mr. PECK. Right. Right.

Mr. DENHAM. If you are drastically changing a building that has been appropriated and been approved by this committee, if the scope is drastically changed and you went from 50 courtrooms to 20 courtrooms, I would expect you to come back. Under the law, under Title 40, you have to come back if it is 10 percent. So that is something I certainly want to look at and make sure it hasn't been happening across the board. But you are going from—you know, I will tell you, if I was running a business that way and I waited until I was over 10 percent, and then I went back to the banks after I got 20 or 30 or 40 percent over, I would be out of business.

Mr. PECK. Mr. Chairman——

Mr. DENHAM. You are waiting until——

Mr. PECK. Mr. Chairman, I am simply——

Mr. DENHAM. When you have spent 90 percent of the money——

Mr. PECK. Mr. Chairman, I am simply reflecting what the law requires. I am not telling you what my personal predilection would be or how I would do it if I ran a business. I am just saying that we are required by law, if we exceed an appropriation by 10 percent, to come back for notification to the Appropriations Committee and approval to go forward.

Mr. DENHAM. And under law you are required to do that. My concern is that you are not. My concern is that you are waiting until 20 or 30 or 40 percent. And then at that point Congress is under a real bind to say, Do we finish the project? Do we reappropriate new money or not?

My concern would be when you get to 90 percent and you realize something has changed. The requirement has changed. The scope has changed. It is going to cost more money. The costs went through the roof. Maybe steel has, the pricing has changed way beyond what your budget would have ever imagined. You get to 90 percent, you realize you are going to have some big cost overruns, I would expect you to come back to Congress then, not when you get to 110 or 115 or 120 percent of the cost.

Mr. PECK. Mr. Chairman, I will be happy to go back and see if there have been instances where we have not come back when we exceeded the 10 percent, number one. And number two, I will certainly submit to you that I don't—it doesn't mean that we are at 110 percent when we come back for approval.

My experience in the times when I have seen this happen has been that when we think we are going to exceed by—I think we are talking about just what you are talking about, when we reach 90 percent or 80 percent or 50 percent for that matter, and don't think we are going to be able to do it within the budget, I believe we have come back to the committees and said, OK, we are going to need more money. And by the way, we have to tell the Congress a source for the funds, which we are required to find savings from other projects to apply to a project when we do go overboard.

But I am just saying that is—I want to assure you that we agreed last year, and we will continue to provide if we increase the scope, including square footage of a project by 10 percent, we will come back and inform you.

Mr. DENHAM. Have you come back to the Congress on this project?

Mr. PECK. On Los Angeles?

Mr. DENHAM. The L.A. courthouse.

Mr. PECK. On the L.A. courthouse we have come back to the Congress a couple of times before.

Mr. DENHAM. And the scope has definitely changed on this project several times.

Mr. PECK. Yes, sir.

Mr. DENHAM. And at one point the justification was because we needed—we were going to have a huge amount of judges we were going to go out and hire. We are going to appoint new judges. That number has changed several times now. And it is my understanding now that new judges is not the concern. Now the concern is Spring Street is just too old.

Mr. PECK. No, it is security concerns. And that has been consistent since we first proposed the product. I would just note that

we are now back to—and I have to tell you, I will think this is a good story on this project—we are back proposing to you about the same amount of square footage that we proposed when this project was first authorized in 2000. And we are proposing to build within an appropriation that was given to us in 2004 and 2005.

We have been told any number of times in this committee and other committees that we should proceed with this project within the budget that was appropriated in 2004, 2005, and we are now prepared to do that.

Mr. DENHAM. Which was 72 judges. And we have 59.

Mr. PECK. I don't ever recall a projection for 72 judges in this courthouse. There was a proposal for something like 41 courtrooms at one time. But as I said, and this is another—

Mr. DENHAM. The slide that was presented to you, the 2004, we actually had 67, and the 10-year projection was 81. So we were basing the scope of this project on 81 judges. In 2011, this year, we have actual 59 judges.

Mr. PECK. That includes, I believe, bankruptcy and magistrate judges. There are—you know, you can compare—it is easy in this project, because there are lots of numbers floating around, to compare apples and oranges. There are district judges who require district courtrooms.

Mr. DENHAM. Apples and apples, that was the projection. You are changing the scope of the project. That is the concern here.

Mr. PECK. No, sir. The number of—in fact, the only way the scope of this project has changed—and this has been in response to concerns of the Congress over the years—is that we no longer scope a courthouse project by trying to figure out how many judges there might be in a district 30 years from now. We simply don't assume any expansion in judgeships, and we take a look 10 years out to see which judges might be taking senior status and how many active judges there will be.

Mr. DENHAM. I am looking at the GSA prospectus, your prospectus, apples and apples, exactly what you presented to Congress. Number of judges, 72. That is the proposed 2011 number. And the actual number right now today is 59?

Mr. PECK. That includes a number of chambers for judges that will be going senior, I am told. And again, that includes district, magistrate, and bankruptcy judges.

Mr. DENHAM. OK. We are in agreement on something.

Mr. PECK. Pardon?

Mr. DENHAM. We are in agreement on something. OK. Apples and apples now. What do you expect to use the Spring Street Courthouse for?

Mr. PECK. If we continue to use the Spring Street Courthouse in the Federal inventory, the only thing I can tell you for certain that we know right now, because we haven't completed a study of it, is that there are some historic courtrooms that would be used for the grand jury, for U.S. attorney practice, and some other courtrooms that might be easily converted to conference room and training room space. That is, if we decide to keep it in the Federal inventory. And as I said, if it is cost-effective to do so, that would allow us to move a lot of Federal agencies out of costly leased space in the Los Angeles area. But we will have to make a determination

about whether we keep it in the inventory or move it out of the inventory.

And I would like to assure you that that is a study that we will move forward with quickly. So I am well aware that there are previous instances in which the old courthouses weren't pushed out of the inventory fast enough.

Mr. DENHAM. Quickly within the next decade? What is quickly?

Mr. PECK. Well, a decade is a pretty long time.

Mr. DENHAM. I would agree. It took us two decades for the Old Post Office. So I would like to clarify what "quickly" would mean.

Mr. PECK. I would be loath to tell you in Los Angeles exactly how fast that would be. We have got to do the study and we have got to move it out. But I certainly think if we are moving ahead with a courthouse, you then have to build a courthouse. And the Spring Street Building wouldn't become excess until we finish construction, which probably wouldn't be until 2016 or so. So we are talking about a ways out before we do it. And then I think you could make a decision and certainly excess and surplus the building within a year after we move people out of it.

Mr. DENHAM. If the Civilian Property Realignment Act were in place and signed into law today, would this be a candidate to be sold?

Mr. PECK. The Spring Street Building?

Mr. DENHAM. Yes.

Mr. PECK. Not right now.

Mr. DENHAM. If the new courthouse was built, would it be?

Mr. PECK. Yes, sir.

Mr. DENHAM. So we would not be looking to investing money into this to redo it or renovate it for any other purpose.

Mr. PECK. I want to be really clear. What I said was we would take a look at what it would cost to renovate the building for Federal use and see whether that saved the Government in the long run, over continuing to lease space. But if it turned out it was too expensive to renovate and we didn't get a return on it, then we would say it is excess to the Government's needs.

Mr. DENHAM. Thank you.

And final question. Judge Morrow, you had said that the challenge that you face right now is that you are in two different courtrooms and they are .4 miles away?

Judge MORROW. Two different courthouses, yes. They are about two blocks away. The problem we have right now, Congressman, is that we have active district judges and senior judges and magistrate judges in each building. District judges and magistrate judges perform, in our district, very different functions. The district judges handle virtually all of the civil trials, all of the felony criminal trials, all the guilty pleas, all the sentencing. Magistrate judges do different things. They handle habeas petitions, Social Security matters, discovery, settlement conferences, things that require different support functions from the activities that the district judges do.

So we now have everyone split between two buildings. That results in the marshals going back and forth between the buildings all the time with the prisoners. It also results in duplicative clerk's office functions in each building. And part of the goal of the design

plan that we have come up with with GSA is to get all of our active district judges and as many of our senior district judges as possible in one building so we don't have to duplicate those support functions, and so that the marshals are not constantly running back and forth between the buildings the way they are now.

So it is a functional split, if you will, as opposed to what we have going on now, which is basically running two separate buildings doing the same things.

Mr. DENHAM. And you have a mix right now. You have district judges in both buildings and you have magistrate judges in both buildings?

Judge MORROW. Yes. And in the proposed plan we would have all the active district judges and approximately 50 percent of the senior district judges in one courthouse. We would have all of the magistrate judges and some overflow senior judges, if you will, in the Roybal Building. And of course the bankruptcy court, which is a separate independent jurisdictional kind of court, is also in the Roybal Building as well.

Mr. DENHAM. The district judges, that is where we run into challenges with the marshals and security and—

Judge MORROW. Yes. Because we are the ones who are doing all the felony work, the guilty pleas, the sentencings. I mean the magistrate judges do handle arraignments, but those are always done all in the Roybal Building. But these other criminal activities are done exclusively by the district judges.

Mr. DENHAM. Why not put all the district judges in the Roybal Building?

Judge MORROW. A couple of things about that—first of all, the way the Roybal Building is configured. Currently the district judges who are resident in the Roybal Building—I am one of those—are in a lower part of the building. There are two towers, two elevator towers. And in order to move all of the district judges into the Roybal Building, there would have to be significant renovations of that building, because the second tower, the higher tower, is now occupied by the bankruptcy court. None of those courtrooms would work for district court functions. They have no prisoner access. They have no holding cells. They have jury boxes, but they are not usable by the district court because they only seat 6 people, and we need 14-person juries in criminal cases, and we seat 8-person juries, by and large, in civil cases.

So the jury facilities are inadequate, the prisoner movement is inadequate, and currently we have a holding cell down in the bottom of the building. The Marshals Service has indicated to us that in order to access those higher level floors, they would have to build a holding cell, a second holding cell on the 18th floor, which is where Congresswoman Roybal-Allard's office currently is. They would have two holding cells, two separate prisoner movements, and it would create real problems for them in the building. So we can't use the existing bankruptcy courtrooms. We would have to completely reconfigure them. GSA would have to build a new elevator shaft. It would be a highly costly venture.

To be inserted after line 1359 on page 59:

[CLERK'S NOTE.— Subsequent to the hearing, the Judiciary provided the following additional information to complete the record:]

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

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

- The build out of 13 new district and magistrate judge courtrooms, and the provision of secure prisoner circulation and holding cells for these courtrooms.
- The build out of 39 additional chambers for use primarily by senior and magistrate judges. It would be necessary to demolish four bankruptcy courtrooms to provide space for these chambers. If Congress were to create the clearly needed district judgeship positions proposed in S. 1032 and HR 2365, additional space would need to be found and built out for them as well.²
- Significant alterations to eight bankruptcy courtrooms to provide the prisoner access and holding cells necessary to convert them for district court use.
- Demolition of twelve bankruptcy court jury deliberation rooms that are too small for district court needs and reconstruction to convert them for district court use.
- Conversion of the district court clerk's office in Roybal to a jury assembly area.
- Expansion of USMS holding cells.
- The vacating of approximately 155,000 usable square feet (usf) of space in the Roybal building by current executive branch agencies and other federal occupants, demolition of the vacated space, and reconstruction for district court purposes. The court understands that this amount of space is not available in GSA's inventory of federal space in the area, and that it will be necessary to obtain leased space for these tenants. Based on past experience, it is likely to take three to at least four years to process a lease prospectus for this amount of space.

² The Central District of California is the 11th busiest of the 94 districts in the nation. District judges in the Central District carry one of the heaviest caseloads in the nation with the number of weighted caseload filings currently at 639 per authorized judgeship (year ending June 30, 2011). This far exceeds the national average of 505.

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

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

Mr. DENHAM. Mr. Peck, you weren't here during that time when the Roybal Building was built, were you?

Mr. PECK. No.

Mr. DENHAM. It wasn't constructed wrong, was it?

Mr. PECK. Even before my time. I will say, just so we note for the record, I was saying to our staff it seems like we have studied just about every permutation and combination of courtrooms, chambers, and buildings that you can imagine in the Los Angeles District. I was out there last week looking at it. And as you know, at one time there was a proposal that GSA put forward to consider a combination of a new building and a renovation of Roybal. We have looked at the renovation of Roybal alone. It is very costly, as Judge Morrow noted. And really, this is I think the smartest way to provide the space we need for the district court judges. The Roybal Building would be principally magistrate and bankruptcy, with some courtrooms for senior district judges.

And finally, I would note something, that when we are done, and again I think I have the numbers right, we will have something between 42 and 49 courtrooms between the buildings. Again, 21 that are active district judge courtrooms, 21; three in the new building that would be used for senior judges. And if the projections are right on the number of judges that go senior in 10 years, we will have 73 judges sharing 40-some courtrooms. So if you want to mix up all the courtrooms—

Mr. DENHAM. The projections haven't been right in the last two decades.

Mr. PECK. But I want to be really clear these are not projections of Congress creating more judgeships. These are projections—we have kind of a baby-boom generation of judges who are eligible to go senior. So we will end up for a while with more judges who are senior, but we are not building very many courtrooms for them. We are not counting on that.

Mr. DENHAM. Thank you. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. You know, Mr. Peck, when you look at a courthouse like the Prettyman Courthouse, you walk into that courthouse, this is the main courthouse in the District of Columbia, it is a perfectly suitable building, but it is also an historic building. So, when you consider the emptiness of the building now, or virtual emptiness of the building when it comes to courthouses, it is difficult to know how better utilization could ever be made of Prettyman. Prettyman is historic for a number of reasons, including the judges who served there and the trials that have occurred there. And so, it makes you want to cry to go into a building that no one ever thought would be abandoned and to see that probably there is no good use that could be made of it now. It also is on Constitution Avenue.

Mr. PECK. Ms. Norton, may I say I actually share your affection for the building. I filed briefs there when I was a much younger attorney. I have served on a jury there. I have to say there are two things to say about the whole Prettyman. One was that the annex was built under the old projections, which we have changed, on how we build courthouses. That was built at a time when we did assume—

Ms. NORTON. That is why I asked you in my prior round of questions whether there was ever any intent to abandon Prettyman. Nobody builds an annex with the thought in mind that all the judges will no longer be in the historic courthouse.

Mr. PECK. That is correct. I don't think there was ever an intention to abandon it. It is partially occupied now, and we have actually been trying to find funds to renovate the building, because I believe that the court thinks that there is still a good use for it.

Ms. NORTON. Well, if not, we are not going to be able to do anything about it. It will just go down as one more reason why we have to be very careful in the future.

Now, you are aware of an issue that was not of GSA's doing, and that had to do with what has led to a new look at utilization rates in Federal office buildings throughout the country. We found that if you don't police that, that even Federal agencies will think they are Federal judges, and they will get utilization rates that taxpayers would be amazed to see. And so, that occurred when the SEC was given authority it never should have had.

I have introduced a bill. SEC, of course, has said it will never do this again, but it was such an outlandish violation of utilization rates that I have introduced a bill to take away any authority from SEC, even though it has obviously given up the authority. And I don't think any agency except GSA should have such authority. But you know, we begin to wonder about GSA when GSA is led by the nose by agencies. And it has happened with agencies, and it certainly happened with the courts to a fare-thee-well, as if the courts, Article III courts, as if they have any jurisdiction whatsoever to say what courthouses will or will not be built. We don't share jurisdiction over that matter with judges or anyone else.

I want to ask you: Is there any difference between the mandated decrease in utilization rates that the administration and GSA is supporting and requiring active judges to share courtrooms?

Mr. PECK. Well, first of all, if you will allow me to say, we are achieving some significant success in talking to executive branch agencies about reducing their utilization rates.

Ms. NORTON. Not only are you achieving it, let me commend GSA. When you came before us—and I only regret that we did only six or so of your leases this time—no one could help but be impressed with the reduction in utilization rates and how they reflected themselves—how that reflected itself in less space that you asked for. It was astounding to see how much, how many millions of dollars of space GSA saved simply by using a reduced utilization rate so that people that work in Federal agencies are going to have to work in less space.

My question to you, after commending you on what you are doing I think so well with Federal agencies, is to indicate why, if at all, there is any difference between decreasing the amount of space, utilization space for other Federal employees, and requiring judges to share courtrooms?

Mr. PECK. Well, I guess I would like to respond in two ways. One is even with respect to executive branch agencies, we are not in most cases just imposing a blanket number. We are talking to them about their functions and asking questions like—

Ms. NORTON. You not only are doing that, and we never—this committee has never stood for inflexibility. You not only are doing that, those numbers are reflected in the prospectuses for leasing that come before and are approved by this subcommittee. So we know exactly what you are doing, we approve them. We know there are differences between agencies. And there may be a difference between courts. No one would require an inflexibility when it comes to courts.

But I am asking a very specific question. And that is, what is the difference between a decrease in the utilization rates for Federal office space and requiring active judges to in fact share courtrooms where that is feasible?

Mr. PECK. OK. Well, number one, I think that we should all take some comfort in the fact that over the last decade the courts have agreed to a different sharing policy. So in essence they are reducing space. In fact—

Ms. NORTON. But they have not agreed to share space when it comes to active judges. We just had a judge testify here today that there would not be sharing.

Mr. PECK. But they are sharing for magistrate judges, for senior judges. You know, there are other space—

Ms. NORTON. So this committee should be satisfied if the judiciary goes along with some of what we mandated, not all of what we mandated?

Mr. PECK. Well, I think that what the committee, as I understand it, has mandated over the years is that we take a look at sharing and see where—

Ms. NORTON. You have testified you haven't taken much of a look at sharing, because Mr. Goldstein is seated next to you, and you haven't had any conversations with him about it.

Mr. PECK. Well, to be candid, my conversation about sharing courtroom space has been with the courts, who are—

Ms. NORTON. Why hasn't your conversation also been—I don't object to your discussing this matter with the courts anymore than I would object your discussing utilization rates with Federal agencies. What I do object to is your having no discussions with Mr. Goldstein when this committee was clear that it was impressed with the GAO report. That is what I am objecting to, Mr. Peck.

Mr. PECK. I don't know if you would call it a conversation, but we certainly had a back-and-forth with Mr. Goldstein about methodology and the results of his report.

Ms. NORTON. Just a moment. So your testimony here today is having had a back-and-forth with Mr. Goldstein, you do not agree with Mr. Goldstein, so you are going to ignore the GAO report?

Mr. PECK. We have not ignored the GAO report. In fact, as I said, we have changed our policy with respect to coming back to the committee for scope. And we are—we have also talked to the—

Ms. NORTON. Mr. Peck, you know what, you are filibustering.

Mr. PECK. No, ma'am.

Ms. NORTON. That doesn't work with me. And this is what I am going to ask. Mr. Chairman, I am going to ask that Mr. Goldstein and Mr. Peck sit down, and within the next 30 days submit a report to the chairman of this subcommittee on what agreement, if

any, you have reached with respect to the GAO report. Within 30 days a document, 30 days of the day of this hearing, not a back-and-forth. Mr. Peck, this committee endorses, made that clear when it came forward, the GAO report.

So within 30 days, I want you to have a conversation with Mr. Goldstein. And that conversation should be reflected in a report as to what, if anything, you have decided in your conversations with Mr. Goldstein.

Mr. PECK. I will be happy to do that.

Ms. NORTON. That is all I am asking.

Mr. DENHAM. And respond back to this committee with any recommendations where there is an agreement between the two on courtroom sharing.

Mr. PECK. Yes, sir.

Mr. DENHAM. Thank you.

At this time, I would ask unanimous consent that Ms. Brown, who is a member of the Transportation and Infrastructure Committee, be permitted to participate in today's committee hearing.

Without objection, so ordered.

Mr. Peck, I think it is great that we are now going to be having a conversation with GAO that should have happened a long time ago. I agree with Ms. Norton on it. But you said you have had conversations with the judicial branch. Do you have an agreement with them on courtroom sharing?

Mr. PECK. Well, our agreement so far on courtroom sharing is the policy that we have described, that there is courtroom sharing with senior judges and magistrate judges.

Just one thing I would like to note. We focus a lot, and we have been focusing for a long time, on courtroom sharing. There are other aspects to the size of a courthouse that we also have conversations with the courts about: size of jury assembly rooms, the size of the district clerk's office, the size of chambers, whether there are large—and if there aren't any longer—large libraries when we don't use books as much as we used to. So we have reduced the amount of space in courthouses in areas other than just courtrooms.

Mr. DENHAM. I am looking at the Judicial Conference of the United States, what they came back to this committee on. And in the third paragraph, it says, "After reviewing the data gathered during the study, the Conference today adopted a policy for senior trial judges to share courtrooms."

Is there any courtroom sharing happening right now at the Roybal Building, Judge Morrow?

Judge MORROW. For the district and magistrate judges in the Roybal Building, no; in the Spring Street Building, yes.

Mr. DENHAM. Mr. Peck, are we following the Judicial Conference report as far as the Roybal Building is concerned?

Mr. PECK. The Roybal Building was built before the Judicial Conference adopted its sharing guidelines, so I defer to Judge Morrow on how much sharing is going on right now.

Mr. DENHAM. In your opinion, Mr. Peck, is there any reason that the Roybal Building would not be doing the sharing that the judicial branch has recommended?

Mr. PECK. I am at a loss to answer your question in part because I don't know enough. But I can tell you that when we do—our plan is that the Roybal Building will reflect the sharing policy when we are done with building a new courthouse and moving people out of Spring Street.

Mr. DENHAM. Is it your plan to demolish seven courtrooms within the Roybal Building?

Mr. PECK. It is—part of the plan, as I understand it going forward, part of the plan would be to as many as seven small courtrooms in the Roybal Building—we are not talking about district courtrooms, but smaller courtrooms—and convert them into chambers, as I understand it.

Mr. DENHAM. Are you sure they are not district courtrooms?

Mr. PECK. I don't know.

Judge MORROW. Congressman, may I respond to that?

Mr. PECK. Some might be district courtrooms. I don't know. I know there are seven courtrooms, some are not district, and they would be converted to chambers.

Judge MORROW. Congressman, we applied the new sharing policies for magistrate judges and senior judges to calculate the amount of space required in the new building and also to calculate the amount of space that we would occupy in the Roybal Building. And the net result of that, if I may disagree with Mr. Peck, is that there would be three magistrate judge courtrooms in the Roybal Building that would be vacant once the new building is constructed and personnel have moved into Roybal and into the new building.

Those we will need for chambers, because we do not have enough chambers in the Roybal Building now to house all of the judges who would move into that building. If that wasn't feasible for some reason, then the court would release that space to GSA so it could move executive branch agencies in there. Because, as Mr. Peck has said, there is about 1 million square feet of lease space in downtown Los Angeles that is presently occupied by executive branch agencies.

Mr. DENHAM. Let's put up slide number 5 again. I think you all have this in front of you.

So, looking at that courtroom, the bottom floors is where we have the security, the holding areas, the district judges. Under the GAO's model, we would be able to fit 47 judges there, 21 district, 9 senior, 17 magistrate. We also have, instead of the 12, we have 16 bankruptcy courtrooms right now, 4 of them being unused? Is that correct?

Judge MORROW. That is correct.

To be inserted after line 1640 on page 71:

[CLERK'S NOTE.— Subsequent to the hearing, the Judiciary provided the following additional information to complete the record:]

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

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

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

On a disturbing note, the model appears to have completely ignored the security issues that exist at courts. Courts are places where dangerous and violent individuals

are brought on a daily basis. They are places where civil litigants have in the past expressed violent and deadly disagreement with the outcomes of their cases. The more moving around the courthouse that is done as cases are shifted from one courtroom to another, the greater the potential for security problems.

The Judiciary Has Responded to and Addressed the Recommendations
in the June 2010 GAO Report

At the hearing, there was an implication that the Judiciary should adopt the courtroom sharing ratios and centralized sharing concept discussed in the GAO report. Adopting these specific sharing ratios was not among the GAO's recommendations in its June 2010 report.

The Judiciary has addressed the GAO's criticism concerning planning space for projected judgeships. At its September 2011 session, the Judicial Conference adopted the following policy:

Space for Judicial Conference-approved judgeships that have not yet been created by Congress will be taken into consideration at the design concept phase in that the architects will show how space for these judgeships could fit into the design. Architects will not, however, complete a detailed design that includes space for these judgeships because they have not yet been created by Congress.

Should the positions be created by Congress during the design phase, the design documents would be amended to include the new positions and space would be constructed for them.

Space for judgeships that the Judiciary has projected would be needed, but has not yet recommended the Judicial Conference approve, will be considered by GSA as part of future expansion plans for the building.

Consistent with this approach, the proposed Los Angeles courthouse does not include space for any projected judgeships. Additionally, due to the need to keep this project within the amount appropriated and authorized, the design concept does not include space for Judicial Conference-approved judgeships that have not yet been created by Congress. The General Services Administration has agreed with this approach.

Current Proposal Takes Into Account the Recommendations
in the GAO's June 2010 Report

Notwithstanding the GAO's written testimony before the Subcommittee, the current proposal does address the GAO's recommendations in its June 2010 report. Specifically:

- The proposal does not exceed the congressional authorization;
- The proposal does not include space for Judicial Conference-approved judgeships

- nor for projected judgeships;
- The proposal complies with all existing Judicial Conference courtroom sharing policies; and
- Additional courtroom sharing will likely occur because space has not been planned for Judicial Conference-approved judgeships nor for projected judgeships.

Mr. DENHAM. Well, what are those four used for today?

Judge MORROW. I can't answer that question because it is a bankruptcy court space.

To be inserted after line 1643 on page 71:

[CLERK'S NOTE.— Subsequent to the hearing, the Judiciary provided the following additional information to correct and complete the record:]

During the November 7, 2011 tour provided to Chairman Denham, bankruptcy court officials explained that none of their courtrooms has ever been used for the storage of furniture. Court officials stated that one bankruptcy court chambers, which is in the process of being repaired due to exterior water damage affecting the walls and wall covering, is temporarily being used to store furniture from another chamber that is under refurbishment. GSA officials stated that furniture that had been ordered for the child care center in the Roybal building was temporarily stored in a Tax Court courtroom that was about to be renovated. (The Tax Court is not part of the Judiciary and therefore the Judiciary has no control over the use of that space.) The furniture has since been removed and installed in the child care center, and the tax court space is under renovation.

With regard to statements at the hearing that four bankruptcy courtrooms are vacant, bankruptcy court officials have since clarified that two of these courtrooms are currently being used by four visiting bankruptcy court judges who are assisting the bankruptcy court with its heavy case load until pending new judgeship positions can be approved and filled.³ In addition, bankruptcy court officials noted that they continue actively to seek additional visiting judges to assist with the caseload.

The other two courtrooms would be utilized by two of these four visiting judges except for the fact that their chambers are being repaired and are temporarily unavailable. Funds for the repairs were provided to GSA in fiscal year 2011, and it is expected that work will be completed in the first half of 2012. When the work is completed, the bankruptcy court plans to utilize all four of courtrooms for the visiting judges who are currently assisting it, and for any additional judges from other districts that can be recruited to assist the court.

³ The bankruptcy court in the Central District of California ranks number one among the country's 90 bankruptcy courts in total case filings as well as in chapter 7, 11 and 13 cases. Total raw filings in the district are 130% higher than the next highest district. For the year ending June 30, 2011, the weighted filings per authorized judgeship in CAC stood at 2,314, which was 36% higher than the national average, and 93% above the full-time workload of a bankruptcy judge. Based on its weighted filings and other factors, at its March 2011 meeting, the Judicial Conference approved a recommendation from the Bankruptcy Committee for an additional 8 bankruptcy judgeships for the Central District. When these clearly needed judgeships are created by Congress, space will be needed to house them.

Mr. DENHAM. My chief consultant here says he toured it and it was full of furniture. The four offices were shut down.

My question is, if we are shutting down Spring Street and we have an opportunity to share courtrooms here, why are we building a new courthouse?

Mr. PECK. Because all of the studies that we have done over the years have shown that trying to retrofit the Roybal as a courthouse that meets the security standards that we have for the courts is expensive.

So is there enough square footage? There probably is. But at the end of the day—

Mr. DENHAM. Mr. Peck, have you done a study on this building as it pertains to courtroom sharing?

Mr. PECK. I would have to—I don't know if we have done it with respect to courtroom sharing. We did it—

Mr. DENHAM. OK, hold on. Let me stop you there.

You have met with the judicial branch. You have agreed with the judicial branch that there is going to be a new courtroom-sharing model. You have come back to Congress and you said, \$400 million we are going to spend on this brand-new courthouse. And the Roybal Building, which is a newer, secure courthouse, you have not even done a study on courtroom sharing there?

Mr. PECK. Mr.—

Mr. DENHAM. How do you propose—when you are building out the entire L.A. area on a courtroom need, how do you find a need to have a new building when you haven't done a courtroom-sharing model on what we currently have?

Mr. PECK. Mr. Chairman, let me correct myself here. We have taken a look, again, at the options of renovating the Roybal and building a new courthouse to meet the courts' needs for court district, magistrate, bankruptcy courtrooms, and to do it in a secure environment. And our conclusion is that the best way to do that is to build a new courthouse and to retrofit the Roybal for certain other purposes, but not principally for the district courtrooms.

So there will be sharing in the Roybal Building. They will be sharing senior district courtrooms and magistrate and bankruptcy courtrooms.

Mr. DENHAM. Thank you.

It is my understanding, on the lower part of this, where we have the secure area, where we have the holding areas, we also have one floor that is completely just office space. It was designed to have four courtrooms in it. It came to this committee in a prospectus to have four courtrooms in it. Yet there was not a need to have extra courtrooms at the time, so we put—instead of having the secure area being utilized for courtrooms, we now have that as office space.

Is that correct, Mr. Peck?

Mr. PECK. I am told that that is correct.

Mr. DENHAM. So we could certainly redevelop that one floor back to its original purpose and put four new district secure, state-of-the-art courtrooms in there.

Mr. PECK. Mr. Chairman, the problem is that you can describe it as secure, but we can't, in this building, without doing things like building a new elevator shaft, make the building a secure

courtroom to handle prisoners in the way that we do it in modern courthouses with three separate circulation systems.

Mr. DENHAM. I am looking forward to touring it firsthand, seeing it firsthand.

Mr. Goldstein, can you explain this model here?

Mr. GOLDSTEIN. Yes, sir. What that model represents—as you know, we developed this model with simulation experts, and our model was peer-reviewed by the people who made the software, so it has been vetted and validated.

So our approach includes: all case-related activities are included; all time allotted to non-case-related activities, including preparation time, ceremonies, educational purposes, are included; all events that are canceled or postponed within a week of the event are included, and that is 60 percent of all events that are scheduled in a courtroom.

So what we did is, the model was then developed using, again, the judiciary's own data. And so, based on the number of current judges in the district court, there were three approaches. Under a dedicated sharing model, which allows judges to be assigned a courtroom which they share, you would need 26 courtrooms—17 district and 9 magistrate. Centralized sharing within type, meaning that the district judges share and then that the magistrate judges share, shows that you need 22 courtrooms—15 for district and 7 for magistrate. And fully centralized, in which you have all judges sharing across the spectrum, you could have 21 courtrooms.

If, indeed, the projections for additional senior judges were actually to come true—and, in many cases, we know they do not—you would need an additional three courtrooms at that point.

Mr. DENHAM. So an additional three courtrooms. That would be converting the one floor of office space into the four courtrooms?

Mr. GOLDSTEIN. Yes, sir. And you also have, of course, the arraignment, you know, courtroom that exists as well.

Mr. DENHAM. So there is one extra courtroom, and you could also redo one of the upper floors as well?

Mr. GOLDSTEIN. That is my understanding, sir, yes.

And this would still allow, based on the most conservative use of the model that we developed, somewhere between 18 and 22 percent of time for courtrooms when they are still not being used.

Mr. DENHAM. Eighteen to twenty-two percent—

Mr. GOLDSTEIN. Even after this, yes, sir.

Mr. DENHAM [continuing]. That wouldn't be used, vacant space.

Mr. GOLDSTEIN. Not vacant. Well, in the existing courtroom, the time, the time during the day, where the courtrooms would still be dark.

Mr. DENHAM. So if we had a sudden influx of judges, could we even accommodate more in the Roybal Building than—

Mr. GOLDSTEIN. We can certainly take a look and get back to the committee. I would hesitate to tell you the full utilization rate until I did that.

Mr. DENHAM. Thank you, Mr. Goldstein.

I am way over my time. Ms. Brown?

Ms. BROWN. Thank you, Mr. Chairman.

I am just not really, kind of, comfortable with the tone of this meeting, having gone through building a courthouse in Orlando, a

Federal courthouse, and the first Federal courthouse that was built after the Oklahoma City bombing. And so, some of the factors that you consider—safety is the first factor.

And I would like to hear from the judge on the safety issue. Because I will be in Los Angeles next week, and I personally want to tour and get an update and see for myself. Because, you know, it is one thing for us to put something in writing, but it is a definite difference as to how it pans out in the district.

So can you give us an update? Because I am most concerned about the safety aspect.

Mr. DENHAM. And, Judge Morrow, before you respond, Ms. Brown, I am planning on being there next week as well. I would look forward an opportunity if we can coordinate schedules, we could see it firsthand together. That would be a good bipartisan way to—

Ms. BROWN. Sounds like a date to me.

Mr. DENHAM. Sounds good.

Judge MORROW. And we would love to give you a tour, all of you who would like to come.

Yes, Congresswoman, I can respond to your question. We have two facilities in Los Angeles, the Spring Street Courthouse and the Roybal Building. Roybal has relatively good security. Spring Street is really the problem.

Spring Street is a very old building; it was built in the late 1930s. It has no secure prisoner circulation to many of the courtrooms in the building. The secure prisoner circulation that does exist goes to some of the courtrooms, and the marshals have stopped using that because it is so dangerous to transport the prisoners in this very narrow, winding corridor, that they are fearful for their own safety as well as the safety of some of the inmates. So these prisoners are being moved through the building in public hallways and on public elevators, where they run into parties, witnesses, jurors, victims, judges, court personnel.

And large numbers of them have to be moved, often, at one time. Because, in our district, we have a number of gang prosecutions where we have 50 to 70 defendants in one case. The Department of Justice has partnered with the Los Angeles Police Department to do large gang takedowns in Los Angeles, because it has one of the highest gang populations in the country. And all of those cases are brought in Federal court because our penalties are higher.

So we have all of those kinds of cases. The Department of Justice also determined to transfer members of the Aryan Brotherhood prison gang from prisons all over the country into our district so that they could be prosecuted in our district. We had death-penalty-eligible people in that case. We had very serious security risks with those defendants. We have to take special measures when we have those kinds of cases in the district.

So the marshal is, I think, reasonably concerned about the state of the security in the Spring Street Building. And the problem with it is, because it is such an old building and because of the particular configuration of the building, GSA cannot come in and fix those problems. They cannot be fixed. And so it is a real concern for us.

There is also a concern that is somewhat unique to the judges, in the sense that the prisoners are brought to the courthouse in small vans. A large prisoner bus cannot come into the courthouse. It is just not large enough for that to happen. So they are brought, very frequently, in these small vans. Those vans pull into the judges' parking lot, the judges' parking area in the building. Judges are getting out of their cars, the prisoners are getting out of the vans. They come face-to-face with one another. And they all have to be in the courtroom at the same time, so there is no sitting back and waiting until the prisoners have been taken in. It is a dangerous situation. And, once again, the building can't be fixed to remedy that problem because you cannot put a sally port on the building.

So there are definite concerns and issues with security in that building.

Ms. BROWN. Mr. Peck, would you like to respond?

Mr. PECK. I was out there last week, and I actually saw the area that Judge Morrow is talking about, where the vans come in and let the prisoners out. There were a couple of courtrooms in there where the prisoners and the marshals have to be in a very narrow space, which is dangerous for the marshals. It is a problem waiting to become even more evident, or tragically evident.

Ms. BROWN. Thank you.

I yield back the balance of my time.

Mr. DENHAM. Mr. Peck, when you were out there, did you see the four courtrooms that were full of furniture?

Mr. PECK. I did not this time. I had one other time. There was a very small—I don't know if I am talking about the same space, but I do recall seeing a very small—what had been called a courtroom, looks like a conference room, a one-story space that is now used for storage. It was not a two-story full-height district courtroom that is being used for storage.

There are a number of courtrooms in this complex that we are calling courtrooms that are pretty small spaces. And to be fair and honest, the bankruptcy proceedings are pretty much just counsel and don't require the same kind of space that a district court requires.

Mr. DENHAM. And just for the record, I am not saying that we should never build any courtrooms in the L.A. area. I am just saying that we ought to fully maximize the ones that we have today—use sharing, use a courtroom for more than an hour-and-a-half a day, use a courtroom not to store furniture but to actually conduct court in it.

And when we have made a secure area with a holding area and we have changed our prospectus and changed our building model to facilitate office space, rather than the courtrooms that were once proposed, we ought to take a look at those things before we go moving forward on a \$400 million project that could possibly go into a half-a-billion-plus project.

Mr. PECK. Well, Mr. Chairman, I couldn't agree with you more that, before we spend this kind of money on the taxpayers' behalf and their money, that we make sure that we are doing it as efficiently as possible. What I am—

Mr. DENHAM. Wait. Before we do it as efficiently as possible, yet you have not done a court sharing analysis on the Roybal Building.

Mr. PECK. No, I am sorry—

Mr. DENHAM. Wouldn't you expect to do that before you go out and spend \$400 million on a new building?

Mr. PECK. Mr. Chairman, I want to clarify again. The proposal that we are making to build a 24-courtroom, 32-chamber new courthouse did include an analysis of how we would go forward with the Roybal Building.

And we have—this is a very complicated project. And anyone can say, as you have just asked about the Roybal Building, you can take a look at square footage in a building and say, can you get all this square footage in there? Yes. But this is the problem with building projects in real estate: You have to look at the building itself. You have to look at the way it is configured. You have to figure out whether, when all is said and done and you were to go into the Roybal Building and try do this, whether having spent probably the same amount of money or more, whether you would end up with a building that is actually efficient and meets the security requirements.

In our determination—and this has been going on now for 10 years—is that the best way to do this is to use the Roybal for certain purposes, which includes some court sharing, and to use the new L.A. courthouse for other purposes for the district courts. I mean, that is—I can tell you, this thing has been studied to death.

Mr. DENHAM. And, Mr. Peck, I know we do a ton of studies here. We do study things to death here. My concern is, in this one area, we have failed to do the final studies on most of these courthouses and we have moved forward, wasting taxpayer dollars.

Let's put up slide number 6 again. These are all buildings that we don't have in our excess property portfolio and yet they are sitting vacant, costing us millions of dollars every year.

Mr. PECK. Well, Mr.—

Mr. DENHAM. And we are going to see the same type of scenario here in L.A. with the Spring Street Courthouse.

Mr. PECK. Mr. Chairman, two things.

One is that—I would like to separate two issues. In almost every one of these instances, we also built a new courthouse because we had security issues with the old one or capacity issues. The question of whether we have taken them out of the inventory or should take them out of the inventory is a separate question.

But I would just note the Brooklyn-adjacent courthouse, for example, if it is the one I am thinking of, it has been vacant because we have had it under renovation, and I think it is being reoccupied for the bankruptcy courts. The Seattle courthouse is being used for the—the old one is being used for the appellate court, as you note. The other ones I will get you reports on.

But I have also committed to you that when we finish this project in Los Angeles, the Spring Street Building is either going to be fully utilized by the Federal Government or we will get it out of the inventory.

Mr. DENHAM. Thank you.

And one final question. I am looking forward to seeing the utilization on all of these buildings, as well as the amount of lease space that we have in each of those cities.

But the final question I have before I turn it back over to Ms. Norton: I assume that OMB has signed off on this project, Mr. Peck?

Mr. PECK. OMB has signed off on our—yes, sir, on our moving forward with the new courthouse, yes, sir.

Mr. DENHAM. And you intend to resubmit a new prospectus for approval to this committee?

Mr. PECK. Mr. Chairman, we have an appropriation to move forward with the project. We intend to submit to you all the facts that are necessary for you to take a look at it. But, as I said, you know, this project has already been authorized and it has been appropriated, and we have been under pressure from the appropriators to move forward. We will provide you with information so that you can see exactly what we are doing.

Mr. DENHAM. So, once again, we started with a discussion of keeping things within scope and cost or coming back to this committee. In the last decade, has the scope of this project changed?

Mr. PECK. Yes, sir, although the square footage is now back to where it was authorized in—we are proposing less square footage than was authorized when the project was appropriated in fiscal 2004–2005. The prospectuses that the committees in the Senate and the House approved were for a far larger building. We are proposing less square footage in the building.

Mr. DENHAM. And in the Roybal Building, are you going to have to do any renovations?

Mr. PECK. We will be doing renovations at some point in the Roybal Building, yes, sir.

Mr. DENHAM. What is the cost associated with that?

Mr. PECK. We don't have the cost estimates on that yet for the backfill and other renovations in Roybal. That would be a separate prospectus and a separate authorization.

Mr. DENHAM. Now, how do we always get cost estimates before you get cost estimates? Why can't we work together and come up with these estimates together? I mean, we already have estimates. We have a pretty good idea of what it is going to cost to renovate that building.

So, before you come back to Congress, before you come back to Congress and ask for another appropriation at a time when we have a \$15 trillion debt and we are trying to cut things everywhere, before you come back to us, you are going to leave a lot of this area vacant because you don't have money to renovate it?

Mr. PECK. We are mostly moving—remember, this project is mostly moving courtrooms out of the Spring Street Building into the new L.A. courthouse. That is the crux of the project. The Roybal will be—

Mr. DENHAM. I understand, but we aren't fully utilizing the Roybal Building today. We have one floor that was supposed to be a secure courtroom area that is now office space. We have another full floor that is full of furniture because we are not utilizing those courtrooms.

Mr. PECK. Mr. Chairman, there is a sequence to the project. And the first thing we need—so we need to build a building, move people out of Spring Street. And when we do that, we will then also be making some changes to the Roybal Building. But that is quite a number of years from now before we get to that. And when we do, we will develop detailed cost estimates and a schedule, and we will submit that to you.

To the extent that you have a cost estimate right now, you have probably heard the same back-of-the-envelope cost estimate that I have heard. But I don't have a real program or a real budget yet.

Mr. DENHAM. The proposed courthouse, \$400 million, that you are not coming back to this committee for a re-approval even though we are dealing with something that was appropriated about a decade ago, you expect to get this project done for \$400 million? I know you are downsizing the building because there is not enough need.

Mr. PECK. Yes, sir. Actually, we have \$365 million to spend on the project because it cost us some money to acquire the site and to do a previous design which will no longer work. So it is \$365 million to design and build a new building.

Mr. DENHAM. To design and build.

Mr. PECK. Yes, sir.

Mr. DENHAM. Haven't we already designed it several times?

Mr. PECK. We designed it once. We only designed it once. We have thought about it many times, but we only designed it once, thank goodness.

Mr. DENHAM. So we have \$365 million left to build this new courthouse. Your plan is to—or at least, under the law, under Title 14, you can go 10 percent higher than that. At what point do you plan on coming back to this committee during the process?

Mr. PECK. Mr. Chairman, I don't plan ever to come back to get an additional authorization or appropriation on this building.

Mr. DENHAM. Ms. Norton?

Ms. NORTON. So, despite the fact that the project originally authorized 1 million square feet and, as I understand it, now you are building 650,000 square feet, leave aside the appropriation, it is your testimony that you have the authority to go forward now and that the scope of the project has not changed?

Mr. PECK. Well, the square footage has not changed.

Ms. NORTON. What does "scope" mean to you? It was 1 million square feet in the original authorization.

Mr. PECK. Right, and 40-some courtrooms, if I recall correctly. And we are now proposing about the same square footage for—

Ms. NORTON. 1 million square feet? I thought it was 650,000 square feet.

Mr. PECK. I am sorry. It is about 650,000 square feet is what we are now proposing to build.

Ms. NORTON. And that is not a change in the scope of the project?

Mr. PECK. It is a decrease in the scope of the project, it definitely is.

Ms. NORTON. Well, just a moment. You said a change in the scope of the—see, now, this is what—

Mr. PECK. I am not trying to parse words.

Ms. NORTON. I am just asking, is it a change in the scope of the project and aren't you supposed to come back to the committee when there is a change in the scope of the project, whether it is a change upward or a downward change?

Mr. PECK. Ms. Norton, we are——

Ms. NORTON. I am just saying—I am asking this——

Mr. PECK. Yes, ma'am.

Ms. NORTON [continuing]. For purposes of precedent.

Mr. PECK. We——

Ms. NORTON. I don't want the result of this committee hearing to be that we authorized you, in spite of what looks to be a change in the scope, to go forward without coming back to this committee.

Mr. PECK. Ms. Norton, well, we are here at the committee. We are going to provide you with information on it. I would note, the committee has already——

Ms. NORTON. We have not authorized a 650,000-foot—and, by the way, I hope we are not talking about cubic feet—a 650,000-square-foot building. We haven't authorized that.

Now, I am pleased to see——

Mr. PECK. Ms. Norton——

Ms. NORTON [continuing]. That you are trying to fit within the appropriation. And you don't have any choice but to fit within the appropriation. Believe me, you don't have any choice.

Mr. PECK. Correct.

Ms. NORTON. But that doesn't mean that the authorizers ought to be ignored.

Mr. PECK. And we are anything but ignoring the authorizers, Ms. Norton. We are here today. We are going to provide you with more information about the project.

Ms. NORTON. Do you know why you are here today, Mr. Peck? You are here today because this committee called you here today. You are not here today to seek the committee's permission for a change in the scope of this project.

Mr. PECK. That is correct.

Ms. NORTON. You are here because we got word that you were thinking of building a different project in L.A., and we said, well, we had better call the GSA here.

You make it sound as if you have come in the normal course, as the subcommittee has mandated, to get the permission of the subcommittee for a change in the scope of the project, when, in fact, on the basis of rumor, we called you here to hold this hearing, and you did not ask for this hearing.

Mr. PECK. That is correct. But, Ms. Norton, we were going to provide, and will provide, a notification to the committee. That is our practice, and that is what we intend to do.

Ms. NORTON. I will leave it to the chairman to decide whether the notification is sufficient to fit within our mandate regarding the scope of the project. I will take that no further, except to say, I want to say on the record that this project is not an exception to the mandate of this committee regarding changes in the scope of a project. I do not want this cited back to us as a precedent for how, if you lower, then of course you don't have to come back. You have to come back when the committee says and has already indicated when you come back.

I have one more question. Now, we have been talking about sharing. And, by the way, Mr. Peck, we intend to inform the appropriators, as well, about the reason that the committee believes that sharing should occur with active judges as well. We don't think the appropriators, given what they are going through, are going to take the position that active judges shouldn't share courtrooms unless Mr. Peck can get the judges to agree to share courtrooms.

And I think you are going to have that reflected in the way in which appropriations occur going forward, if you are ever able to get another appropriation. And I say that advisedly. It is going to be very hard to get any money from the appropriators or anybody else in the Congress of the United States to do anything. If you didn't already have money that has been lying on the table for more than 10 years, this project would be dead in the water.

And you know, and you are here, and not only because we called you here, but you know this money is going to be rescinded if you do not use this money.

Mr. PECK. I am well aware of that.

Ms. NORTON. I would like Mr. Goldstein—we have been talking about sharing in the ordinary course. And, of course, the judges have been willing to give away the bankruptcy judges and the magistrate judges, anybody but themselves.

But I want Mr. Goldstein to describe centralized sharing and what is the difference between centralized sharing and the sharing we have been discussing here.

Mr. GOLDSTEIN. Ms. Norton, the centralized sharing is where judges will share based on a scheduling system that is done across the court, like you do here for, you know, hearing rooms. If you want to use a hearing room here, Mr. Chairman, you have whoever is in charge of scheduling schedule your subcommittee when you want to use the room. And so, that is how it is done.

The difference between that and what I called "dedicated sharing" earlier is, there isn't any sort of central scheduling; it is where two judges are paired up. And that is mainly what has been occurring in Manhattan in the last couple years while they have been retrofitting the other courthouse.

Ms. NORTON. Well, is there any centralized sharing going on in the United States?

Mr. GOLDSTEIN. Certainly not among active judges. There is very little sharing that goes on, because, obviously, any sharing that does occur is at the margins in new construction among some senior and some magistrate judges.

But the important thing to note here is that the sharing policies of the Judicial Conference, while they have gone certainly further than they had gone from years past, aren't based on courtroom usage data that the Federal Judicial Center did. They are simply based on policies that they developed. But they are not based on the actual usage of courtrooms today.

Ms. NORTON. Well, does your report indicate that centralized sharing would be based on actual use?

Mr. GOLDSTEIN. Well, certainly the model that we produced did exactly that. It uses actual data that was developed by the judiciary. And that was the basis of the modeling that we did.

Ms. NORTON. Mr. Peck, why should this committee, in the future—I understand this courthouse has its \$400 million dangling out there for a decade—but, in the future, given what we are going through here in the Congress and that no one sees that there will be many changes in it—in fact, the supercommittee has been challenged to go two and three times what they are aiming for—why should this subcommittee authorize and why should the appropriators appropriate money for anything except centralized sharing of the same kind we do in the Senate and the Congress of the United States?

Mr. PECK. Ms. Norton, I certainly agree that we should take another look at the sharing policy. As I have said, I have had this conversation a number of times with the Judicial Conference's Space and Facilities Committee, and we will talk about it again.

I think, again, that, whether or not we can do it—and I think it is fair for the committee to ask us, should we come forward with another proposal for a new courthouse, to ask whether, given the caseload in that area, the number of judges, the way the facilities rate, whether we can share more than they currently are, I think it is certainly a fair question and I think that it is something we all ought to be talking about as we go forward. I certainly do agree.

Mr. GOLDSTEIN. Ms. Norton, I would add just one item to what Mr. Peck said. I think it is important to note that the information that the judiciary presented, all of the court usage data they developed, shows that there was and our model proved that there is no correlation between caseload and courtroom usage across the United States based on the generalizable data that they used. There is no correlation.

Ms. NORTON. I believe we should ask the appropriators—and I know the appropriators in this area—to hold a hearing where they hear some of what you are saying so that we can match up what was authorized and we don't have people running back and saying, give us more money.

Of course, I think this, Mr. Peck. I think that you are going to be hard-pressed to get anything but authorization and appropriation for centralized sharing.

And I would like to ask you and Mr. Goldstein, in light of the meeting you will be having and the report you will be giving to the chairman within 30 days, to describe how centralized sharing could occur. You might even—if you doubt the data, you might even ask the judiciary, which apparently has had its way at the expense of the taxpayers, whether or not they would be willing to do a pilot project on centralized sharing in realtime.

We are asking people in realtime—we have got 45 million people on food stamps. I have been on the "challenge diet," the "food stamp diet." Glad I am off of it now for a week. I can tell you that nobody can live on the food stamp diet. According to the data, it lasts for about 2½ weeks. So I think I know what people did. I think they went to the kitchens that give out food for the rest of the time.

That is what we are confronting here when we decide where the money should go. And nobody is going to go home and say that everybody in the United States ought to be sharing except active

judges, and that the GSA and the active judges are unwilling even to do a pilot project on real-time centralized sharing.

Mr. PECK. Ms. Norton, I will talk to the judiciary about it.

And I want to say this. I could not agree more. This is an unbelievably constrained budget time. Every dollar we spend on our inventory should be subject to scrutiny. We need to think about it in ways different, perhaps, than we have thought about it before. And we will certainly cooperate with you in taking a look at that.

May I make one final comment, Mr. Chairman? I do want to note this, just because if I can, sort of, take us from this topic to the broader one of the health of the Federal Building Fund, you noted in your opening statement that the Federal Building Fund is empty and we don't have money to spend on projects.

The Federal Building Fund is actually not empty. It is working the way it is supposed to, which is that we are collecting rents from Federal agencies and managing the inventory well enough that, at the end of the year—I don't have my final numbers for fiscal 2011 yet, but we will probably end up with about \$1.5 billion in money that we proposed and that should be spent mostly on renovating and capital maintenance on our Federal buildings; we are just not being allowed to spend it. And I understand why, and so I am not—some other time, I will make my plea for getting the right to spend it.

But I just want you to know that the building fund is, in fact, accumulating the money it is supposed to for capital investment. We just can't get the approval to spend it on, I think, necessary projects. And I am not just talking about court projects; I am talking about something that Ms. Norton and I talk about a lot, moving forward on the consolidation of Homeland Security at St. Elizabeth's, which we are not being allowed to spend our money on even though we have it.

Ms. NORTON. This is a point well taken. And, as you know, we have been working very hard on it.

I do note for the record that the judiciary actually asked—this takes a lot of gall—to be exempted from the Federal Building Fund at one point. Of course, the committee had to laugh in their faces. They are the greatest user of the Federal Building Fund, and they actually asked. That was their sense of entitlement, that every other Federal agency ought to—but the judiciary should not.

And one of the reasons we are impatient with the courts is they have had an attitude toward taxpayers' money that we have not seen any Federal agency have the temerity to have, not the Defense Department, not—and we are just not going to do it anymore.

Mr. PECK. Ms. Norton, may I say, and Mr. Chairman, to the extent you hear me—and you do—hear me defending the courts, I will say that there is new management in the Administrative Office of the Courts. And there is a different, more open attitude to discussing these issues than there was when I was at GSA the last time. And that is why I give them credit for—

Ms. NORTON. We will understand that when the judges understand that we are not going to authorize courts where active judges refuse to share courtrooms.

Mr. Chairman, could I introduce to the record a letter from Mr. Serrano? He asked me—

Mr. DENHAM. Without objection.
[The letter follows:]

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Congress of the United States
House of Representatives
Washington, DC 20515-3216

November 3, 2011

COMMITTEE:
APPROPRIATIONS
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GENERAL GOVERNMENT
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MEMBER, INTERIOR AND ENVIRONMENT
MEMBER, CONGRESSIONAL
HISPANIC CAUCUS
SENIOR WHIP

Congressman Jeff Denham
Chairman
Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
585 Ford House Office Building
Washington, DC 20515

Congresswoman Eleanor Holmes Norton
Ranking Member
Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Denham and Ranking Member Norton:

I am writing to express my concern about the Transportation and Infrastructure Committee's November 4, 2011 hearing on the Los Angeles Courthouse, entitled "A Review and Analysis of the Proposed \$400 million Los Angeles Courthouse."

As the Ranking Democrat on the Financial Services and General Government Subcommittee, which oversees funding for the General Services Administration, I was particularly troubled by serious omissions in the background information that has been distributed as part of this hearing. This memo includes the statement that "The pending House version of the Financial Services Appropriations bill for FY 2012 recommends no construction funding. . ." The implication seems to be that the Appropriations Committee, by omitting funding, disapproves of further efforts with regard to the Los Angeles Courthouse.

However, the briefing memo fails to note the Financial Services Subcommittee's clearly stated intent with regard to the Los Angeles Courthouse and other similarly situated courthouse projects. For the past several years, the report accompanying the Financial Services and General Government Appropriations bill has included language prohibiting the General Services Administration (GSA) from using funding designated for a particular courthouse project from being used for any other project. It is important to note that this language is once again repeated in the report accompanying the fiscal year 2012 Financial Services and General Government Appropriations bill (on page 47). Rather than lacking interest in completing the Los Angeles Courthouse project, the Financial Services and General Government Appropriations

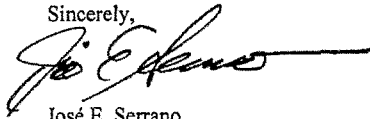
Page 2
November 3, 2011

Subcommittee has gone out of its way to ensure that the funding remains available for future construction.

I would also like to take this opportunity to register some concern about the Los Angeles Courthouse language that was inserted into the Manager's Amendment during consideration of H.R. 1734 by the Transportation and Infrastructure Committee. The language, contained within Section 26 of the bill, prohibits the use of previously appropriated funds for the construction of a new courthouse in Los Angeles. In my view, the determination as to how already appropriated monies can or cannot be spent is traditionally a decision reserved for the Appropriations Committee.

I hope that the Transportation and Infrastructure Committee will find this information useful as you receive testimony regarding the Los Angeles Courthouse project.

Sincerely,

A handwritten signature in black ink, appearing to read "José E. Serrano", with a long horizontal flourish extending to the right.

José E. Serrano
Member of Congress

Ms. NORTON. Thank you, Mr. Chairman.

Mr. DENHAM. I am looking at the prospectus now that—the committee resolution that came before Chairman Shuster at the time. It says “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings.”

We do not have all existing courtrooms utilized today. You have also testified under oath today that you do not plan on fully utilizing all of the courtrooms once this building is done.

Mr. PECK. Say it again, sir? I don’t understand the question.

Mr. DENHAM. You testified that the Roybal Building will not be 100 percent utilized, will not be fully utilized, once this new courthouse is built.

Mr. PECK. I hope I didn’t say that. But what I said was——

Mr. DENHAM. Well, let me ask, do you expect the Roybal Building to be 100 percent utilized once this new courthouse is built?

Mr. PECK. I certainly do, yes, sir.

Mr. DENHAM. Is it 100 percent utilized today?

Mr. PECK. I——

Mr. DENHAM. The answer is, no, it is not 100 percent utilized.

Mr. PECK. As far as——

Mr. DENHAM. You were just there. He was just there. I am going to be there next week with Ms. Brown. It is not 100 percent utilized. You are not sticking to the resolution that came before us in the first place.

Mr. PECK. Mr. Chairman——

Mr. DENHAM. Let me ask again, once this courthouse is done, the new courthouse is fully completed, will you have 100 percent utilization in the Roybal Building?

Mr. PECK. Mr. Chairman, we will have a building—I believe our plan is to have a building that is fully utilized, by which I mean that every space in the building will be assigned. And we may have to do some renovation to get there, but, by the time we finish this project, it will be a fully utilized building.

Mr. DENHAM. So you will have to do renovations to the Roybal Building?

Mr. PECK. At some point we need to do renovations to the Roybal Building for lots of reasons——

Mr. DENHAM. Part of this \$365 million?

Mr. PECK. No, sir.

Mr. DENHAM. So the scope of this project has not only changed that you are going to use—you are going to get 40 percent less square footage than what was——

Mr. PECK. No——

Mr. DENHAM [continuing]. Originally proposed to this committee, but you are also going to have to come back to this committee and ask for more money for the Roybal renovation.

Mr. PECK. Mr. Chairman, when we proposed 1 million square feet, which was, I think, 7 years ago, you know, there has been—even though the construction market is now soft, there was a period of significant inflation. And we are still—we could not build the same size building for this amount of money as we did then.

But we are providing for the new courthouse that was the basis for the proposal in 2004 and, indeed, in 2000. We are providing a

building for the U.S. District Court. That was the proposal, and that is what we are proposing to build.

There are other things that are going to have to be done to make this a—as in other courthouse projects that we have proposed, Mr. Chairman, we propose the work we are doing for the U.S. District Court and sometimes for magistrate and bankruptcy as well, but we often have follow-on projects to make the rest of the Federal inventory work.

Mr. DENHAM. The project that was approved by this committee says “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings.”

Mr. PECK. That was the proposal at that time, yes, sir.

Mr. DENHAM. Yes. And you are changing that proposal. The scope of the project has changed. We are going to get 40 percent less courtroom space, and you are going to go over the budget that you originally came to this committee for.

Mr. PECK. No, we are at the same budget that we came to the committee for. As I said, we are at \$365 million.

Mr. DENHAM. \$365 million, and I am also looking at the prospectus that came before this committee in 2008 asking for \$700 million. And under that \$700 million, you have \$50 million that you would need to renovate Roybal.

Mr. PECK. Mr. Chairman, that—

Mr. DENHAM. So if you have \$50 million that you are going to spend to meet the original prospectus, which says “continued use of all existing courtrooms in the Roybal Federal Building,” under the same prospectus you need an additional \$50 million that you don’t have in that \$365 million. That is definitely over the 10 percent that you need to finish the prospectus.

Mr. PECK. Mr. Chairman—

Mr. DENHAM. So if you are going beyond what the original prospectus said in 2000, where are you going to come up with the money and when are you coming back to this committee?

Mr. PECK. Mr. Chairman, the prospectus, the 2008 prospectus, was, as I understand it, dead on arrival. It was never approved.

If you are talking about the 2000—there was a 2000 prospectus, and I believe—give me a moment—there was another prospectus in 2004.

Mr. DENHAM. Well, it sounds like you are trying to confuse everybody here.

Mr. PECK. No, sir, I am not. This is a pretty complex, confusing issue.

Mr. DENHAM. OK, so you came to this committee in 2008 with this new prospectus.

Mr. PECK. Sir, I did not.

Mr. DENHAM. And under this prospectus—

Mr. PECK. Sir, GSA, under a previous administration, came up with a proposal. This is not our proposal.

Mr. DENHAM. Do you refute the numbers in this prospectus on what the previous administration came up with?

Mr. PECK. Yes, sir. I mean, I am not refuting it; I am just saying that that is not our proposal anymore. That is—

Mr. DENHAM. OK. The proposal that you are going by right now is the 2000 prospectus, yes or no?

Mr. PECK. I believe the prospectus we are going on is the prospectus approved in 2004.

Mr. DENHAM. Perfect. The 2004 prospectus says “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings.” Are you going to have 100 percent utilization in the Roybal Building?

Mr. PECK. We will have——

Mr. DENHAM. Yes or no?

Mr. PECK. As I said, yes, sir, when this is over, there also will be 100 percent utilization of the space in the Roybal Building.

Mr. DENHAM. OK. So, when this is over. Which means that you have to renovate the Roybal Building when this is over, correct?

Mr. PECK. Yes, sir. And we will be back——

Mr. DENHAM. As part of the original prospectus. So you are saying you are going to come back at some point and ask for more money to make sure that you can continue to finalize the prospectus.

Mr. PECK. We will be back for an authorization to do the work in the Roybal, but not——

Mr. DENHAM. It is the same prospectus.

Mr. PECK [continuing]. Not another prospectus to do the courthouse, no, sir. But we will—yes, sir, for the Roybal work, we will have to come back for a new prospectus.

Mr. DENHAM. So you are not only changing the scope but you are changing the cost of the current prospectus.

Mr. PECK. No, sir, because the——

Mr. DENHAM. The current prospectus has both buildings in there. And, again, it says “continued use of all existing courtrooms in the Roybal Federal Building.” If you have to use all existing courtrooms in the Roybal Federal Building, you need \$50 million to complete the entire prospectus, which means you that need new authorization from this committee.

Mr. PECK. No. Mr. Chairman, we have an appropriation to build a new courthouse in Los Angeles, and we are going to build a new courthouse in Los Angeles.

The work that needs to be done in the Roybal is not a part of the new courthouse project any more than we will have to go back and take a look at what we do with the space that is left over in the North Spring Street Courthouse.

Mr. DENHAM. Yeah, the only problem is the North Spring Street Courthouse building is not in this prospectus. The Roybal Building is. And, again, it says “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings” not only in the 2000 prospectus, but in the 2004 prospectus. No matter which prospectus you go to, you have to have 100 percent utilization of the Roybal Building.

So if it is going to cost you \$50 million to renovate it to get 100 percent usage, which—we don’t have 100 percent usage today—then you have to come back before this committee to get a new authorization for the \$50 million to complete the project.

Mr. PECK. Mr. Chairman, as I said, we will be back for an authorization to do the work in the Roybal Building. That is correct.

Mr. DENHAM. It was included in the original prospectus——

Mr. PECK. Mr. Chairman——

Mr. DENHAM [continuing]. And in the 2004 prospectus to make sure that we would never end up in this position. I mean, I think that it is egregious that we would do a bait and switch and change the complete scope of this project that is going to give the taxpayers 40 percent less square footage than what the original prospectus said. But I think that it is even more egregious to say that we are going to just ignore the prospectus and have to come back at a later date, after the taxpayers are on the hook for the \$365 million, and have to come up with an additional \$50 million to complete the project.

Mr. PECK. Mr. Chairman, the language that was in both the 2000 and the 2004 prospectuses—the 2000 was approved by Mr. Shuster and the 2004 by Mr. Young—said that we should design for and configure for maximum utilization of courtroom-sharing model for the courts, ensuring to the maximum extent practicable continued use of all the existing courtrooms in the Roybal Federal Building.

So that is our plan, to use to the maximum extent practicable the existing courtrooms in the Roybal Building. As I said, we are going to have some 24 courtrooms in the new building and 25 courtrooms in the Roybal Building. I mean, we have taken that into account.

The fact that at some later date we are going to have to renovate so that we can provide additional chambers is really a separate project. And this is the way we have done this before, to my knowledge.

Mr. DENHAM. It is not a separate project. It is the same prospectus. And in this committee, when it authorized the use of funds, said “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings.” You are changing not only the scope of the project, but you are changing the cost of the project.

Mr. PECK. Mr. Chairman, the prospectuses that were submitted in 2000 and 2004, I will go back and check, and I will get back to you for the record, but I believe that those prospectuses also contemplated additional work being done on the Roybal Building in a separate project.

Mr. DENHAM. Well, you won’t have to go back and check. We will make sure you have a copy of this once again for your records. But this is what this committee had approved.

Ms. Norton?

Ms. NORTON. I just want to say that we have been following the prospectuses as you outline, and I associate myself with your comments. Thank you, Mr. Chairman.

Mr. DENHAM. Mr. Peck, to say that we have a disagreement on the usage of this courthouse would be an understatement. I am certainly disappointed that—you and I have been able to work very, very close on the Civilian Property Realignment Act and look at correcting a lot of the challenges that we have with our entire inventory. There is so much that is left off. Of the 14,000 excess properties that we have listed today, not only can we not sell the 14,000 that we don’t use, but we have these courthouses that are amazing courthouses, historic courthouses, just like the Old Post Office, that we could not only create hundreds of thousands of jobs in construction and renovation, but revitalize communities and cre-

ate hundreds of thousands of long-term jobs, just like what we are proposing in the Old Post Office.

I am disappointed that it appears that you are just trying to get around this committee, whether it is the prospectus that was passed in 2000, the prospectus in 2004, or the prospectus that was presented to this committee in 2008 but never acted upon, all of which suggest that—not suggest, they mandate continued use of all existing courtrooms in the Roybal Federal Building as the same prospectus.

You have clearly stated that you are going to spend the \$365 million on changing the scope of this project, will result in 40 percent less square footage than the original prospectus. And then, at some later date, you are going to come back, after ignoring the resolution and prospectus that passed out of this committee, while ignoring the language in that, then come back at a later date and ask for an additional \$50-million-plus to continue to fix the Roybal Courthouse.

Mr. PECK. Mr. Chairman, there was an appropriation made in 2004—appropriations made in 2004 and 2005 and, I believe, in 2001 for site and design. An appropriation to a Federal agency is a directive to do a project. We have the opportunity to take—we have sat on that money for a long time, and we are not supposed to do that. We are supposed to do what the Congress tells us to spend on. We don't have to spend every money; our goal is to bring in projects for less. But, in essence, we have not followed a different direction of the Congress to build this project. We have an opportunity to do it now and to create thousands of construction jobs in Los Angeles.

Moreover, we have been told in committee report language, at least from the Appropriations Committees for the past several years, that we were to get on with it, to figure out what we could build within the amount of money we have, and move on with the project. And that is what we have done.

GAO in 2008 took a look at what was going on and said GSA and the courts were not agreed on this thing at all and weren't getting anywhere and needed to figure out a way to get this done within the budget. And, you know, we followed that mandate, and that is why we are here today, to try present to you, in your oversight capacity, what we are doing under that appropriation.

And you are absolutely right, we have been very much aligned on what we are doing. And I believe that there is a good story here about finally taking a project that has been sitting here, that is needed by the courts, and that will help us align the Federal office inventory in the Los Angeles area in a better way than it is today.

I am sorry that we disagree about how it should move forward. I truly am.

Mr. DENHAM. You have drastically changed the scope of this project from a 1.1-million-square-foot project. Now the taxpayers are going to receive 40 percent less than that. It is not your prerogative to change projects and bait and switch this Congress into getting something that it—you can't go out there and do gold-lined walls or change a project so significantly without coming back for Congress' approval.

Nor can you go out and change a prospectus and just ignore the fact that the prospectus that was passed out of this committee says “continued use of all existing courtrooms in the Roybal Federal Building for judicial proceedings” and just ignore the language in there.

Mr. PECK. Mr. Chairman—

Mr. DENHAM. You, in your own testimony, said that you would have to come back to this committee for the \$50 million that is in your prospectus to continue to renovate that building. This committee expected, clearly, in writing, expected that the \$400 million that was allocated was going to have two 100 percent fully utilized courtrooms. The judges aren’t there, the need isn’t there. And in the current building you have vacant space, which I am looking forward to seeing.

I hope that they do their due diligence over the weekend and pull out all of the old furniture that is in these vacant courtrooms and actually find some courts to actually see there. But right now, from what I am hearing from my colleagues, that does not exist. So you have a partially empty courtroom today, you are going to build 60 percent of the courtroom that you said you were going to build when you came before Congress, and the taxpayers are going to get left holding the bag of one and a half empty spaces.

My position stands very clear, that this is something that is not only a waste but something that we need to be looking at expediting the sale of this Spring Street Building before we end up in another situation like Miami or New York or many other areas around the Nation. I will look forward to visiting some of those courtrooms, as well.

But we need to be doing more with less, not continuing to go on this spending spree that has gone on in the past. We need to change our ways. And that is coming, not only with the CPRA bill that is before Congress and before the supercommittee today, but we will be further looking at all of these courthouses.

Mr. Peck, Ranking Member Norton brings up a very good question. We already have a prospectus here in front of us from 2008 that already has GSA’s numbers in it. With the current scope of the project changing as much as it has, with the current prospectus out there and the very clear language in this, this committee would request that a new prospectus come back from GSA, outlining not only the use of the Roybal Building but the expense as well.

Since you already understand that the renovations are going to go outside of this current prospectus, we would request that you bring that new prospectus in front of us immediately.

Mr. PECK. I understand. I will respond to you with—after I consult, I will certainly respond to you, Mr. Chairman.

Mr. DENHAM. Thank you. You have a lot of requests to bring back to us. We also look forward to your meeting with Mr. Goldstein. But this prospectus we would expect in a timely manner, especially since you have all of the information already done from the 2008 prospectus.

With that, I would like to thank each of you for your testimony and comments today. Certainly they have been helpful and enlightening in some concerns.

I would 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 unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

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

And if no other Members have anything to add, the subcommittee stands adjourned.

[Whereupon, at 12:57 p.m., the subcommittee was adjourned.]

United States Government Accountability Office

GAO

Testimony

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

For Release on Delivery
Expected at 10:00 a.m. EDT
Friday, November 4, 2011

FEDERAL COURTHOUSE CONSTRUCTION

Nationwide Space and Cost Issues Are Applicable to L.A. Courthouse Project

Statement of Mark L. Goldstein, Director
Physical Infrastructure Issues





Highlights of GAO-12-206T, a testimony to the Subcommittee on Economic Development, Public Buildings, and Emergency Management, Committee on Transportation and Infrastructure, House of Representatives

Why GAO Did This Study

In 2000, as part of a multibillion-dollar courthouse construction initiative, the judiciary requested and the General Services Administration (GSA) proposed building a new courthouse in Los Angeles to increase security, efficiency, and space—but construction never began. About \$400 million was appropriated for the L.A. courthouse project. For this testimony, GAO was asked to report on (1) the status of the L.A. courthouse project, (2) challenges GAO has identified affecting federal courthouses nationwide, and (3) the extent to which these challenges are applicable to the L.A. courthouse project.

This testimony is based on GAO-10-417 and GAO's other prior work on federal courthouses, during which GAO analyzed courthouse planning and use data, visited courthouses, modeled courtroom sharing scenarios, and interviewed judges, GSA officials, and others.

In GAO-10-417, GAO recommended that (1) GSA ensure that new courthouses are constructed within their authorized size or, if not, that congressional committees are notified, (2) the Judicial Conference of the United States retain caseload projections to improve the accuracy of its 10-year-judge planning, and (3) the Conference establish and use courtroom sharing policies based on scheduling and use data. GSA and the judiciary agreed with most of the recommendations, but expressed concerns with GAO's methodology and key findings. GAO continues to believe that its findings were well supported and developed using an appropriate methodology.

View GAO-12-206T. For more information, contact Mark L. Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

November 4, 2011

FEDERAL COURTHOUSE CONSTRUCTION

Nationwide Space and Cost Issues Are Applicable to L.A. Courthouse Project

What GAO Found

GAO reported in 2008 that GSA spent about \$33 million on design and site preparations for a new 41-courtroom L.A. courthouse, leaving about \$366 million available for construction. However, project delays, unforeseen cost escalation, and low contractor interest had caused GSA to cancel the project in 2006 before any construction took place. GSA later identified other options for housing the L.A. Court, including constructing a smaller new courthouse (36 courtrooms) or using the existing courthouses—the Spring Street Courthouse and the Edward R. Roybal Federal Building and Courthouse. As GAO also reported, the estimated cost of the 36-courthouse option as of 2008 was over \$1.1 billion, significantly higher than the current appropriation.

The challenges that GAO has identified in recent reports on federal courthouses include increasing rent and extra operating, maintenance, and construction costs stemming from courthouses being built larger than necessary. For example, in 2004, the judiciary requested a \$483 million permanent, annual exemption from rent payments to GSA due to difficulties in paying for its increasing rent costs. GAO found in 2006 that these increasing rent costs were primarily due to increases in total courthouse space—and in 2010, GAO reported that more than a quarter of the new space in recently constructed courthouses is unneeded. Specifically, in the 33 federal courthouses completed since 2000, GAO found 3.56 million square feet of excess space. This extra space is a result of (1) courthouses exceeding the congressionally authorized size, (2) the number of judges in the courthouses being overestimated, and (3) not planning for judges to share courtrooms. In total, the extra space GAO identified is equal in square footage to about 9 average-sized courthouses. The estimated cost to construct this extra space, when adjusted to 2010 dollars, is \$835 million, and the estimated annual cost to rent, operate and maintain it is \$51 million.

Each of the challenges GAO identified related to unnecessary space in courthouses completed since 2000 is applicable to the L.A. courthouse project. First, as GAO reported in 2008, GSA designed the L.A. Courthouse with 13 more courtrooms than congressionally authorized. This increase in size led to cost increases and delays. Second, in 2004, GAO found that the proposed courthouse was designed to provide courtrooms to accommodate the judiciary's estimate of 61 district and magistrate judges in the L.A. Court by 2011—which, as of October 2011, exceeds the actual number of such judges by 14. This disparity calls into question the space assumptions on which the original proposals were based. Third, the L.A. court was planning for less courtroom sharing than is possible. While in 2008 the judiciary favored an option proposed by GSA that provided for some sharing by senior judges, according to GAO's 2010 analysis, there is enough unscheduled time in courtrooms for three senior judges to share one courtroom, two magistrate judges to share one courtroom, and three district judges to share two courtrooms. In 2011, the judiciary also approved sharing for bankruptcy judges. Additional courtroom sharing could reduce the number of additional courtrooms needed for the L.A. courthouse, thereby increasing the potential options for housing the L.A. Court.

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

We are pleased to be here to discuss our recent work on federal courthouse construction issues and on the Los Angeles (L.A.) courthouse in particular. Since the early 1990s, the General Services Administration (GSA) and the federal judiciary (judiciary) have undertaken a multibillion-dollar courthouse construction initiative that by June 2010 had resulted in 66 new courthouses or annexes, with 29 additional projects in various stages of development. However, rising costs and other federal budget priorities threaten to stall the initiative. The L.A. courthouse is one of the projects that has not been constructed, even though in fiscal year 2000, the judiciary ranked Los Angeles, California, as its first priority for courthouse construction.¹ Currently, in downtown Los Angeles at one of the nation's busiest federal district courts (L.A. Court), the judiciary's operations are split between two buildings—the Spring Street Courthouse and the Edward R. Roybal Federal Building and Courthouse. In 1996, the judiciary concluded that the split created operational inefficiencies, that it needed additional space in downtown Los Angeles, and that the Spring Street building had obsolete building systems and poor security conditions. The split court was a significant factor in the high priority ranking given to the L.A. courthouse project. For example, according to GSA officials, inefficiencies occur because the court's operations are split between these two buildings. GSA agreed in 2000 that the existing buildings did not meet the court's expansion and security requirements, among other things. Accordingly, the judiciary requested and GSA proposed building a new courthouse in downtown Los Angeles.

In July 2000, GSA was congressionally authorized to begin designing a new courthouse in Los Angeles, and from fiscal year 2001 through fiscal year 2005, Congress appropriated about \$400 million for the project.²

¹California is divided into four judicial districts and Los Angeles is located in the Central District.

²Before Congress makes an appropriation for a proposed project, GSA submits to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure detailed project descriptions, called prospectuses, for authorization by these committees when the proposed construction, alteration, or acquisition of a building to be used as a public building exceeds a specified threshold. For purposes of this testimony, we refer to approval of these projects or prospectuses by these committees as "congressionally authorized." See 40 U.S.C. § 3307.

GSA initially estimated in 2000 that the L.A. Court could take occupancy of a new courthouse in fiscal year 2006, but construction never began. For this testimony, GAO was asked to address (1) the history and status of the L.A. courthouse project, (2) challenges we have identified affecting federal courthouses nationwide, and (3) the extent to which these challenges are applicable to the L.A. courthouse project. This testimony is based on GAO's prior work on federal courthouses,³ for which we analyzed courthouse planning and use data; reviewed relevant laws, regulations, and project planning and budget documents; visited key sites in Los Angeles and courthouses in many locations; analyzed selected courthouses as case studies; modeled courtroom sharing scenarios; contracted with the National Academy of Sciences to convene a panel of judicial experts, and conducted structured interviews with numerous other district and magistrate judges about the challenges and opportunities related to courtroom sharing; analyzed nationwide judiciary rent data generated from GSA's billing system, and interviewed judges, GSA officials, and others. This prior work was conducted from June 2004 through June 2010 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. More detail on our scope and methodology is available in the full reports on which this testimony is based.

³See GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417 (Washington, D.C.: June 21, 2010); GAO, *Federal Courthouse Construction: Estimated Costs to House the L.A. District Court Have Tripled and There is No Consensus on How to Proceed*, GAO-09-889 (Washington, D.C.: Sept. 12, 2009); GAO, *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613 (Washington, D.C.: June 20, 2006); and GAO, *L.A. Federal Courthouse Project: Current Proposal Addresses Space Needs, but Some Security and Operational Concerns Would Remain*, GAO-05-156 (Washington, D.C.: Dec. 20, 2004).

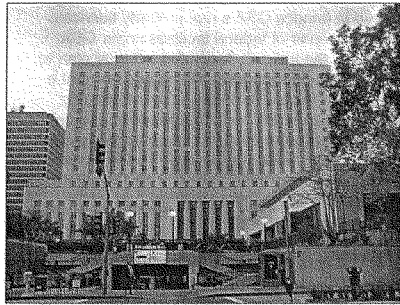
Background

The judiciary pays rent annually to GSA for court-related space. In fiscal year 2010, the judiciary's rent payments totaled over \$1 billion. The judiciary's rent payments are deposited into GSA's Federal Buildings Fund, a revolving fund used to finance GSA's real property services, including the construction and repair of federal facilities under GSA control. Since fiscal year 1996, the judiciary has used a 5-year plan to prioritize new courthouse construction projects, taking into account a court's projected need for space related to caseload and estimated growth in the number of judges and staff, security concerns, and any operational inefficiencies that may exist. Under current practices, GSA and the judiciary plan new federal courthouses based on the judiciary's projected 10-year space requirements, which incorporate the judiciary's projections of how many judges it will need in 10 years.

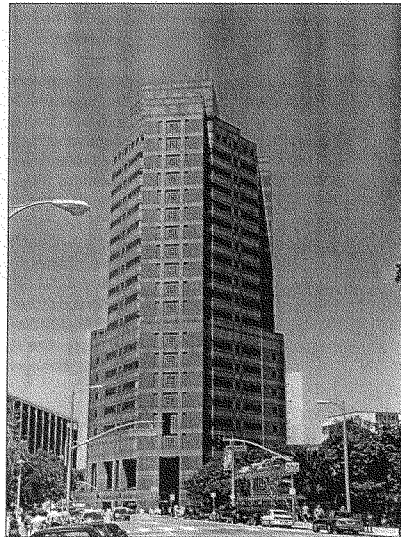
The L.A. Court's operations are currently split between two buildings—the Spring Street Courthouse built in 1938 and the Roybal Federal Building built in 1992. In 2008, we reported that the Spring Street building consists of 32 courtrooms—11 of which do not meet the judiciary's minimum design standards for size⁴—and did not meet the security needs of the judiciary. The Roybal Federal Building consists of 34 courtrooms (10 district, 6 magistrate, and 18 bankruptcy). (See fig. 1.)

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

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



Source: GAO.
 Spring St. Courthouse, opened in 1938 (765,000 square feet)
 Court family tenants as of December 2004:
 U.S. District Court, U.S. Attorneys, U.S. Marshals Service,
 U.S. Circuit Court



Source: GAO.
 Roybal Federal Building, opened in 1992 (1.2 million square feet)
 Court family tenants as of December 2004:
 U.S. Bankruptcy Court, U.S. District Court, U.S. Circuit Court of Appeals
 Satellite Library, U.S. Marshals Service

Since 2000, the construction of a new L.A. courthouse has been a top priority for the judiciary because of problems perceived by the judiciary related to the current buildings' space, security, and operations. From fiscal year 2001 through fiscal year 2005, Congress made three appropriations for a new L.A. courthouse. Specifically, in fiscal year 2001, Congress provided \$35.25 million to acquire a site for and design a 41-courtroom building, and in fiscal year 2004, Congress appropriated \$50 million for construction of the new L.A. courthouse. In fiscal year 2005, Congress appropriated an additional \$314.4 million for the construction of

a new 41-courtroom building in Los Angeles, which Congress designated to remain available until expended for construction of the previously authorized L.A. courthouse.

L.A. Courthouse Project Cancelled After Delays and Increases in Estimated Costs

In our 2008 report, we found that GSA had spent \$16.3 million designing a new courthouse for the L.A. court and \$16.9 million acquiring and preparing a new site for it in downtown Los Angeles. In addition, we reported that about \$366.45 million remained appropriated for the construction of a 41-courtroom L.A. courthouse. Subsequent to the initial design and site acquisition, we noted that the project experienced substantial delays. The project was delayed because GSA decided to design a larger courthouse than congressionally authorized, GSA and the judiciary disagreed over the project's scope, costs escalated unexpectedly, and there was low contractor interest in bidding on the project. We also reported that because of the delays, estimated costs for housing the L.A. Court had nearly tripled to over \$1.1 billion, rendering the congressionally-authorized 41-courtroom courthouse unachievable with current appropriations. As a result of the delays and the increases in estimated cost, in 2006, GSA cancelled the entire 41-courtroom courthouse project for which Congress had appropriated funds.

By 2008, GSA was considering three options for a revised L.A. courthouse project, which would have required balancing needs for courtroom space, congressional approval, and additional estimated appropriations of up to \$733 million. These options are summarized in Table 1.

Table 1: Three Options for Housing the L.A. Court Currently under Consideration by GSA

Description	Total courtrooms	Estimated completion date	Estimated new appropriations needed
Option 1: Construct a new 36-courtroom, 45-chamber building to house district judges; add 4 more courtrooms to Roybal to house the magistrate and bankruptcy judges; and the L.A. Court vacates the Spring Street building.	74	2014	\$733.6 million
Option 2: Construct a new 20-courtroom, 20-chamber courthouse to house about half of the district judges; add 12 more courtrooms to the Roybal building; and the L.A. Court vacates the Spring Street building.	66	2014	\$301.5 million
Option 3: Add 13 more courtrooms in the Roybal building, retain 17 courtrooms and upgrade security in the Spring Street building, and house the remaining court functions in the federal building on L.A. Street (located in between the Spring Street and the Roybal buildings).	64 (some below design standards for size)	2016	\$282.1 million

Source: GAO analysis of GSA data.

The L.A. Court supported the first of these options—building a 36-courtroom, 45-chamber courthouse to house all district and senior judges and adding 4 more courtrooms in the Roybal building to house all magistrate and bankruptcy judges—but it was the most expensive, pushing the total project costs to \$1.1 billion at that time. While in 2008, we took no position on the three options, it was clear that the process had become deadlocked. Moreover, none of the options considered in 2008 would have solved the issue of a split court, as all involved using two buildings to house the L.A. Court.

GAO Found Judiciary's Rent Challenge Stems from Courthouses Having Unneeded Space with Higher Associated Costs

GAO Found That Increases
in the Judiciary's Rent
Costs Were Primarily Due
to Increases in Space and
That Courthouses Have
Significant Unneeded
Space

In 2004, the judiciary requested a \$483 million permanent, annual exemption from rent payments to GSA because it was having difficulty paying for its increasing rent costs. GSA denied this request. GAO found in 2006⁵ that the federal judiciary's rental obligations to GSA for courthouses had increased 27 percent from fiscal year 2000 through fiscal year 2005, after controlling for inflation, and that these increasing rent costs were primarily due to the judiciary's simultaneous 19-percent increase in space.⁶ Much of the net increase in space was in new courthouses that the judiciary had taken occupancy of since 2000. In

⁵GAO, *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613 (Washington, D.C.: June 20, 2006).

⁶The judiciary's rent increased from \$780 million in fiscal year 2000 to \$990 million in fiscal year 2005, after controlling for inflation. During this time, the judiciary's space increased from 33.6 million to 39.6 million rentable square feet.

2010, we found that the 33 federal courthouses completed since 2000 include 3.56 million square feet of unneeded space—more than a quarter of the space in courthouses completed since 2000. This extra space consists of space that was constructed as a result of (1) exceeding the congressionally authorized size, (2) overestimating the number of judges the courthouses would have, and (3) not planning for judges to share courtrooms. Overall, this space is equal to the square footage of about 9 average-sized courthouses. The estimated cost to construct this extra space, when adjusted to 2010 dollars, is \$835 million, and the annual cost to rent, operate, and maintain it is \$51 million.

**Most Federal Courthouses
Constructed Since 2000
Exceed Authorized Size,
Some by Substantial
Amounts**

In our 2010 report on federal courthouse construction, we found that 27 of the 33 courthouses completed since 2000 exceeded their congressionally authorized size by a total of 1.7 million square feet. Fifteen exceed their congressionally authorized size by more than 10 percent, and 12 of these 15 also incurred total project costs that exceeded the estimates provided to congressional committees. However, there is no statutory requirement to notify congressional committees about size overages. According to our analysis, a lack of oversight by GSA, including not ensuring its space measurement policies were understood and followed, and a lack of focus on building courthouses within the congressionally authorized size, contributed to these size overages.

For example, all 7 of the courthouses we examined in case studies for this 2010 report included more building common and other space—such as mechanical spaces and atriums—than planned for within the congressionally authorized gross square footage. The increase over the planned space ranged from 19 percent to 102 percent. Regional GSA officials involved in the planning and construction of several courthouses we visited stated that they were unaware until we told them that the courthouses were larger than authorized.

Further indicating a lack of oversight in this area, GSA relied on the architect to validate that the courthouse's design was within the authorized gross square footage without ensuring that the architect followed GSA's policies on how to measure certain commonly included spaces, such as atriums. Although GSA officials emphasized that open space for atriums would not cost as much as space completely built out with floors, these officials also agreed that there are costs associated with

constructing and operating atrium space. In fact, the 2007 edition of the U.S. Courts Design Guide,⁷ which reflects an effort to impose tighter constraints on future space and facilities costs, emphasizes that courthouses should have no more than one atrium.

Because the Judiciary Overestimated the Number of Judges, Courthouses Have Much Extra Space after 10 Years

For 23 of 28 courthouses whose space was planned at least 10 years ago, the judiciary overestimated the number of judges who would be located in them, causing them to be larger and costlier than necessary. Overall, the judiciary has 119, or approximately 26 percent, fewer judges than the 461 it estimated it would have. This leaves the 23 courthouses with extra courtrooms and chamber suites that, together, total approximately 887,000 square feet of extra space. A variety of factors contributed to the judiciary's overestimates, including inaccurate caseload projections, difficulties in projecting when judges would take senior status, and long-standing difficulties in obtaining new authorizations and filling vacancies. However, we found that the contribution of inaccurate caseload projections to inaccurate estimates of how many judges would be needed cannot be measured because the judiciary did not retain the historic caseload projections used in planning the courthouses.

Low Levels of Use Show That Judges Could Share Courtrooms, Reducing the Need for Future Courtrooms by More than One-Third

According to our analysis of the judiciary's data,⁸ courtrooms are used for case-related proceedings only a quarter of the available time or less, on average. Furthermore, no event (case related or otherwise) was scheduled in courtrooms for half the time or more, on average. Using the judiciary's data, we designed a model for courtroom sharing, which shows that there is enough unscheduled time for substantial courtroom sharing. (For more information on our model, see app. I). Specifically, our model shows that under dedicated sharing, in which judges are assigned to share specific courtrooms, three district judges could share two courtrooms, three senior judges could share one courtroom, and two magistrate judges could share one courtroom with time to spare. This level of sharing would reduce the number of courtrooms the judiciary

⁷The U.S. Courts Design Guide specifies the judiciary's criteria for designing new court facilities and sets the space and design standards for court-related elements of courthouse construction.

⁸Federal Judicial Center, *The Use of Courtrooms in U.S. District Courts: A Report to the Judicial Conference Committee on Court Administration & Case Management*, (Washington, D.C.: July 18, 2008).

requires by a third for district judges and by more for senior district and magistrate judges.

In our 2010 report, we found that dedicated sharing could have reduced the number of courtrooms needed in courthouses built since 2000 by 126 courtrooms—about 40 percent of the total number—accounting for about 946,000 square feet of extra space. Furthermore, we found that another type of courtroom sharing—centralized sharing, in which all courtrooms are available for assignment to any judge based on need—improves efficiency and could reduce the number of courtrooms needed even further.

Some judges we consulted raised potential challenges to courtroom sharing, such as uncertainty about courtroom availability, but others with experience in sharing indicated they had overcome those challenges when necessary and no trials were postponed. In 2008 and 2009, the Judicial Conference adopted sharing policies for future courthouses under which senior district and magistrate judges are to share courtrooms at a rate of two judges per courtroom plus one additional duty courtroom for courthouses with more than two magistrate judges. Additionally, the conference recognized the greater efficiencies available in courthouses with many courtrooms and recommended that in courthouses with more than 10 district judges, district judges also share.

Our model's application of the judiciary's data shows that still more sharing opportunities are available. Specifically, sharing between district judges could be increased by one-third by having three district judges share two courtrooms in courthouses of all sizes. Sharing could also be increased by having three senior judges—instead of two—share one courtroom. We found that, if implemented, these opportunities could further reduce the need for courtrooms, thereby decreasing the size of future courthouses.

**GSA and the Judiciary
Have an Opportunity to
Align Courthouse Planning
and Construction with the
Judiciary's Real Need for
Space**

In 2010, we concluded that, for at least some of the 29 courthouse projects underway at that time and for all future courthouse construction projects not yet begun, GSA and the judiciary have an opportunity to align their courthouse planning and construction with the judiciary's real need for space. Such changes would reduce construction, operations and maintenance, and rent costs. We recommended, among other things, that GSA ensure that new courthouses are constructed within their authorized size or that congressional committees are notified if authorized sizes are going to be exceeded; that the Judicial Conference of the United States

retain caseload projections to improve the accuracy of its 10-year-judge planning; and that the Conference establish and use courtroom sharing policies based on scheduling and use data. GSA and the judiciary agreed with most of the recommendations, but expressed concerns about our methodology and key findings. We continue to believe that our findings were well supported and developed using an appropriate methodology, as explained in the report.⁹

Challenges Related to Costs and Unneeded Space in Courthouses Are All Applicable to the L.A. Courthouse Project

The three causes of extra space—and the associated extra costs—in courthouses that we identified in 2010 are all applicable to the L.A. courthouse project. These causes, as described above, include (1) exceeding the congressionally authorized size, (2) overestimating the number of judges the courthouses would have, and (3) not planning for courtroom sharing among judges.

In 2008, we reported that GSA's decision to design a larger courthouse in Los Angeles than was congressionally authorized had led to cost increases and delays. The design of a new courthouse in Los Angeles was congressionally authorized in 2000 and later funded based on a 41-courtroom, 1,016,300-square-foot GSA prospectus. GSA decided instead to design a 54-courtroom, 1,279,650-square-foot building to meet the judiciary's long-term needs. A year and a half later, after conducting the environmental assessments and purchasing the site for the new courthouse, GSA informed Congress that it had designed a 54-courtroom courthouse in a May 2003 proposal. However, the Office of Management and Budget (OMB) rejected this proposal, according to GSA, and did not include it in the President's budget for fiscal year 2005. GSA then designed a 41-courtroom building, but by the time it completed this effort, the schedule for constructing the building had been delayed by 2 years, according to a senior GSA official involved with the project.

With this delay, inflation pushed the project's cost over budget, and GSA needed to make further reductions to the courthouse in order to procure it within the authorized and appropriated amounts. However, GSA and L.A. Court officials were slow to reduce the project's scope, which caused additional delays and then necessitated additional reductions. For example, GSA did not simplify the building-high atrium that was initially

⁹GAO-10-417.

envisaged for the new courthouse until January 2006, even though the judiciary had repeatedly expressed concerns about the construction and maintenance costs of the atrium since 2002. In our 2010 report, we found that large atriums contributed to size overages in several courthouses completed since 2000. Moreover, according to GSA officials in 2010, GSA's current policy on how to count the square footage of atriums and its target for the percentage of space in a building that should be used for tenant space (which does not include atriums) should make it difficult, if not impossible, for a courthouse project to include large atriums spanning many floors—although relatively modest atriums should still be feasible.

Second, overestimates of how many judges the L.A. Court would need led to the design of a courthouse with more courtrooms than necessary. Specifically, we reported in 2004 that the proposed L.A. courthouse was designed to include courtrooms for 61 judges (47 current district and magistrate judges and 14 additional judges expected by 2011), but in 2011, the L.A. Court still has 47 district and magistrate judges—and none of the 14 additional judges that were expected. This outcome calls into question the space assumptions that the original proposals were based on.

Third, in 2008 we reported that in planning for judges to share courtrooms, the judiciary favored an option proposed by GSA that provided for sharing by senior judges, but our 2010 analysis indicated that further sharing was feasible and could reduce the size and cost of the L.A. courthouse project. Specifically, GSA's proposal to build a 36-courtroom, 45-chamber building and add 4 courtrooms to Roybal's existing 34 courtrooms—which GSA estimated at the time would cost \$1.1 billion, or \$733.6 million more than Congress had already appropriated—would have provided the L.A. Court with 74 courtrooms in total—36 district courtrooms in the new building and 38 courtrooms (20 magistrate and 18 bankruptcy) in Roybal. The judiciary supported this proposal in part, it said, because, with more chambers than courtrooms included in the plan, it could fulfill its need for a larger building through courtroom sharing among senior judges who would occupy the extra chambers in the new building. In this option, the district and senior judges would be housed in the new courthouse, while the magistrate and bankruptcy judges would be housed in the Roybal building. As described above, our model suggested that additional courtroom sharing would be possible in a courthouse such as the L.A. courthouse, which could reduce the number of courtrooms needed for this project, broadening the potential options for housing the L.A. District Court.

Chairman Denham, Ranking Member Norton, and Members of the Subcommittee, this concludes our testimony. We are pleased to answer any questions you might have.

Contact Information

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

Appendix I: Additional Information on GAO's Courtroom Sharing Model

To learn more about the level of courtroom sharing that the judiciary's data support, we used the judiciary's 2008 district courtroom scheduling and use data to create a simulation model to determine the level of courtroom sharing supported by the data.

The data used to create the simulation model for courtroom usage were collected by the Federal Judicial Center (FJC)—the research arm of the federal judiciary—for its *Report on the Usage of Federal District Court Courtrooms*, published in 2008. The data collected by FJC were a stratified random sample of federal court districts to ensure a nationally representative sample of courthouses—that is, FJC sampled from small, medium, and large districts, as well as districts with low, medium, and high weighted filings. Altogether, there were 23 randomly selected districts and 3 case study districts, which included 91 courthouses, 602 courtrooms, and every circuit except that of the District of Columbia. The data sample was taken in 3-month increments over a 6-month period in 2007 for a total of 63 federal workdays, by trained court staff who recorded all courtroom usage, including scheduled but unused time. These data were then verified against three independently recorded sources of data about courtroom use. Specifically, the sample data were compared with JS-10 data routinely recorded for courtroom events conducted by district judges, MJSTAR data routinely recorded for courtroom events conducted by magistrate judges, and data collected by independent observers in a randomly selected subset of districts in the sample. We verified that these methods were reliable and empirically sound for use in simulation modeling.

Working with a contractor, we designed this sharing model in conjunction with a specialist in discrete event simulation and the company that designed the simulation software to ensure that the model conformed to generally accepted simulation modeling standards and was reasonable for the federal court system. Simulation is widely used in modeling any system where there is competition for scarce resources. The goal of the model was to determine how many courtrooms are required for courtroom utilization rates similar to that recorded by FJC. This determination is based on data for all courtroom use time collected by FJC, including time when the courtroom was scheduled to be used but the event was cancelled within one week of the scheduled date.

The completed model allows, for each courthouse, user input of the number and types of judges and courtrooms, and the output states whether the utilization of the courtrooms does not exceed the availability of the courtrooms in the long run. When using the model to determine the

level of sharing possible at each courthouse based on scheduled courtroom availability on weekdays from 8 a.m. to 6 p.m., we established a baseline of one courtroom per judge to the extent that this sharing level exists at the 33 courthouses built since 2000. In selecting the 8 a.m. to 6 p.m. time frame for courtroom scheduling, we used the courtroom scheduling profile that judges currently use, reflecting the many uses and flexibility needed for a courtroom. Judges stated that during trials courtrooms may be needed by attorneys before trial times in order to set up materials. This set up time was captured in the judiciary's data; other uses of a courtroom captured by the judiciary are time spent on ceremonies, education, training, and maintenance. We differentiated events and time in the model by grouping them as case-related events, nonjudge-related events, and unused scheduled time, and we allotted enough time for each of these events to occur without delay. Then we entered the number of judges from each courthouse and determined the fewest number of courtrooms needed for no backlog in court proceedings.

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STATEMENT OF

THE HONORABLE MARGARET M. MORROW
DISTRICT JUDGE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BEFORE

THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

ON

“A REVIEW AND ANALYSIS OF THE PROPOSED \$400 MILLION
LOS ANGELES, CALIFORNIA, FEDERAL COURTHOUSE PROJECT”

NOVEMBER 4, 2011

Good morning, Chairman Denham and Ranking Member Norton. My name is Margaret M. Morrow, and I am a District Judge of the United States District Court for the Central District of California, resident in Los Angeles. I appreciate the opportunity to appear before the Subcommittee today to discuss with you the Judiciary's number one courthouse construction priority – the Los Angeles courthouse project.

Over the past 18 months, the Judiciary has worked closely with the General Services Administration (GSA) to develop a plan for a functional and cost-effective facility that will provide long-term, secure housing for the Los Angeles district court and for the public that uses the building. The project incorporates the direction from this Subcommittee and Committee to maximize the use of existing courtrooms in the Edward R. Roybal Federal Building (Roybal) to the extent practicable, and to share courtrooms. The project does not require additional funding, also a directive of this Subcommittee and Committee. *The planned project is a reduction of 350,000 square feet, 17 courtrooms, and 8 chambers from the project that this Committee considered in prior years.* In my testimony, I will explain why a new courthouse is needed, and describe the project that the Judiciary and GSA have jointly developed.

The Need for a New Courthouse in Los Angeles is Well-Established

All those familiar with the existing facilities in Los Angeles agree that there are serious operational, infrastructure, and security concerns that must be addressed. In addition, 14 judges will be eligible for senior status between now and 2019, with 9 of those becoming eligible in the next 5 years.

The court in Los Angeles currently operates in two buildings: 312 North Spring Street (Spring Street) and the Roybal building at 255 East Temple Street. District judges are split between the two buildings. At this time, 21 active and senior district judges (including one vacancy) and 11 magistrate judges have chambers and use courtrooms in the Spring Street building. Ten active and senior district judges and 6 magistrate judges have chambers and use courtrooms in the Roybal building.

Space Concerns

The Central District of California is one of the largest and busiest courts in the nation. It handles a high percentage of complex criminal cases related to drugs, murder, street gangs, prison gangs, and terrorism. Judges in the Central District carry one of the heaviest caseloads in the nation with the number of weighted caseload filings currently at 639 per authorized judgeship (year ending June 30, 2011). This far exceeds the national average of 505, and makes the Central District the 11th busiest of the 94 districts in the nation.

Currently, there are 21 authorized Article III (district) judgeships in the Los Angeles division. As noted, 14 of the active judges will be eligible for senior status between now and 2019; nine are eligible in the next five years. As these judges take senior status, and replacement district court judges are appointed, we will still have to provide space to accommodate the senior judges, while keeping with our sharing policy. We hope, of course, that Congress will also recognize the dire need for nine new judgeship positions that have been approved by the Judicial Conference of the United States for the Central District, and pass legislation creating them. These new judgeships are proposed in two bills currently pending before Congress – S. 1032 and

H.R. 2365. If these judgeships are created, chambers and courtrooms will be needed for the new judgeship positions as well. I want to emphasize, however, that the project the Judiciary and GSA have developed *does not* include space for any new judgeship positions.

In sum, excluding any new judgeships that may be created, and taking into account those judges eligible for senior status over the next ten years, the Judiciary's space requirements in 2021 for district and magistrate judges, after incorporating courtroom sharing policies, will be 37 courtrooms and 61 chambers. The proposed plan encompasses these needs and addresses the operational and security concerns discussed below.

Operational Concerns

The Spring Street facility, originally a post office and courthouse, was built in 1938. There are serious seismic problems with the building, which is unfortunately located in an area highly prone to earthquakes. GSA has informed the court that the building will require a seismic retrofit to meet GSA's standards. The building is also riddled with asbestos, which makes improvements complicated and costly. Due to its age, the existing infrastructure does not accommodate modern-day technology, and the building systems (e.g., HVAC, electrical, and elevators) are old and require upgrades or replacement. Air quality tests have detected contaminants that are at the high end of an industry-accepted range, and employees have reported respiratory problems.

The Roybal building was built 20 years ago; its systems have functional failures that need to be addressed. As an example, there are water intrusion issues and significant problems with the elevators in the building.

Security Concerns

The Spring Street location has many serious security issues that affect the safety of the public (i.e., parties, jurors and witnesses), the marshals, court employees, and judges. ***It is critical to recognize that many of these problems cannot be ameliorated through modifications to the building due to the building's configuration.*** These include:

- There is no vehicular sally port. Prisoners are brought into the facility through the judges' parking area where they are able to identify the judges parking in the area and the license plates on their vehicles. Prisoners and judges often encounter each other upon exiting their respective vehicles because they enter/exit the garage at the same point.
- The entry and size of the parking garage cannot accommodate large prisoner buses; therefore, large numbers of smaller vans are used to transport large numbers of prisoners, causing delays and increased risks.
- The central holding facilities in the main cellblock are extremely undersized. As a result, in-custody defendants may be placed in the same cell together, adding to the security risk.
- The pathway from the central cell block to 12 of the 29 courtrooms is circuitous through extremely narrow corridors and staircases. Escorting large numbers of prisoners who are shackled together in such tight spaces with blind spots is extremely dangerous for both the marshals and the prisoners. Because of this risk, prisoners are often moved to these courtrooms through public elevators and public corridors, causing them to cross paths with the public, jurors and witnesses. The only prisoner access to the remaining 17 courtrooms is through the public corridors.
- There are only two holding cells directly adjacent to courtrooms. One of these holding cells has been out of commission for more than 12 years as the prisoner elevator that provides access to this cell is inoperable. The other holding cell serves two courtrooms. Eight magistrate judge courtrooms are supported by holding cells on the same floor as the courtrooms but only accessible through a public corridor. In-custody defendants who appear in the remaining 19 courtrooms not supported by any holding cells are generally escorted back and forth through public corridors and elevators to the central cell block. This requires extensive time and causes delays to court proceedings, especially court recesses which must be extended to accommodate this activity.

The History of the Los Angeles Courthouse Project

As the Subcommittee is well aware, since FY 2000 there have been appropriations and authorizations totaling approximately \$400 million for the Los Angeles courthouse project. The Subcommittee knows the many challenges this project has faced, including complexities resulting from the need to house a large number of judges, and the unprecedented escalation of construction costs in the Los Angeles area beginning in 2006, which caused the project budget to exceed the funds appropriated and authorized. GSA planned to award a contract to build the project in FY 2006, but withdrew the request for proposal due to lack of competition and inadequate funding. We regret the passage of time since the House Transportation and Infrastructure Committee authorized funding for this project, but we have worked diligently and in good faith with GSA over the past year and a half to devise a new plan that we believe will address the district court's needs for a functional, safe, and cost-effective building, and that is responsive to the directives of this Subcommittee and Committee – to maximize the use of the Roybal building, to share courtrooms, and to ensure that no additional appropriated funding is required.

Proposed Plan for the New Courthouse

The proposed plan I present to you today is the product of close collaboration between the Judiciary and GSA – at both the national and the local levels. It is our understanding that the plan also has the approval of the Office of Management and Budget. GSA and the Judiciary re-assessed the requirements for the new courthouse, applying current Judicial Conference senior judge courtroom sharing policies and eliminating any provision for projected judgeships. (When

both the new courthouse and Roybal are considered, 23 senior judges will share seven courtrooms; 17 magistrate judges will share nine courtrooms in the Roybal building.)

Additionally, given the difficult federal budgetary situation, the Los Angeles court suggested numerous reductions in the scope of the project.

The new housing plan includes the following:

- Construction of a new courthouse that will be approximately 650,000 gross square feet on a site already owned by the government, that has been cleared and is ready for construction. This is a reduction of 350,000 square feet.
- Construction of a facility that will have 24 district judge courtrooms and 32 chambers for the 21 authorized active district judges and 11 senior judges. This reflects application of the Judicial Conference's courtroom sharing policies for senior judges, and is a reduction of 17 courtrooms and 8 chambers.
- Construction of a facility that will have reduced space for the functions of the clerk of court and the requirements of the USMS.
- As has always been planned, the district court will not occupy the Spring Street facility. The Judiciary understands that GSA has plans to renovate the Spring Street facility to address the seismic and health and safety issues highlighted above, so that it can be used by Executive Branch agencies that have substantial operations in the downtown Los Angeles area, and that are currently in leased facilities.
- The Roybal building will be used for: (1) magistrate judge courtrooms and chambers; (2) bankruptcy judge courtrooms and chambers; (3) judicial support functions; and (4) courtrooms and chambers for senior judges who cannot be accommodated in the new facility.
- In response to the concerns expressed by this Subcommittee and Committee, the proposed project does *not* include space for judgeships that the Judiciary has requested that Congress create, or for projected judgeships not yet approved by the Judicial Conference but warranted based on caseload.

While the proposed plan will not address all of the operational issues that result from the court being split into two facilities, the court will function more efficiently in this new configuration

than it currently does. In particular, significant efficiencies will be achieved if the active district court judges are consolidated in one facility.

Judge Michael A. Ponsor, Chair of the Judicial Conference Space and Facilities Committee testified at a May 25, 2010, hearing of this Subcommittee. At that hearing, the Chair and Ranking Member clearly stated that no additional funds would be authorized for the Los Angeles project, and that the Los Angeles problem needed to be solved within the existing appropriation. The Subcommittee also made clear that courtroom sharing was required, and that the manner in which the Judiciary plans space for projected judgeships that have not been approved by the Judicial Conference, or created by Congress, needed to be changed. The Judiciary believes that the plan GSA and the Judiciary have developed for the Los Angeles courthouse project meets all of those requirements.

Additionally, since 2008, the Senate and House of Representatives Appropriations Committees have reiterated their support for this project in Conference Reports accompanying annual appropriations bills, have directed the Judiciary to work with GSA to move forward with the project, have prohibited GSA from using the funding appropriated for this project for any other purpose, and have prohibited GSA from using the proceeds of any sale of the land acquired for this project for any purpose other than the facility needs of the Los Angeles division of the Central District of California.

Consistent with all of the direction we have received from Congress, GSA and the Judiciary have proceeded in good faith to develop a reasonable and cost-effective solution that addresses the space, operational and security concerns of the Central District of California in the present Spring Street and Roybal buildings.

Conclusion

I appreciate very much the opportunity to discuss the housing challenges faced by the Los Angeles court. The Judiciary greatly appreciates the courthouses that the Committee has authorized over the years. These buildings provide secure places and space needed to administer justice fairly and equally to the American people. The Judiciary and GSA believe that they have found an efficient and cost-effective solution to the Los Angeles court's long-standing housing problem. We believe that this solution will provide long-term, secure housing for the Los Angeles district court and members of the public who use the building. The project incorporates the Judicial Conference's courtroom sharing policies, and the directives of the House Transportation and Infrastructure Committee to maximize the use of existing courtrooms in the Roybal building to the extent practicable and not to request any additional funding for the project.



U.S. General Services
Administration

Robert A. Peck
Commissioner
Public Buildings Service

Committee on Transportation and Infrastructure
Subcommittee on Economic Development, Public Buildings, and
Emergency Management
Los Angeles Courthouse
November 4, 2011

Good morning Chairman Denham, Ranking Member Norton, and Members of the Subcommittee. I am Robert A. Peck, Commissioner of GSA's Public Buildings Service. As the steward of federally owned buildings and the government's landlord, GSA helps more than one hundred Federal agencies achieve their missions by constructing and renovating facilities that help them carry out their public missions productively and efficiently.

The Federal Courts play a critical role in the constitutional framework of American democracy. GSA is proud to build courthouses worthy of that role. Local, state and Federal courthouses are a traditional landmark, dating back to the founding of the nation. Federal courthouses must maintain the Judiciary's mission of ensuring fair and impartial administration of justice for all Americans while providing security for judges, jurors and others engaged in the judicial process.

GSA has developed a strong partnership with the Federal Judiciary. Since we began our Design Excellence program and the Congress began funding a nationwide program of courthouse renovation and construction approximately sixteen years ago, we have compiled a solid track record of delivering high quality buildings that support the Courts' unique needs while enhancing the buildings' surroundings. We do so within carefully considered design and budgetary guidelines and pursuant to Congressional authorization and appropriations.

Today's hearing focuses on the Los Angeles Courthouse. Due to security deficiencies in the existing building and courtrooms that do not meet the Courts' space needs or functional requirements, the Los Angeles Courthouse is the Courts' number one priority. Between FY2001 – FY2005, the project received appropriations and was fully authorized, but for a variety of reasons including scope and cost, has been awaiting an updated solution for several years.

I am pleased to announce that the Courts and GSA now have a plan to deliver this critical facility within the current appropriation and authorization, eliminating future projected judgeships from the requirements and incorporating courtroom sharing policies. This is a worthwhile investment that will allow GSA to improve the security of the Los Angeles Federal District Court and meet the functional needs of the Court, take advantage of an unfortunate downturn in the market to deliver the project within the current appropriation, and mobilize nearly \$400 million set aside by Congress for this project to create thousands of jobs in a hard-hit industry.

Courthouse Construction Program –

In selecting new courthouse construction projects, GSA works closely with the Federal Judiciary to construct their priority projects. Since 1996, the Judiciary has used a 5-year plan to prioritize new courthouse construction projects. The Court's 5-year plan considers projected needs for space, projected growth in judgeships, and security concerns. GSA relies on the Judiciary's 5-year plan to develop our priorities, as funding permits, and incorporates projects into GSA's Capital Investment and Leasing Program. GSA then constructs projects appropriated and authorized by Congress. Since the program's inception fifteen years ago, 67 new courthouses

or annexes have been constructed. Congress in total has appropriated and authorized approximately \$7.5 billion for this program.

GSA and the Courts have continually improved and refined the management and oversight of these projects. The Judiciary has developed and implemented policies that require courtrooms to be shared among judges. The Judiciary has also revised its estimates for projected future judgeships. These estimates were based on the best data available at that time, but it has become clear over the past few years that Congress is not approving the judgeships they did historically. GSA, likewise, has improved our management of the courthouse program. We have put in place space management controls to ensure that our courthouses are constructed within budget and within scope, and have committed to come back to our authorizing committees if we exceed by 10 percent or more the authorized square footage of our new courthouses. GSA and the Judiciary have made great strides and are committed to continuing to improve all of these policies.

A recent report from GAO argued that courthouses had been overbuilt and that this overbuilding had cost taxpayers hundreds of millions of dollars. GSA has taken great exception to GAO's reported findings and methodology. Our concerns, in short, are that:

- 1) GAO applied the Courts' new revised sharing standards retroactively to completed projects and then claimed the space was overbuilt based on those standards;
- 2) GAO took incorrect measurements of our buildings, assuming high ceiling space in building atriums is included in the gross square footage of an asset;
- 3) GAO compounded this mistake by then imputing the same construction and operating costs to this space as all other space within the building;
- 4) GAO did not take into account the well-documented, and unprecedented, increase in the cost of construction over the time period they reviewed.

In our opinion, these mistakes by GAO resulted in inflated numbers. Taken together, these inaccuracies account for well more than half of the total reported overbuilding of courthouses identified by GAO.

GSA has been forthright and transparent in all of our documents, testimony, and briefings to Congress throughout the history of our courthouse program. Moreover, GSA only builds courtrooms requested by the Judiciary and authorized by Congress. And GSA and the Courts have a strong program to manage the requirements development, design, and delivery of courthouses.

Los Angeles Courthouse –

The Los Angeles Courthouse is an example of the strength of GSA's and the Courts' effort, and its history reflects the continued improvements by both GSA and the Courts in the delivery of the Courthouse program. The Judiciary's number one priority is the construction of a new courthouse in Los Angeles. Between 2001 and 2005, Congress authorized and appropriated

\$399,635,000 for this courthouse. For the last several years, a variety of factors, from construction cost escalation to programmatic changes, prevented us from moving forward.

In 2005, the Los Angeles courthouse was originally planned to provide one million gross square feet of space at an estimated cost of \$400 million. The plan anticipated 41 courtrooms, 40 chambers and 150 parking spaces. The design was subsequently revised in favor of a more conventional design and a reduced and reconfigured interior and the project solicitation was reissued in March 2006. However, the solicitation was canceled due to lack of competition. During this time, the Los Angeles construction market had experienced a significant increase in construction material and labor costs. Due to this sharp increase, the project was halted.

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

The Courts and GSA have worked closely together to develop a feasible solution for a smaller district courthouse that supports the Judiciary in meeting their mission needs, providing needed courtrooms and chambers with secure access. GSA and the Courts have incorporated the latest sharing guidelines and eliminated projected judgeships to develop a solution to build this courthouse within the latest Judiciary management guidelines and lessons learned over the past several years. The current proposal will provide approximately 600 to 650 thousand GSF of space, 24 district courtrooms and 32 chambers to house active district court judges and senior district court judges, as well as the supporting Clerk and U.S. Marshals Service functions.

A Worthwhile Investment –

The current proposal breaks the long-standing hiatus on the Courts' number one capital priority. As GAO noted in their September 2008 report on the Los Angeles Courthouse, the security in the current Spring Street facility is among the worst in the nation, with poor prisoner circulation, inadequate security for many of the District and Magistrate courtrooms, and shared circulation between judges and prisoners. As proposed, the new facility will provide the Los Angeles Federal District Court, and the citizens it serves, with a secure facility.

Additionally, GSA will be able to take advantage of an unfortunate downturn in the market to complete this project within the current appropriation. The Government owns and has already

cleared the site for the Los Angeles Courthouse, and a contract can be solicited. Moving now will begin to mobilize nearly \$400 million Congress has set aside for this project, putting thousands of workers in this hard-hit industry back to work.

As proposed, the project will allow a more effective use of space, consolidating the Court functions currently housed in Spring Street to the new Courthouse and the Roybal building. The District Court will fully occupy the new courthouse, as well as the District Clerk and the accompanying Marshals Service. A number of senior district judges, the magistrate judges, as well as Pretrial Services and Probation, will consolidate in the Roybal building with the Bankruptcy Court. These two buildings will meet the security needs and functional requirements of the Courts, while satisfying the updated court requirements of 49 courtrooms.

The consolidation of the Judiciary in the new courthouse and the Roybal Building will allow GSA to assess the potential reuse of the Spring Street facility and the possibility of modernizing it to accommodate the more than one million square feet of leased space that a number of executive agencies currently occupy in the Los Angeles area. GSA will conduct a study to assess the best reuse of the facility at a future date to coincide with the court's transition to its new facilities.

Conclusion –

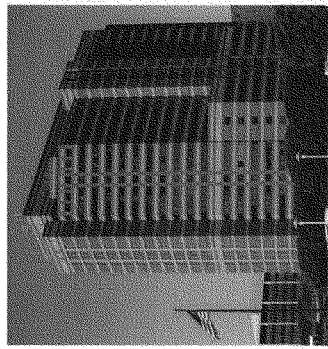
GSA and the Courts are responsibly managing the U.S. Courthouse program, making continuous improvements and refinements to better reflect space requirements, fiscal realities, and capital priorities.

The Los Angeles Courthouse project has idled for far too long. GSA and the Courts now have a plan that can be completed within the current appropriation, mobilize this funding to put people back to work, and help the Courts meet their mission needs. GSA is ready to issue a solicitation. Los Angeles will have a secure, state-of-the-art Courthouse, helping improve court functions and services, while keeping tenants and the visiting public safe.

Thank you for inviting me to appear before you today. I appreciate the opportunity to discuss GSA's management of the Federal courthouse construction program, the new path forward for the Los Angeles Courthouse, and the benefits of this investment. I welcome your questions.

Current Los Angeles Federal Courthouses

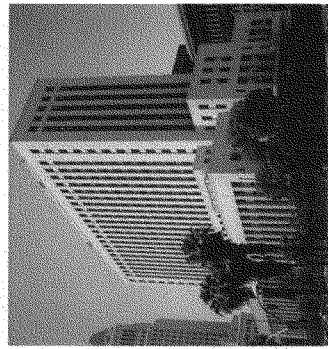
Slide 1



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

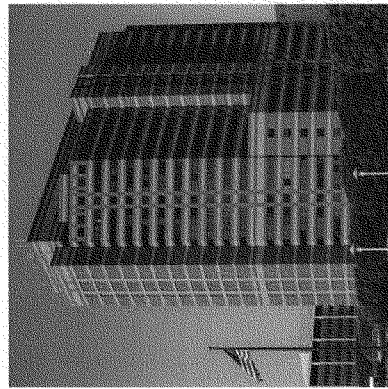
	District	Magistrate	Bankruptcy	Total
Judges	20	11	0	31
Court Rooms	19	10	0	29 (3 shared)

Total: 59 Judges 61 Courtrooms

Los Angeles District Court Judgeships

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

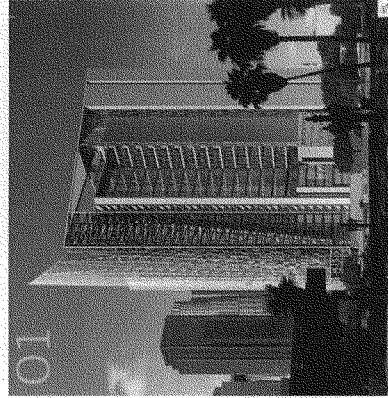
Pending \$400 Million GSA Proposal



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

32 Current Courtrooms

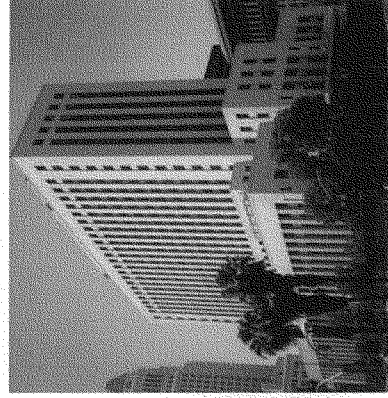
32 Courtrooms



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

0 Current Courtrooms
+24 July 2011 Proposal

24 Courtrooms



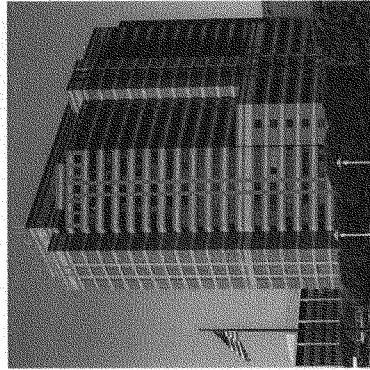
312 N. Spring Street Courthouse
(Discontinue use for federal court)

29 Current Courtrooms

29 Courtrooms

Total: 59 Judges 85 Courtrooms

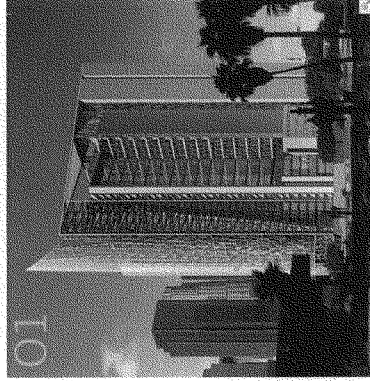
\$700+ Million GSA Proposal



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

32 Current Courtrooms
 -7 Convert 7 Courtrooms to Judicial Chambers
 (+ \$50 Million)

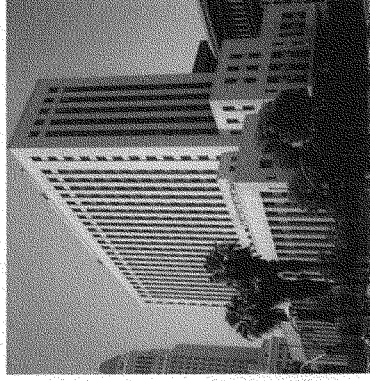
25 Courtrooms



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

0 Current Courtrooms
 +24 July 2011 Proposal

24 Courtrooms



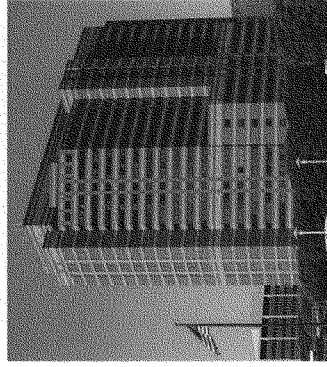
312 N. Spring Street Courthouse (Discontinue use for federal court)

29 Current Courtrooms
 -29 Convert to Office Space
 (+\$250 Million)

0 Courtrooms

Total: 59 Judges 49 Courtrooms + Office Building

Royal Can House Entire LA Court with Centralized Courtroom Sharing



Courtrooms		Judges
21	District/Magistrate	47 Judges (21 District) (9 Senior) (17 Magistrate)
6	Bankruptcy	12 Bankruptcy
27	TOTAL	59 TOTAL
+ 3	District/Magistrate	+13 Seniors

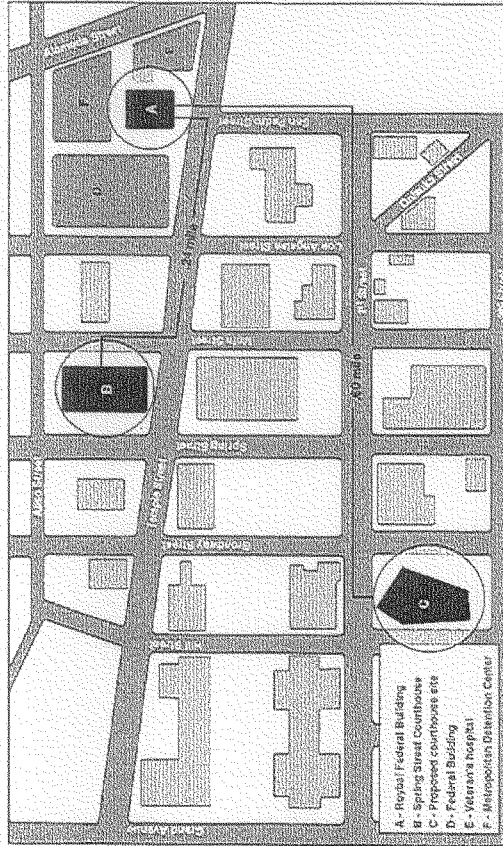
Cities with Newly Constructed Courthouses Where Old Courthouses are Abandoned or Significantly Underutilized

Note: List is not exhaustive

City	Description
Miami, FL	<ul style="list-style-type: none"> •Ferguson Courthouse was constructed. •The old Dyer Courthouse is now completely vacant and King and Ferguson courthouses remain underutilized.
Washington, DC	<ul style="list-style-type: none"> •Bryant Annex to Prettyman Courthouse was completed in 2006. •Prettyman Courthouse is now almost completely vacant.
Brooklyn, NY	<ul style="list-style-type: none"> •Roosevelt Courthouse Annex was completed in 2006. •The older adjacent courthouse is now nearly completely vacant.
Seattle, WA	<ul style="list-style-type: none"> •New Seattle Courthouse opened in 2004 and still has several shelled courtrooms. •The old Nakamura Courthouse that housed the entire district court now houses only the appellate court that rotates among Seattle, Portland, Pasadena, and the main appellate courthouse in San Francisco.
Tucson, AZ	<ul style="list-style-type: none"> •DeConcini Courthouse was completed in 2000 •The old courthouse now only houses 2 bankruptcy judges.
Richmond, VA	<ul style="list-style-type: none"> •New Richmond Courthouse was completed in 2008. •The historic Powell Courthouse and annex only hold the appellate court, which holds court less than one week a month.
Phoenix, AZ	<ul style="list-style-type: none"> •O'Connor Courthouse was completed in 2000 •The old courthouse that housed the entire district court is now nearly vacant.

Slide 6

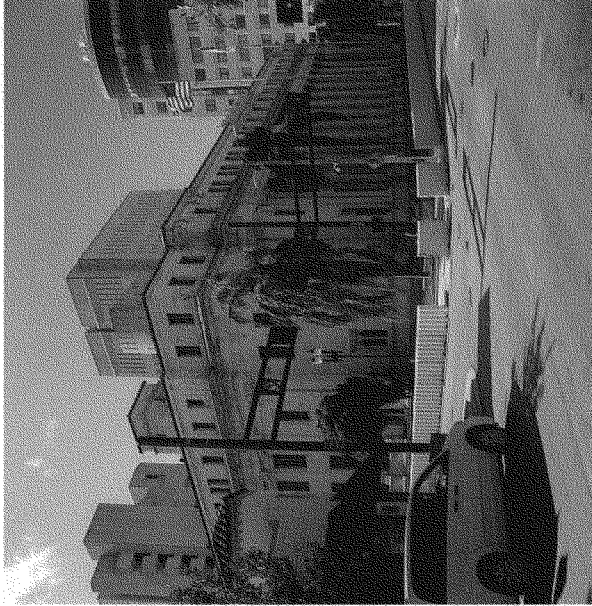
Background: Location of current and planned court buildings



Source: GAO analysis of GSA and Los Angeles Court maps.

Miami, Florida

Slide 8



David W. Dyer Federal Building and
United States Courthouse

(Currently sits vacant)



Wilkie D. Ferguson Jr. United States
Federal Courthouse

(New Courthouse not fully utilized)

Slide 9

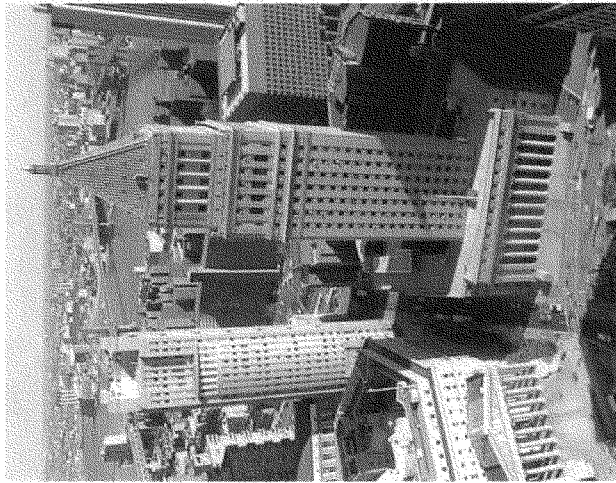
109



Abandoned Ceremonial Courtroom
David W. Dyer Federal Building and
United States Courthouse

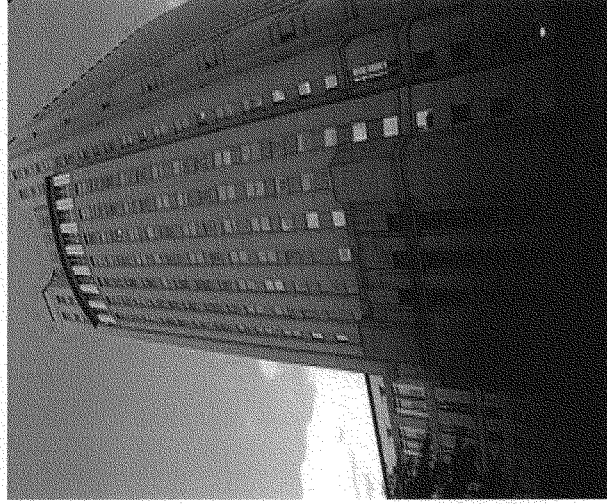
New York City, NY

Slide 10



Thurgood Marshall United States
Courthouse

(Currently under Renovation - \$230 Million)



Daniel Patrick Moynihan United
States Courthouse

Memorandum

To: Ranking Republican John L. Mica
From: Dan Mathews, Subcommittee on Economic Development, Public Buildings, and Emergency Management Staff Director
Date: April 23, 2009
RE: California Border Station and Courthouse GSA Staff Trip Report – April 14-17, 2009

Summary: The majority and minority staff directors of the Subcommittee on Economic Development, Public Buildings, and Emergency Management traveled to Los Angeles and San Diego, California to meet with GSA, the U.S. Marshalls Service, members of the Judiciary, and Customs and Border Protection representatives regarding the LA and San Diego courthouses and the San Ysidro and Otaj Mesa border crossings. We also met with Representative Bob Filner, his staff, and local officials regarding concerns they have with the San Ysidro border station project.

The purpose was to evaluate the need for the proposed LA and San Diego courthouses and the issues surrounding the border station improvements.

Staff: Dan Mathews (Republican); Susan Brita (Democratic)

Tuesday, April 14, 2009

Most of the day was consumed by travelling to California. In the afternoon, we performed an unannounced tour of the Los Angeles courthouses and federal building to see the usage level on a typical day. Both courthouses had little activity and only a few court proceedings in progress. The federal building was quite crowded with people visiting the immigration offices.

Wednesday, April 15, 2009

GSA representatives provided a briefing on the current status of the new Los Angeles courthouse project and the potential options for moving a project forward. The basic problem is that the Judiciary wants a new 1.2 million square foot courthouse to be constructed on a GSA owned lot nearby. The committee has refused to increase the project's authorization from the current \$400 million limit to the estimated \$900 million it would cost to build the building at today's prices. As a result the project is stalled.

After the GSA briefing, they took us on a tour of the two existing federal courthouses. The 1930's era courthouse on Spring Street is old and in need of renovation at some point. While its prison holding rooms and circulation patterns do not meet current security standards, the U.S. Marshalls Service said the number of prisoner circulations is way down, because most of those trials have been moved to the newer Roybal Courthouse two blocks to the south. We did not find any courtrooms or chambers being

shared by active or senior district judges. There may be some courtroom sharing by Magistrates.

The Roybal building was constructed in the early 1990's and it is a fairly modern and efficient courthouse. It has three circulation patterns (prisoner, public, and judges) and no security issues were raised by the Marshalls. However, it appears that eight bankruptcy courts and chambers are completely vacant. They are literally being used to store furniture and files in a haphazard fashion. There are no courtrooms or chambers being shared by any judge in the Roybal Courthouse.

After the tours and the briefings, I do not understand what, if any, space emergency exists in the LA district courts. The Spring Street courthouse will require renovation at some point in the future, but that timetable should be driven by renovation considerations and not a security or space emergency.

In the afternoon we travelled to San Diego. Upon arriving we went to the federal building and received a briefing from GSA's project manager for the San Diego Courthouse project.



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

James L. Oberstar
 Chairman

Washington, DC 20515

John L. Mica
 Ranking Republican Member

David Heymsfeld, Chief of Staff
 Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

August 2, 2010

President Barack Obama
 The White House
 1600 Pennsylvania Ave., NW
 Washington, DC 20500

Dear President Obama,

We are writing to request that no new federal courthouse construction projects be included in the President's FY 2012 budget request to Congress. After a thorough review by our Committee, we have found that federal courthouses have been significantly overbuilt, unnecessarily costing the taxpayer hundreds of millions of dollars. Our Committee is working with the General Services Administration (GSA) and the Judiciary to put in place necessary reforms in the planning, design and construction process for courthouses, as identified in a recent Government Accountability Office (GAO) report (GAO-10-417). In the interim, we ask that you not submit new courthouse projects for Congressional action. The GAO report demonstrates that important and urgent reforms are needed in order to remedy the problems that have plagued this program for the last two decades. (Please see Attachment: Background on the U.S. Courthouse Construction Initiative and GAO's Findings.). We believe this request is consistent with your Memorandum issued June 10, calling for better management and utilization of federal space.

We are anxious to have the appropriate checks and balances in place to ensure that the judiciary's space requests are reasonable and sustainable. Our Committee has long championed the idea of greater federal ownership of office space assets for which long-term federal needs exist, rather than long-term leasing. Consequently, we are deeply concerned that GSA's scarce capital resources have been siphoned off over the last two decades principally to build federal courthouses that are either not needed or are significantly overbuilt. GAO reports that the funds expended on the unneeded space would have been sufficient to build nine average size courthouses. GAO studied only the 33 courthouses built since 2000, rather than the entire 66 courthouses constructed since 1990. It is highly likely that the earlier courthouses were overbuilt as well, but we can only speculate as to the

President Barack Obama
August 2, 2010
Page 2

value of the overbuilding. Nonetheless, it is clear that had the funds that were misapplied in overbuilding courthouses been available to construct or purchase federal office buildings instead, these capital budget resources would have made an appreciable contribution towards lessening the over-reliance on costly leasing.

To address these concerns, the Subcommittee intends to work diligently to construct a new protocol with GSA and the Judiciary regarding courthouse space need determinations, and construction execution. The protocol we seek is one that includes realistic, credible judgeship projections; courtroom sharing in a robust and efficient fashion in accordance with the empirical courtroom use data collected by the Federal Judicial Center; and faithful adherence by GSA to congressionally authorized square footage and dollar limitations when executing projects.

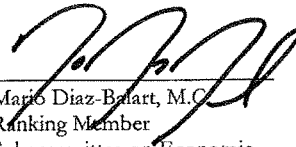
The Committee on Transportation and Infrastructure plans to withhold authorizing new additions to the courts' inventory until we are convinced that the Federal Courthouse Construction program is satisfactorily reformed. Every courthouse on the courts' Five Year Courthouse Project Plan will need to be reconsidered under the new protocol governing judgeship projection and courtroom sharing.

We ask for your cooperation and request that the Office of Management and Budget place a moratorium on federal courthouse program new construction budget requests until the Committee has the opportunity to work constructively with GSA and the Administrative Office of the U.S. Courts on this new protocol.

Sincerely,



Eleanor Holmes Norton, Delegate
Chairwoman
Subcommittee on Economic
Development, Public Buildings,
and Emergency Management



Mario Diaz-Balart, M.C.
Ranking Member
Subcommittee on Economic
Development, Public Buildings
and Emergency Management

Cc: Mr. Jeffrey Zients,
Acting Director
Office of Management and Budget

Attachment

BACKGROUND ON THE U.S. COURTHOUSE CONSTRUCTION INITIATIVE AND THE GAO'S FINDINGS

History

Since the early 1990s, the GSA and the federal judiciary have undertaken a multi-billion dollar courthouse construction initiative to address the judiciary's need for new, modern courthouses. According to the Administrative Office of the U.S. Courts (AOUSC), the judiciary's workload had been growing substantially (through the 1970s and 1980s) and the number of court staff had doubled. At the same time, many federal courthouses built decades ago had become functionally obsolete and in need of replacement, expansion, or renovation to accommodate modern technology, security, and operational needs. The effort to replace or renovate courthouses across the nation, however, has been plagued by significant problems.¹ Beginning in the mid-1990s, courthouse projects were criticized by GAO and Congress as overbuilt in terms of both size and overly lavish and expensive features. Through at least 2004, the federal judiciary was reluctant to adopt more cost-conscious requirements for courthouse projects. In addition, in the early 2000s, the judiciary had difficulty paying its rent bills to GSA, which raised additional questions about costly construction requirements and lack of incentives for efficient use of space.

As a result of these burgeoning construction and rental costs, the judiciary embarked upon several initiatives to control costs, including revising the *U.S. Courts Design Guide*, validating GSA space assignments and rental rate charges, and with insistence from this Committee, commencing courtroom sharing, which to date has been applied only to senior and magistrate judges. However, the Subcommittee continues to be concerned about the high cost of courthouse construction and its overall program management. In 2005, the Subcommittee requested that the Judiciary complete a courtroom usage study. The study was submitted to the Subcommittee by the Federal Judicial Center (FJC) in 2008 and the Judicial Conference agreed to adopt a sharing plan for senior judges, develop a sharing policy for magistrate judges, and study the feasibility of sharing among district judges.

Current Investigation

To assist with the House Transportation and Infrastructure Committee's ongoing oversight of the courthouse construction program, the Subcommittee on Economic Development, Public Buildings and Emergency Management requested that GAO conduct a comprehensive review of the program by examining the following areas: the judiciary's courtroom sharing policies, the ability of the judiciary to project future judgeships accurately, and GSA's management of the program.

¹ The GAO has issued reports for nearly two decades highlighting problems with the Federal courthouse construction program. These reports include: *Federal Courthouse Construction: More Disciplined Approach Would Reduce Costs and Provide Better Decisionmaking*, T-GGD-96-19 (Nov. 1995); *Courthouse Construction: Improved 5-Year Plan Could Promote More Informed Decisionmaking*, GGD-97-27 (Dec. 1996); *Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking*, GGD-97-39 (May 1997); *Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue*, GAO-01-70 (Dec. 2000); *Federal Courthouses: Rent Increases Due to New Space and Growing Energy and Security Costs Require Better Tracking and Management*, GAO-06-613 (June 2006).

Attachment

The GAO report, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs* (GAO-10-417) issued in June contained alarming findings about how the courthouse program has been managed and a shocking estimate of the amount of money that has been expended for unneeded space.

On May 25, 2010, the Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on the draft GAO report. In this hearing, the Subcommittee received testimony from the Judiciary, GSA, and GAO. GAO determined that the 33 courthouses completed by GSA since 2000 include 3.56 million square feet of extra space, attributable to: space that was constructed above the congressionally approved size; space built due to significant overestimation by the Judiciary of the number of judges that courthouses would need to accommodate; and the Judiciary's failure to implement courtroom sharing to the degree supported by the courtroom utilization study conducted by the FJC, the Judiciary's educational and research arm. The total value of the unneeded or extra space was estimated by GAO to be \$835 million in construction costs, and \$11 million in recurring annual operating and maintenance expenses.

The GAO estimate for initial construction costs attributable to building beyond congressionally authorized size limitations, which at 1.7 million square feet is approximately half of the total overbuilding, was vigorously contested by GSA. GSA argued that much of the extra space consists of void or "phantom" space in multi-story atria, which is not as expensive to build as tenanted space. In the alternative, GSA volunteered that the cost of the overbuilding is equal to \$269 million, which is the amount by which the costs exceeded appropriations. The Judiciary, for its part, objected that the other half of the amount of overbuilding found by GAO (i.e., 857,000 square feet due to over-projection of judgeships, and 946,000 square feet due to judges not sharing courtrooms) unfairly applied courtroom sharing retrospectively, based upon the FJC study that was not completed until 2006. The Judiciary further claimed that, even though it did over-project judgeships, that the extra space will be needed eventually.

The final GAO report addressed all of the principal rebuttal points raised by GSA and the AOUSC.

Over-projection of Judges

While there may be debate as to the degree of the expenditure on unneeded space, the critical point is that an enormous amount of unneeded courthouse space was built, at significant cost to the taxpayer. There are a number of factors that have contributed to the overbuilding. One of the causes, as GAO reports, is that the Judiciary has consistently over-projected the number of judgeships and the number of senior judges that would be present 10 years from the point of courthouse design. The Judiciary's judgeship projections are for a point in time ten years from the date of design, and for 28 of the 33 courthouses GAO studied, at least 10 years have elapsed since they were designed, allowing GAO to compare the Judiciary's 10-year judgeship projections with actual outcomes. Of these 28 courthouses, 23 had extra courtrooms, as well as ancillary space associated with the extra courtrooms (e.g., jury deliberation rooms, attorney conference rooms, and holding cells). For at least two of these courthouses, the projection of the number of judges

Attachment

exceeded the actual number of judges at the 10 year mark by 10, indicating a highly inaccurate projection methodology.

Insufficient Courtroom Sharing

The GAO Study, using empirical data provided by the Judiciary, clearly shows that courtroom sharing is possible on a greater scale than the Judiciary has adopted to date. For instance, while the GAO study found that magistrate judges can share on the basis of at least two judges to a courtroom,² the Judicial Conference policy for magistrate judge courtroom sharing applies only to courthouses which have three or more magistrate judges. Since only 63 courthouses have three or more magistrate judges, the Judicial Conference policy significantly curtails the reach of courtroom sharing for magistrate judges.

Moreover, an inaccurate judgeship projection methodology which overstates the numbers of judges, also significantly impairs the effectiveness of courtroom sharing. If the numbers of judges are over-projected, then effectively judges do not share, because more courtrooms will be built than are needed, and even though courtroom sharing ratios are applied to the projected judgeship population, the actual numbers of judges may not exceed the number of courtrooms constructed. As a result, even though the Judiciary has commenced the application of a sharing protocol for senior and magistrate judges, actual sharing has not yet been the norm.

² In GAO's analysis and modeling of courtroom needs, as the number of magistrate judges increases above six, the number of courtrooms needed per judge can be fewer than the 1 for 2 ratio.



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

John L. Mica
Chairman

Washington, DC 20515

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
Page 2

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

United States District Court
Central District of California
255 East Temple Street
Los Angeles, California 90012

Margaret M. Morrow
United States District Judge

Telephone
(213) 894-2949

November 22, 2011

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

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

Dear Mr. Chairman and Ranking Member Norton:

Thank you for the opportunity to testify at the Subcommittee's November 4, 2011 hearing entitled, "A Review and Analysis of the Proposed \$400 Million Los Angeles, California, Federal Courthouse Project." I also appreciate the fact that the Chairman took time to visit Los Angeles the following week and tour our current facilities.

During the question and answer portion of the hearing, you raised several issues to which you did not ask me to respond, but about which I have additional information that I believe would be useful to the Subcommittee's consideration of the need for the new courthouse. I am therefore enclosing the following supplemental materials and respectfully request that they be included in the hearing record:

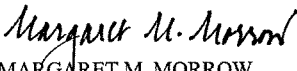
- (1) Additional information and the views of the Central District of California on several questions posed by Subcommittee members at the hearing.

Honorable Jeff Denham
Chairman
Honorable Eleanor Holmes Norton
Ranking Member
Subcommittee on Economic Development,
Public Buildings and Emergency Management
November 22, 2011
Page 2

- (2) A letter from the U.S Marshals Service about the security problems in the Spring Street Courthouse in Los Angeles, which I mentioned during my testimony.
- (3) A letter from the chief judges of the Circuit Court of Appeals and the District Court for the District of Columbia and an accompanying chart that reflects space assignments in the two buildings occupied by those courts.
- (4) A letter from the Chief Judge of the Southern District of New York about the impact of courtroom sharing on that court.

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

Sincerely,


MARGARET M. MORROW

MMM:cmg
Enclosures

Supplemental Information for the Hearing Record

A Review and Analysis of the Proposed \$400 Million
Los Angeles, California Federal Courthouse Project

The Subcommittee on Economic Development,
Public Buildings, and Emergency Management

Committee on Transportation and Infrastructure
United States House of Representatives
November 4, 2011

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

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

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

- The build out of 13 new district and magistrate judge courtrooms, and the provision of secure prisoner circulation and holding cells for these courtrooms.
- The build out of 39 additional chambers for use primarily by senior and magistrate judges. It would be necessary to demolish four bankruptcy courtrooms to provide space for these chambers. If Congress were to create the clearly needed district judgeship positions proposed in S. 1032 and HR 2365, additional space would need to be found and built out for them as well.¹

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

- Significant alterations to eight bankruptcy courtrooms to provide the prisoner access and holding cells necessary to convert them for district court use.
- Demolition of twelve bankruptcy court jury deliberation rooms that are too small for district court needs and reconstruction to convert them for district court use.
- Conversion of the district court clerk's office in Roybal to a jury assembly area.
- Expansion of USMS holding cells.
- The vacating of approximately 155,000 usable square feet (usf) of space in the Roybal building by current executive branch agencies and other federal occupants, demolition of the vacated space, and reconstruction for district court purposes. The court understands that this amount of space is not available in GSA's inventory of federal space in the area, and that it will be necessary to obtain leased space for these tenants. Based on past experience, it is likely to take three to at least four years to process a lease prospectus for this amount of space.
- The resulting configuration would be able to accommodate the bankruptcy court but would not accommodate the bankruptcy clerk's office, the probation office and pretrial services office. There would also be significant space shortfalls for the USMS. An additional 253,000 usf would be required to house these functions.
- The extensive construction that would be required on floors 12 through 20 to complete these renovations would significantly impact building egress and life safety systems, making occupancy of these floors impractical during the construction period, which can be expected to take at least three years. This would necessitate the acquisition of approximately 125,000 usf of leased temporary swing space to house the bankruptcy court for the duration of construction.

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

2. No Courtrooms in the Roybal Building Are Being Used to Store Furniture

At the hearing, it was asserted that courtrooms in the Roybal building were being used to store furniture. This is not the case. During the November 7, 2011 tour provided to Chairman Denham, bankruptcy court officials explained that none of their courtrooms has ever been used for the storage of furniture. Court officials stated that one bankruptcy court chambers, which is in the process of being repaired due to exterior water damage affecting the walls and wall covering, is temporarily being used to store furniture from another chamber that is under refurbishment. GSA officials stated that furniture that had been ordered for the child care center in the Roybal building was temporarily stored in a Tax Court courtroom that was about to be renovated. (The Tax Court is not part of the Judiciary and therefore the Judiciary has no control over the use of that space.) The furniture has since been removed and installed in the child care center, and the tax court space is under renovation.

With regard to statements at the hearing that four bankruptcy courtrooms are vacant, bankruptcy court officials have since clarified that two of these courtrooms are currently being used by four visiting bankruptcy court judges who are assisting the bankruptcy court with its heavy case load until pending new judgeship positions can be approved and filled.² In addition, bankruptcy court officials noted that they continue actively to seek additional visiting judges to assist with the caseload.

The other two courtrooms would be utilized by two of these four visiting judges except for the fact that their chambers are being repaired and are temporarily unavailable. Funds for the repairs were provided to GSA in fiscal year 2011, and it is expected that work will be completed in the first half of 2012. When the work is completed, the bankruptcy court plans to utilize all four of courtrooms for the visiting judges who are currently assisting it, and for any additional judges from other districts that can be recruited to assist the court.

3. GSA and the Judiciary Have Always Contemplated that the Spring Street Building Would No Longer Be Used by the Courts.

It has always been contemplated that the Spring Street building would not be part of the future housing plans of the Los Angeles court due to operational issues, security deficiencies, and because the building cannot be retrofitted to security standards.

The building has the following security deficiencies:

- The vehicular sally port is too small to accommodate large buses, requiring that prisoners be transported to the court in multiple small vans and offloaded in the parking area used by judges. There is no space to construct a new sally port.
- Prisoner circulation is substandard and requires using multiple elevators and narrow winding corridors with numerous blind spots.
- The holding cells are undersized.
- There is no means of providing three separate circulation patterns and prisoners cannot be moved to all courtrooms through secure corridors.

² The bankruptcy court in the Central District of California ranks number one among the country's 90 bankruptcy courts in total case filings as well as in chapter 7, 11 and 13 cases. Total raw filings in the district are 130% higher than the next highest district. For the year ending June 30, 2011, the weighted filings per authorized judgeship in CAC stood at 2,314, which was 36% higher than the national average, and 93% above the full-time workload of a bankruptcy judge. Based on its weighted filings and other factors, at its March 2011 meeting, the Judicial Conference approved a recommendation from the Bankruptcy Committee for an additional 8 bankruptcy judgeships for the Central District. When these clearly needed judgeships are created by Congress, space will be needed to house them.

The GSA testified at the hearing that the Spring Street building would either be renovated for use by executive branch agencies, or expeditiously sold.

4. Housing Plan Under the Current Proposal

The proposed housing plan for the district court described below is consistent with Judicial Conference courtroom sharing policies:

ROYBAL BUILDING	NEW COURTHOUSE	SPRING STREET	TOTALS
32 Courtrooms³		29 Courtrooms⁴	85 Courtrooms⁵
16 District Court Courtrooms – 12 Senior Judges will share 4 courtrooms. – 17 Magistrate Judges will share 9 courtrooms.	24 District Court Courtrooms – 21 Authorized District Judges will be assigned 21 courtrooms. – 11 Senior District Judges will share 3 courtrooms.		37 ⁶ District Court Courtrooms for 61 Judges

Slide # 3, which was shown at the hearing, suggested that after construction of a new courthouse, the Los Angeles division of the Central District would occupy three courthouses that would have a total of 85 courtrooms. This is not correct. For the reasons explained above, the district court plans to vacate the Spring Street building, and to occupy two courthouses (the Roybal building and the new courthouse), not three. The Spring Street courtrooms should not, therefore, be included in any total courtroom count. Additionally, bankruptcy courtrooms should not be included in any total courtroom count because bankruptcy courtrooms do not have prisoner access and do not have the type of juror facilities needed by the district court. The district court’s housing plan for the Roybal building and the new courthouse will provide a total of 37 courtrooms for 61 district active, senior and magistrate judges.

³ The Subcommittee’s count of 32 courtrooms in the Roybal building includes 16 bankruptcy courtrooms. It is not correct to include these bankruptcy courtrooms as part of the district court’s housing plan. This has therefore been stricken from the table.

⁴ The Subcommittee’s count of the courtrooms in the Spring Street building should not be included in the total number of courtrooms. This has therefore been stricken from the table.

⁵ The Subcommittee’s total of 85 courtrooms incorrectly includes 29 Spring Street courtrooms and 16 bankruptcy courtrooms. This has therefore been stricken from the table.

⁶ In order to comport with the Judicial Conference’s courtroom sharing policies, three existing magistrate judge courtrooms will be released.

5. GAO's Courtroom Sharing Recommendations Are Based on Invalid Assumptions

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

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

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

On a disturbing note, the model appears to have completely ignored the security issues that exist at courts. Courts are places where dangerous and violent individuals are brought on a daily basis. They are places where civil litigants have in the past expressed violent and deadly disagreement with the outcomes of their cases. The

more moving around the courthouse that is done as cases are shifted from one courtroom to another, the greater the potential for security problems.

6. The Judiciary Has Responded to and Addressed the Recommendations in the June 2010 GAO Report

At the hearing, there was an implication that the Judiciary should adopt the courtroom sharing ratios and centralized sharing concept discussed in the GAO report. Adopting these specific sharing ratios was not among the GAO's recommendations in its June 2010 report.

The Judiciary has addressed the GAO's criticism concerning planning space for projected judgeships. At its September 2011 session, the Judicial Conference adopted the following policy:

Space for Judicial Conference-approved judgeships that have not yet been created by Congress will be taken into consideration at the design concept phase in that the architects will show how space for these judgeships could fit into the design. Architects will not, however, complete a detailed design that includes space for these judgeships because they have not yet been created by Congress.

Should the positions be created by Congress during the design phase, the design documents would be amended to include the new positions and space would be constructed for them.

Space for judgeships that the Judiciary has projected would be needed, but has not yet recommended the Judicial Conference approve, will be considered by GSA as part of future expansion plans for the building.

Consistent with this approach, the proposed Los Angeles courthouse does not include space for any projected judgeships. Additionally, due to the need to keep this project within the amount appropriated and authorized, the design concept does not include space for Judicial Conference-approved judgeships that have not yet been created by Congress. The General Services Administration has agreed with this approach.

7. Current Proposal Takes Into Account the Recommendations in the GAO's June 2010 Report

Notwithstanding the GAO's written testimony before the Subcommittee, the current proposal **does address** the GAO's recommendations in its June 2010 report. Specifically:

- **The proposal does not exceed the congressional authorization;**
- **The proposal does not include space for Judicial Conference-approved judgeships nor for projected judgeships;**

- The proposal complies with all existing Judicial Conference courtroom sharing policies; and
- Additional courtroom sharing will likely occur because space has not been planned for Judicial Conference-approved judgeships nor for projected judgeships.

United States Courts
District of Columbia Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001-2866

David B. Sentelle
Chief Judge

Royce C. Lamberth
Chief Judge

November 8, 2011

The Honorable Jeff Denham
Chairman
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
585 Ford House Office Building
United States House of Representatives
Washington, D.C. 20515

The Honorable Eleanor Holmes Norton
Ranking Member
Subcommittee on Economic Development,
Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure
592 Ford House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Denham and Ranking Member Norton:

We write to clarify what appears to be some confusion about the E. Barrett Prettyman U.S. Courthouse. At the November 4, 2011, hearing on the proposed construction of the Los Angeles federal courthouse project, it was stated several times that the Prettyman Courthouse was abandoned by the judges when the William B. Bryant Annex was built and that nobody is using the Prettyman Courthouse. We write to advise you that those statements could not be further from the truth.

There are currently 20 judges who have chambers in the Prettyman Courthouse and 18 judges who have chambers in the Bryant Annex. Of the 21 courtrooms in the Prettyman Courthouse, 18 are assigned and in regular use as are all 9 courtrooms in the Bryant Annex. The U.S. Court of Appeals Clerk's Office and the U.S. District and Bankruptcy Courts Clerk's Office are both located in the Prettyman Courthouse as is the U.S. District Court's Jury Assembly Room. During regular business hours, the Prettyman Courthouse is a bustling facility with attorneys and members of the public reporting for scheduled hearings and trials in courtrooms, conducting business in the Clerk's Offices, and reporting for jury service. It is our understanding that Delegate Norton's recent visit to the Prettyman Courthouse was for an evening reception between 6:00 p.m. and 8:00 p.m. when these activities are not typically taking place.

The Honorable Jeff Denham
The Honorable Eleanor Holmes Norton
November 8, 2011
Page Two

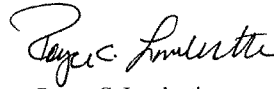
In addition to the 20 judges who have chambers in the Prettyman Courthouse, almost all of the court staff (Circuit Executive's Office, U.S. Court of Appeals Clerk's Office, U.S. District and Bankruptcy Courts Clerk's Office, Foreign Intelligence Surveillance Court Clerk's Office, Circuit Library, Senior Staff Attorney's Office, and half of the U.S. Probation Office), are located in the Prettyman Courthouse. We also want to mention that the judiciary is not the sole tenant of the Prettyman Courthouse. The U.S. Marshals Service, the U.S. General Services Administration, the Pretrial Services Agency for the District of Columbia, the U.S. Bankruptcy Trustee, and the Federal Occupational Health unit also have staff in the Prettyman Courthouse. Indeed, in terms of building population, there are approximately 400 tenants in the Prettyman Courthouse and only 200 tenants in the Bryant Annex. The Prettyman Courthouse is far from being abandoned.

Sincerely,



David B. Sentelle
Chief Judge
United States Court of Appeals
for the District of Columbia Circuit

Sincerely,



Royce C. Lamberth
Chief Judge
United States District Court
for the District of Columbia

cc: The Honorable Thomas F. Hogan
Director
Administrative Office of the U.S. Courts

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

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

**JUDGES LOCATED IN THE E. BARRETT PRETTYMAN U.S. COURTHOUSE AND WILLIAM B. BRYANT ANNEX
(CURRENT AS OF NOVEMBER 17, 2011)**

U.S. Court of Appeals for the D.C. Circuit

(8 circuit judges + 5 senior judges + 1 visiting judge = 14 judges)

Name	Status	Chambers Location
David B. Sentelle	Chief Circuit Judge	Prettyman Courthouse
Karen LeCraft Henderson	Circuit Judge	Prettyman Courthouse
Judith W. Rogers	Circuit Judge	Bryant Annex
David S. Tatel	Circuit Judge	Bryant Annex
Merrick B. Garland	Circuit Judge	Bryant Annex
Janice Rogers Brown	Circuit Judge	Bryant Annex
Thomas B. Griffith	Circuit Judge	Bryant Annex
Brett M. Kavanaugh	Circuit Judge	Bryant Annex
Harry T. Edwards	Senior Circuit Judge	Prettyman Courthouse
Laurence H. Silberman	Senior Circuit Judge	Prettyman Courthouse
Stephen F. Williams	Senior Circuit Judge	Prettyman Courthouse
Douglas H. Ginsburg	Senior Circuit Judge	Prettyman Courthouse
A. Raymond Randolph	Senior Circuit Judge	Bryant Annex
Jane R. Roth	Visiting Senior Circuit Judge	Prettyman Courthouse

U.S. District Court for D.C.

(14 district judges + 5 senior judges + 3 magistrate judges + 1 visiting judge = 23 judges)

Name	Status	Chambers Location
Royce C. Lamberth	Chief District Judge	Bryant Annex
Emmet G. Sullivan	District Judge	Bryant Annex
Colleen Kollar-Kotelly	District Judge	Bryant Annex
Henry H. Kennedy, Jr.	District Judge	Bryant Annex
Richard W. Roberts	District Judge	Prettyman Courthouse
Ellen Segal Huvelle	District Judge	Bryant Annex
Reggie B. Walton	District Judge	Bryant Annex
John D. Bates	District Judge	Bryant Annex
Richard J. Leon	District Judge	Prettyman Courthouse
Rosemary M. Collyer	District Judge	Prettyman Courthouse
Beryl A. Howell	District Judge	Prettyman Courthouse
Robert L. Wilkins	District Judge	Prettyman Courthouse
James E. Boasberg	District Judge	Prettyman Courthouse
Amy B. Jackson	District Judge	Prettyman Courthouse
Louis F. Oberdorfer	Senior District Judge	Prettyman Courthouse
Thomas F. Hogan	Senior District Judge	Bryant Annex
Gladys Kessler	Senior District Judge	Bryant Annex
Paul L. Friedman	Senior District Judge	Bryant Annex
Ricardo M. Urbina	Senior District Judge	Bryant Annex
Deborah A. Robinson	Magistrate Judge	Prettyman Courthouse
Alan Kay	Magistrate Judge	Prettyman Courthouse
John M. Facciola	Magistrate Judge	Prettyman Courthouse
Barbara Rothstein	Visiting Senior District Judge	Prettyman Courthouse

U.S. Bankruptcy Court for D.C.

(1 bankruptcy judge)

S. Martin Teel, Jr.	Bankruptcy Judge	Prettyman Courthouse
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**COURTROOMS IN THE E. BARRETT PRETTYMAN U.S. COURTHOUSE AND WILLIAM B. BRYANT ANNEX
(CURRENT AS OF NOVEMBER 17, 2011)**

Courtroom Number	Judge	Courtroom Location
1	Bankruptcy Judge Teel	Prettyman Courthouse
2	District Judge Jackson	Prettyman Courthouse
3*	District Judge Contreras	Prettyman Courthouse
4	Magistrate Judge Robinson	Prettyman Courthouse
5	Guantanamo Bay Hearings	Prettyman Courthouse
6	Magistrate Judge Facciola	Prettyman Courthouse
7	Magistrate Judge Kay	Prettyman Courthouse
8	District Judge Collyer	Prettyman Courthouse
9	District Judge Roberts	Prettyman Courthouse
10	High-Security Courtroom	Prettyman Courthouse
11	U.S. Court of Appeals	Prettyman Courthouse
12	Visiting Judge Rothstein	Prettyman Courthouse
14	District Judge Bates	Prettyman Courthouse
15	District Judge Howell	Prettyman Courthouse
16	District Judge Walton	Prettyman Courthouse
17	District Judge Wilkins	Prettyman Courthouse
18	District Judge Leon	Prettyman Courthouse
19	District Judge Boasberg	Prettyman Courthouse
20	Special Proceedings Courtroom	Prettyman Courthouse
21	Visiting Judges	Prettyman Courthouse
22	Chief District Judge Lamberth	Bryant Annex
23	District Judge Huvelle	Bryant Annex
24	District Judge Sullivan	Bryant Annex
25	Senior District Judge Hogan	Bryant Annex
26	Senior District Judge Kessler	Bryant Annex
27	District Judge Kennedy	Bryant Annex
28	District Judge Kollar-Kotelly	Bryant Annex
29	Senior District Judge Friedman	Bryant Annex
30	Senior District Judge Urbina	Bryant Annex
31	U.S. Court of Appeals	Prettyman Courthouse

There are only 30 courtrooms in the Prettyman Courthouse and Bryant Annex although the courtroom numbers go up to 31. This is because there is no courtroom assigned the number 13 – that number was skipped.

There are 21 courtrooms in the Prettyman Courthouse: 17 are assigned; 1 is used for visiting judges who assist with the court's caseload; and the remaining 3, because of their configuration, are shared by all the judges on an as-needed basis. These last 3 include 1 that is set up with secure video conferencing equipment for Guantanamo Bay hearings, 1 that is built with high-security features that is used for terrorist, gang, and violent crime trials, and the special proceedings courtroom that is used for large multi-defendant cases.

There are 9 courtrooms in the Bryant Annex, all 9 are assigned and in use.

*Rudy Contreras has been nominated to fill the one vacancy on the USDC bench. His confirmation vote is imminent. In anticipation of his arrival, he has been assigned Courtroom #3

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

LORETTA A. PRESKA
CHIEF JUDGE

212-805-0240
FAX 805-7941

November 22, 2011

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

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

Dear Mr. Chairman and Ranking Member Norton:

I understand that during the Subcommittee's November 4, 2011 hearing on the new Los Angeles courthouse project, there were questions about how well the Southern District of New York is able to share courtrooms while renovations are underway at the Thurgood Marshall United States Courthouse, which will house the Second Circuit Court of Appeals and twenty-one judges from the District Court. As Chief Judge of the Southern District, I write to provide additional information on that matter.

It is important to note at the outset that this is a temporary situation with a limited amount of sharing. When the Marshall Courthouse had to be vacated for the renovations, twenty-three circuit judges, fourteen district judges, and three magistrate judges had to be moved to the Daniel Patrick Moynihan United States Courthouse, which was constructed to house the majority of the District Court. The first thing the General Services Administration (GSA) had to do to accommodate this significant influx of judges was to clear out and modify three floors of the Moynihan Courthouse to create what are generally small, cramped chambers for each of the judges. GSA did this by moving Probation and Pretrial Services, Circuit Conference Attorneys, Senior Staff Attorneys, and the Circuit Library into leased space that is costing GSA \$7 million per year until the renovations are completed.

With regard to courtroom use, there is a major difference between the Circuit Court of Appeals and the District Court. Circuit judges sit in panels or en banc (the entire court) and therefore do not require many courtrooms. There are only two circuit courtrooms in the Marshall Courthouse. For their temporary stay in the Moynihan Courthouse, the twenty-three circuit judges are using just one of the courtrooms, the special proceedings courtroom, where they sit in panels every day of the week, doubling up with two panels a day for at least one week of the month. This courtroom was previously used by the District Court for large multi-defendant trials, large jury selections, and naturalization ceremonies (held every Friday). Its non-availability has posed major logistical problems for the District Court, which must use the jury assembly room for special proceedings, naturalizations, and for overflow crowds for large public trials, such as the September 11 and Madoff cases.

Of the fourteen district court judges who were moved from the Marshall Courthouse to the Moynihan Courthouse during the renovations, ten were active and four were senior. To determine courtroom assignments, the court decided to pair the ten active judges with ten senior judges who had been in senior status for a number of years, as their caseloads were not as heavy as those of active judges, or other senior judges with larger caseloads. (Many of these senior judges would no longer have been entitled to a courtroom at all under the Judiciary's senior judge sharing policy.) This limited amount of sharing, while inefficient, is only workable because it is temporary and the pairs were carefully chosen for compatibility of workload. Other courts may not be able to replicate this type of sharing, and indeed our court may not be able to do so in the future.

The Southern District of New York has continued to operate under these trying circumstances and to carry out our Constitutional responsibilities to the public that we serve. However, we have done so with great difficulty, reduced efficiency, and tremendous inconvenience to everyone, especially the public. With respect to sentencings, for example, the defendant's attorney notifies the defendant's family weeks in advance of the time and place of sentencing. Immediate family, in turn, notifies extended family and friends. If the courtroom is unavailable or the time changed, even as long as seven days in advance, the extended family and friends arrive to the proceeding very late or not at all. This is hardly consistent with our Constitutional duty to conduct public proceedings so the community can observe all stages of criminal proceedings. Similarly, most of our pro se litigants take a day off from work to attend conferences and other proceedings in court. Because most pro se litigants are not on e-mail, if the courtroom is unavailable or the time changed, those litigants arrive late or arrive for a canceled proceeding, necessitating another day off from work for the rescheduled conference.

Entry to the crowded Moynihan Courthouse is attended by considerable inconvenience because of the large number of judges crammed into its spaces and the resulting large number of proceedings held every day. As a result, the public, lawyers, litigants, and jurors often wait in block-long lines to get into the building exposing them not only to the elements but to various security risks.

Finally, not only are judges and staff now crammed into inadequate space, but we have an urgent need to return to the Marshall Courthouse as we are out of space for judges and staff at the Moynihan Courthouse. The District Court currently has six vacancies, which are likely to be

filled within the next six months, plus five more judges eligible for senior status within the next year. That means the Court could increase by as many as eleven district judges in the next year.

In closing, everyone now using the Moynihan Courthouse – the public, litigants, judges, court staff, attorneys, and marshals – is anxious for the Marshall Courthouse renovations to be completed. As I said earlier, we have been able to get through this difficult period, which has had an adverse impact on our Constitutional mandate of delivering justice, because it was temporary and limited. The federal circuit and district courts in Manhattan could not hope to continue functioning efficiently into the future without both the Moynihan Courthouse and the renovated Marshall Courthouse.

I hope that this information is helpful to the Subcommittee and I am available at your convenience should you wish additional information.

Sincerely,



Loretta A. Preska

cc: Hon. Thomas F. Hogan
Hon. Dennis Jacobs