

**GSA'S FISCAL YEAR 2001 CAPITAL
INVESTMENT AND LEASING PROGRAM**

HEARING
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION
MARCH 21, 2000

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GSA'S FISCAL YEAR 2001 CAPITAL INVESTMENT AND LEASING PROGRAM

TUESDAY, MARCH 21, 2000

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 406, Senate Dirksen Building, Hon. George V. Voinovich (chairman of the subcommittee) presiding.

Present: Senators Voinovich, Baucus, Moynihan, Graham, and Boxer.

OPENING STATEMENT OF HON. GEORGE VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO

Senator VOINOVICH. Good morning. This hearing will come to order.

I'd like to thank Robert Peck, Commissioner of the Public Building Services of the General Services Administration and Judge Jane Roth, U.S. Court of Appeals for the Third Circuit and chair of the Committee on Security and Facilities of the Judicial Conference for appearing today to discuss GSA's fiscal year 2001 capital investment and leasing program, including the courthouse construction program.

The fiscal year 2001 program before the committee requests authorization for 54 projects in various stages of development, totaling \$1.167 billion; repairs and alterations include 13 projects, \$365 million; design, 11 projects, \$20.5 million; construction, 18 projects, \$701 million; and leases, 12 projects, \$80 million in annual costs.

It is my hope that we will be able to operate within the constraints of the budget resolution to approve these resolutions early this year, prior to the Treasury, Postal, and general government appropriations bill moving through the Appropriations Committee.

Our job is made easier by the fact—hooray—that the Administration has included in the President's budget for fiscal year 2001 a request of \$488 million for seven new courthouse construction projects. For the past 3 years, the Office of Budget and Management has refused to include a request by the General Services Administration on behalf of the Federal Judiciary for funds and budget authority to construct new Federal facilities.

I and others on this committee wrote to the Office of Budget and Management last fall stating that the Federal Government has the responsibility to see that adequate, secure facilities are provided to

the Judicial Branch of Government, as well as the executive and legislative branches.

I pretty well made it clear that if we didn't get some type of request from the Office of Budget and Management, that the legislation pending by Senator Cochran, which had bypassed OMB and this committee, might have passed.

Courthouse construction is a Federal responsibility. Unlike many other initiatives that the Administration is proposing, like school construction, this is something that Congress should be funding. The problem around here is that we have expanded this Federal Government into a lot of areas that are, in my opinion, the responsibility of State and local government, and, as a result of that, haven't got the money to do the things that the Federal Government has primary responsibility for. We need to remember around here what the Federal Government is responsible for and what the States are responsible for.

I am pleased that the Senate budget resolution is moving one step further in meeting the needs of the Federal Judiciary. It is my understanding that the Senate budget resolution will assume \$700 million for courthouse construction. This will allow us to potentially authorize more than the \$488 million proposed by the Administration to accommodate for the backlog of projects that are in the pipeline, and there are lots of them.

The judiciary has a continuing need to have additional court space available so it can do business and move cases to settlement in a timely manner.

While saying this, the Office of Budget and Management's approach this year to courtroom sharing is one which I would like to explore. I would like to receive more information on the model that OMB used to derive the increase in courtroom sharing at a ratio of two courtrooms for every three judges.

While we need courthouses, we also need to do more with less. We can ill afford, with limited Federal dollars, to build courthouses in the future which accommodate a courtroom for every single judge.

I look forward to your testimony on this proposal.

We'll start our hearing, but prior to doing that we have several Senators here today that would like to make statements. Our first Senator that arrived was Senator Boxer.

**OPENING STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator BOXER. Well, Mr. Chairman, you're very gracious to permit me this very short period of time. I will conclude my remarks in 1 minute.

I'd ask unanimous consent that I may place in the record my full statement and a statement of Terry Hatter, Jr., Chief U.S. District Judge of the Central District of California.

Mr. Chairman, let me just say, in summarizing my statement, I am very distressed, having followed two particular courthouses now for years—Los Angeles and Fresno—as to what has happened to these projects in the President's budget and what GSA is recommending.

To put it succinctly, I believe that the record would show that the way they are reconfiguring the Los Angeles courthouse, which is so desperately needed, would compromise security and efficiency, and it calls for two buildings to be used instead of one. We'd have to require links for prisoner, public, and staff circulation. We don't know where a companion building could be erected.

We're very distressed. We thought we had this all done, and now this has come up.

Second, the situation in Fresno, where we have a design, everybody is happy, and there's not a penny in there.

I would conclude by just saying this—because I, again, don't want to take the subcommittee's time—this is really serious business in my State. We are growing now from 34 million people to more than 50 million people, Mr. Chairman, by the year 2020, and if GSA thinks this is going to resolve it by having people sharing courtrooms, this is much bigger than that.

We need justice for the people, and we're not going to have it if we start cutting back these buildings and putting two buildings linked by a bridge or something. It's not going to work in the long term. We're going to find ourselves where we find ourselves now all over the country with buildings that are built that are inadequate.

I am really distressed about it, so I'll stop, because I don't want to get myself worked up. It's too early.

But I wanted to thank you for this opportunity, and I hope that we can work together, Mr. Chairman. You and I may have a different view about sharing space. I know if we suggested two Senators in one office, I don't think it would work really well, as far as the efficiency of our office. And they have things that they do. They are backlogged as it is. But that's another conversation.

So thank you, again. I hope to work with you to remedy these two glaring problems in my State.

Senator VOINOVICH. Thank you, Senator.

[The statements of Senator Boxer and Judge Hatter follow.]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE
STATE OF CALIFORNIA

Thank you. Today, I am here to request the construction of courthouse buildings in Fresno and Los Angeles. Both cities' courthouses are decrepit and filled beyond capacity. New facilities are desperately needed. I have raised this point many times, and I think that the circumstances warrant our support for new facilities.

Los Angeles clearly requires a new and larger courthouse. Today, the population of Los Angeles is 3.7 million people, making it the second most populous city in the United States. The Central District of California's Los Angeles division is considered the largest district court operation in the nation. The existing U.S. Courthouse on North Spring Street opened in 1938 with 8 courtrooms. Although more courtrooms were added by converting offices into courtrooms, our magistrate judges currently share two courtrooms while two senior judges and one new active district judge rotate among available courtrooms. A second courthouse site was created three blocks away in the Roybal Federal Building, and this facility also is filled to capacity. We simply do not have enough space for our judges.

And the situation will only worsen. The Los Angeles court currently has vacancies for three district judges and one magistrate judge. Two more district judgeships will be vacant by the end of the year. When these vacancies are filled, the court will not have the facilities in either building to house these judges.

As originally planned, the new Los Angeles courthouse would include thirty-three new courtrooms and would consolidate all District Court operations into a single building. Built in downtown Los Angeles, this facility would meet the space requirements of the Federal courts in Los Angeles for 30 years. This project would cost approximately \$379 million.

I was disappointed in the President's budget request that reduced funding for the planned Los Angeles courthouse. The budget recommended \$32 million for site and design, less than the \$37 million recommended by GSA.

I also disagree with OMB's demand to downsize the scope of the project limiting it to a small, companion building next to the Roybal Federal Building. By reducing the size of the new courthouse, OMB would force the District Court to continue to operate out of two buildings greatly diminishing the benefits provided by the original courthouse. Two buildings would require links for prisoner, public, and staff circulation. Furthermore, it is unclear as to where a companion building could be erected. No space exists on the same block as the Federal building, and no adjacent sites are viable. OMB's project would compromise security and efficiency and would require extensive and costly duplication in building infrastructure and support services.

It also disturbs me that OMB deleted GSA's proposed high security, multi-defendant courtroom. This courtroom was approved by the Judicial Council and the Administrative Office of the Courts because high security, multi-defendant trials occur regularly in Los Angeles. For safety and security reasons, such a courtroom is vital to the operations of the District Court.

During a conference call with Chief Judge Terry Hatter, I was amazed to hear that OMB required judges to share courtrooms. The judges fear that OMB's mandate to share courtrooms represents an unwarranted intrusion by the executive branch into the Judicial Branch, violating the doctrine of separation of powers.

While the OMB recommendation would reduce the cost of the project to \$266 million, I strongly believe that the detriments would far outweigh the benefits. This courthouse's value extends well beyond mere cost-benefit analysis. As originally designed, the Los Angeles courthouse would provide the judiciary with a quality facility and would ease the burdens created by Los Angeles growing population. By consolidating the District Court's operations into one large building, the courthouse would eliminate the need for people to travel between two court buildings, reduce the number of staff currently required by the two buildings, permit district and magistrate courtrooms to use one central cell block, and diminish the confusion inherently created by two courthouses. The new courthouse, as originally designed, is not a luxury. It is a necessity.

Fresno suffers many of the problems currently plaguing the Los Angeles judicial system. The San Joaquin Valley area where Fresno is located is the fastest growing area in the state, and it has been predicted that one-fifth of the state's population will reside in the Valley in a very short period of time. The court's caseload reveals this population growth. Bankruptcy filings increased from 6,679 in 1995 to 11,749 in 1999 (a 76 percent growth).

The court currently is housed in the B.F. Sisk Federal Building and Courthouse. This building, originally constructed in 1965, includes eight courtrooms (three district, three magistrate, and two bankruptcy). This space currently is occupied by four district judges, three magistrate judges, and two bankruptcy judges. Within 10 years, the court projects that the courthouse will hold eight district judges, four magistrate judges, and four bankruptcy judges. The current facilities simply cannot accommodate such anticipated growth. In fact, five of the existing courtrooms were converted from office spaces and are already substandard in size.

Because the building was not originally designed for use as a courthouse, it fails to meet minimum security requirements for court operations. Judges and prisoners intermingle in the same basement corridors along with GSA contractors and delivery persons. The noise created by prisoners in holding cells (containing dozens of prisoners each day) often disrupts the court. A seismic evaluation was conducted, and it determined that the courthouse is seismically unsound and that retrofit was necessary. The cost of such repairs far exceeds the value of the building itself. Finally, this building is a firetrap because grates cover the windows greatly diminishing ingress or egress in case of fire or other emergency. The current building simply is a travesty.

I am deeply concerned about this situation, and I had hoped that the President's budget would reflect the severity of the problem. Although the project was overlooked by the FY2001 budget, I strongly believe that we must provide funding for a new Fresno courthouse. GSA confirms that the project is fully ready for construction and that a construction contract could be awarded early in FY2001 if funded this year. The new courthouse would cost approximately \$111 million. This 360,000 square-foot, 8 story building would be built on 4.5 acres in downtown Fresno. This glass edifice would revitalize the downtown area and would ensure a Federal presence that will help to make downtown business districts a top priority.

Our economy is stronger than ever. To use a cliché, we should fix the roof while the sun is shining. Well, my friends, the courthouses in Los Angeles and Fresno

have much more than roofs to fix. I think that these courts deserve facilities that will advocate, not impede upon, justice, and today, we can do much to provide those very buildings.

STATEMENT OF TERRY J. HATTER, CHIEF U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

I appreciate the opportunity to submit to the subcommittee this statement regarding the construction of a new U.S. Courthouse in Los Angeles. Given its extremely heavy caseload and insufficient facilities, the Federal court in Los Angeles desperately needs a new courthouse. After extensive study, the General Services Administration forwarded to the Office of Management and Budget a proposal for a stand-alone courthouse that would house the District Court and related facilities. GSA determined that a stand-alone structure would alleviate the inefficiencies and security risks currently caused by housing the Court in two separate buildings several blocks apart. However, as discussed below, OMB has drastically changed that proposal. It would now require the new building to connect to one of the existing courthouses, and would mandate that active district court judges share courtrooms.

I. BACKGROUND

Los Angeles is the only major city in the country that does not have a new courthouse in planning or recently constructed. Indeed, after evaluating all proposed courthouse projects in the country, the Administrative Office of the Courts and the Judicial Conference ranked a new courthouse in Los Angeles as the No. 1 funding priority in the Judiciary's 5-year courthouse construction plan. This was due in large part to our steady growth and also to the fact that the 49 judicial positions located in Los Angeles (23 district judges, 12 senior judges, and 14 magistrate judges) and the court-related agencies are interspersed among two federally owned facilities in downtown Los Angeles (the Spring Street Courthouse and the Roybal Building), as well as leased facilities. The result is split operations, which creates severe administrative inefficiencies and security risks.

II. THE GENERAL SERVICES ADMINISTRATION'S PROPOSED PROJECT

In 1996, the Court updated its Long Range Facility Plan and identified the need for a new courthouse in downtown Los Angeles. In response, GSA, in cooperation with the Court, undertook extensive studies, identifying and evaluating over a dozen alternatives.¹ Ultimately, GSA and the Court jointly concluded that the needs of the Federal community would best be met by constructing a new stand-alone facility to house the entire District Court, including district, senior and magistrate judges, the clerk's office, and related agencies. This would allow the Bankruptcy Court (currently divided between the Roybal Building and the Federal Building) to be consolidated in the Roybal Building; the Office of the U.S. Attorney (currently divided between the Federal Building and the Spring Street Courthouse) to be consolidated in the Spring Street Courthouse; and the Federal Building to be dedicated to Executive agencies. This alternative, described in the GSA prospectus (attachment #1), would maximize the efficient use of existing facilities.

GSA estimated the total cost of the proposed project to be \$379.5 million. It has requested that \$36.2 million be included in the fiscal year 2001 budget for the site acquisition and design of the facility, as described in attachment #1.

III. THE OFFICE OF MANAGEMENT AND BUDGET'S PROPOSED, REVISED PROJECT

The OMB has substantially changed the proposed project for Los Angeles, and now estimates the total cost to be \$266 million, \$31.5 million of which is allocated for site and design (attachment #2). According to the budget documents, OMB's proposed project would require that:

(1) A companion building be constructed adjacent to and connected with the Roybal Building. The new building would be sized to house only the district judges, the clerk's office, and some Court-related agencies. Magistrate judges, who are also part

¹The results of the studies are documented in the *Suitability of the Roybal Building for U.S. Court Expansion*, dated August 1996 by Abide International, Inc.; the *U.S. Courts Feasibility and Master Plan*, dated June 24, 1997 by Kaplan, McLaughlin, Diaz; the *Roybal Study; a Supplement to the Feasibility Study/Master Plan*, dated November 1997 by Kaplan McLaughlin Diaz; the *Prospectus Development Study; Alternative 4*, dated March 31, 1998 by Kaplan McLaughlin, Diaz; *Prospectus Development Study; Alternative 5*, dated March 27, 1998 by Kaplan, McLaughlin, Diaz; and the *U.S. General Services Administration Courthouse Reinvestment Project; Los Angeles Courthouse Analysis*, dated November 1998 by Ernst & Young.

of the district court, and the remaining court agencies would be housed in the Roybal Building.

(2) The number of new courtrooms be reduced by one third, requiring district court judges to share courtrooms.

(3) Anything considered an exception to the U.S. Courts Design Guide be eliminated, regardless of the need for such exceptions, and despite the fact that several exceptions already have been justified and approved by regional and national oversight committees. The most important of these is a high security courtroom for multi-defendant trials.

IV. THE COURT'S CONCERNS WITH OMB'S PROPOSED PROJECT

The Court is extremely concerned that OMB's proposed revised project disregards the findings of 3 years of extensive studies by GSA and the Court.

A. A Companion Facility for the Roybal Building Is Not Feasible

The Court and GSA already have considered alternatives—like OMB's current proposal—that would connect the Roybal Building to a new companion building. In order to meet the Court's functional requirements, a new companion facility would have to connect to the Roybal Building in a way that would allow both buildings to act as a single facility. This would require numerous short links between the buildings, at various floors, to accommodate the unique types of circulation required in a courthouse—prisoner circulation, public and staff circulation, and separate secured circulation for judges. The failure to provide such links would compromise security and efficiency, and would require extensive and costly duplication in building infrastructure and support services. There are only two ways to provide such links—building the companion building in the same block as the Roybal Building, or building it across a city street. Neither is practical.

1. Building a Companion Building in the Same Block Is Impractical

While the entire block that houses the Roybal Building is under Federal ownership, it is densely developed, and building a companion building would require the demolition of one of the existing facilities in the block—the Veterans Administration Building, constructed in the early 1990's; the Federal Building, constructed in the 1960's; or the Metropolitan Detention Center, constructed in the early 1990's. Demolishing the Veterans Administration Building would yield a small, roughly triangular site, that would be ill-suited to accommodate even the minimum footprint required for a courthouse. Partial or total demolition of the Federal Building could provide a suitable site; however, according to GSA, it would be prohibitively expensive due to the high cost of relocating tenants, and the long-term negative impact to the Federal Building Fund. Demolishing and relocating the Metropolitan Detention Center would also be cost-prohibitive, and would defeat one advantage of locating a new building in downtown Los Angeles—the convenience and security of having the courthouse in close proximity to the detention center.

2. Building a Companion Building in an Adjacent Block Is Impractical

It is highly questionable whether any sites would be available on blocks adjacent to the Roybal Building. The closest sites front on Temple Street. They are owned by the city government, and already are developed, or planned for development. Moreover, even the closest site is too distant. The studies clearly indicate that links, whether by bridge or tunnel, are not feasible for any site across the street from the Roybal Building, due to excessive distances, extensive underground utilities, and the City's reluctance to allow bridges across public streets (see attachment #3).

3. Building a Companion Building Elsewhere Is Impractical

Given the above problems, the Court is concerned that a proposal might be made to build a separate facility not connected to the Roybal Building, and sized to house only the district and senior judges, leaving the magistrate judges in the Roybal Building. Such a scenario again would force the clerk's office, the court agencies and the U.S. Marshals to run split operations, thereby duplicating cost and creating security hazards. Such a proposal would be totally unacceptable. The District Court has confronted exactly these difficulties for 9 years. Building a new facility that duplicates these same problems makes little sense. (See attachment #4, Impact to the Court of Working in Multiple Locations.)

B. The Courtroom Sharing Proposed by OMB Is Contrary to Judicial Conference Guidelines

Current policy of the Judicial Conference calls for only senior judges to share courtrooms. The proposal submitted by GSA and this Court adhere to these Guidelines. However, in contravention of the Guidelines, OMB would require all district

court judges to share courtrooms. Setting aside the issue of whether OMB has any constitutional authority to dictate the Court's usage of courtrooms, it is absolutely clear that the massive caseload in the Central District demands that each active district and magistrate judge have their own courtroom. There is simply too much activity for courtroom sharing to be feasible.

Moreover, it should be noted that even the original GSA prospectus for this project was based on extremely conservative growth projections which were made 4 years ago. Only two additional district and four additional magistrate judge positions were projected over the next 7 years. Recent growth trends in California lead the Court to anticipate far greater growth than previously projected. The imposition of courtroom sharing would not allow room to accommodate that growth.

C. OMB Deleted Important Program Requirements That Were Justified and Approved by the Judicial Council

Under the GSA proposal, the new facility would include a high security, multi-defendant courtroom. This courtroom was approved by both the Judicial Council and the Administrative Office of the Courts, and with good reason: high security, multi-defendant trials occur regularly in Los Angeles. In the current courthouses, one of the larger courtrooms must be modified with platforms to hold a large number of defendants and to allow for additional security. After the trial, the courtroom must be restored to its original configuration. Each modification costs \$50,000 or more. OMB has deleted this aspect of GSA's proposal.

V. SUMMARY

The Court urges the subcommittee to reject OMB's proposal to build a companion facility to the Roybal Building. Three years of extensive studies concluded that such a proposal was neither feasible nor practical. OMB's proposal would lock the Court into a construction project that does not meet the needs of the Court or the Los Angeles community not even for a 10-year span, let alone the 30-year plan.

The Court also strongly opposes OMB's proposal to reduce the number of courtrooms for this project. The project submitted by the GSA comported with all courtroom sharing guidelines that are currently in effect.

As proposed by OMB, this project would leave fewer courtrooms than we presently occupy, as well as continue to leave us in the same split court operation that we find ourselves in presently.

A high security courtroom is an essential component of the project, as it is desperately needed by the Court. Failing to build such a courtroom would not remedy our security issues, would be fiscally imprudent, and will not accommodate the large number of defendants, lawyers and court attaches (court reporters, experts) involved in multi-defendant trials.

In conclusion the Court requests the support of this subcommittee in restoring this project to its original scope as proposed by GSA.

GSA

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**FACTSHEET
NEW U.S. COURTHOUSE
LOS ANGELES, CA**

ATTACHMENT 1

ORIGINAL PROSPECTUS AS PROPOSED BY GSA

Description

The General Services Administration proposes the acquisition of a site and the design of a 1,094,000 gross square foot U.S. Courthouse (CT), including 150 inside parking spaces, in Los Angeles, CA. The new CT will be constructed to meet the 10-year requirements of the District Court and Court-related agencies and the site will be large enough to accommodate their 30-year expansion requirements. Site and design funding for a new courthouse in Los Angeles is included in the Five-Year Courthouse Plan 2000-2004, which reflects priorities approved by the Judicial Conference in March 1999.

Project Summary**Site Information**

To be acquired..... Approximately 3 acres

Building Area

Gross Square Feet (excluding parking).....1,034,000
Gross Square Feet (including parking).....1,094,000

Project Budget

Site Cost.....\$20,600,000
Design.....15,603,000
Management and Inspection (M&I).....8,597,000
Estimated Construction Cost (\$306/gsf including inside parking).....334,658,000
Estimated Total Project Cost*.....\$379,458,000

*Tenant agencies may fund an additional amount for alterations above the standard normally provided by GSA.

Prior Authority and Funding None

Overview of Project

The new CT will consolidate the District Court and the Magistrate Court into one building with a possible connection to the Roybal Federal Building or Metropolitan Detention Center to provide prisoner circulation directly to the new U.S. Courthouse (site dependent). The District and Magistrate Court will be housed in the new CT, with the Bankruptcy Court continuing to occupy the Roybal Federal Building. The two buildings will operate independently, eliminating split operations for the Courts.

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FACTSHEET
NEW U.S. COURTHOUSE
LOS ANGELES, CA

Space Requirements for the U.S. Courts

| | Proposed Roybal | | Proposed New CT | | Change | |
|---------------|--------------------|---------------|--------------------|---------------|--------------------|---------------|
| | No. of Court-rooms | No. of Judges | No. of Court-rooms | No. of Judges | No. of Court-rooms | No. of Judges |
| District | | | | | | |
| - Active | 0 | 0 | 25 | 25 | 5 | 5 |
| - Senior | 0 | 0 | 8 | 11 | (1) | 0 |
| Magistrate | 0 | 0 | 18 | 18 | 0 | 4 |
| Bankruptcy | 18 | 18 | 0 | 0 | 0 | 4 |
| Total: | 18 | 18 | 51 | 54 | 4 | 13 |

GSA

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**PROSPECTUS - SITE AND DESIGN
NEW U.S. COURTHOUSE
LOS ANGELES, CA**

ATTACHMENT 2

Prospectus Number: PCA-01001
Congressional District: 33

PROSPECTUS AS REVISED BY OMB

Description

The General Services Administration proposes the acquisition of a site and the design of a 712,102 gross square foot U.S. Courthouse (CT), including 80 inside parking spaces, in Los Angeles, CA. The new CT will be constructed to meet the 10-year requirements of the District Court and Court-related agencies and the site will be large enough to accommodate their 30-year expansion requirements. Site and design funding for a new courthouse in Los Angeles is included in the Five-Year Courthouse Plan 2000-2004, which reflects priorities approved by the Judicial Conference in March 1999.

Project Summary

Site Information

To be acquired.....Approximately 3 acres

Building Area

Gross Square Feet (excluding parking)..... 680,102
Gross Square Feet (including parking) 712,102

Project Budget

Site Cost \$20,600,000
Design 10,923,000
Management and Inspection (M&I) 6,266,000
Estimated Construction Cost (\$321/gsf including inside parking) 228,428,000
Estimated Total Project Cost* \$266,217,000

*Tenant agencies may fund an additional amount for alterations above the standard normally provided by GSA.

Authorization Requested (Site and Design)..... \$31,523,000

Prior Authority and Funding None

Schedule

FY 2001 Site and Design
FY 2003 Construction
FY 2006 Occupancy

**PROSPECTUS -- SITE AND DESIGN
NEW U.S. COURTHOUSE
LOS ANGELES, CA**

Prospectus Number: PCA-01001
Congressional District: 33

Overview of Project

The new CT will consolidate the District Court into one building with a connection to the Roybal Federal Building and/or Metropolitan Detention Center to provide prisoner circulation directly to the new U.S. Courthouse. The District Court will be housed in the new CT, with the Magistrate and Bankruptcy Court continuing to occupy the Roybal Federal Building.

Upon completion of the new building and tenant move-in, the U.S. attorneys will be consolidated into 312 North Spring Street. The IRS and INS will continue to occupy the 300 North Los Angeles Street FB.

Tenant Agencies

The new CT will house the District Court and Court-related agencies.

Delineated Area

The new CT will be located within the Central Business District of Los Angeles, CA, adjacent to the existing Roybal Federal Building.

Justification

The District and Magistrate Courts are currently housed in both the courthouse at 312 North Spring Street and the Roybal Federal Building. The Bankruptcy Court is housed in the Roybal FB and the bankruptcy clerk's office is located at 300 North Los Angeles Street. Along with the split operations for the District, Magistrate and Bankruptcy Court, the U.S. attorneys are also split between two buildings, with a portion housed at 300 North Los Angeles Street and the remaining at 312 North Spring Street.

The majority of the district and magistrate courtrooms do not meet current security requirements for judges, prisoners, and the public. All magistrate courtrooms and seven of the district courtrooms lack prisoner circulation. All courtrooms lack holding cell facilities. There is no separate circulation for judges. None of the courtrooms are ADA compliant.

Also, the U.S. Courts and Court-related agencies have expansion requirements that cannot be met in Federal facilities located in downtown Los Angeles. The courthouse at 312 North Spring Street cannot accommodate additional courtrooms and several of the existing courtrooms do not meet the United States Courts Design Guide standards.

SDB

PBS

PROSPECTUS - SITE AND DESIGN
NEW U.S. COURTHOUSE
LOS ANGELES, CA

Prospectus Number: PCA-01001
Congressional District: 33

Space Requirements for the U.S. Courts

| | Current 312 N. Spring | | Current Roybal | |
|---------------|-----------------------|---------------|-------------------|---------------|
| | No. of Courtrooms | No. of Judges | No. of Courtrooms | No. of Judges |
| District | | | | |
| - Active | 12 | 14 | 8 | 8 |
| - Senior | 8 | 10 | 2 | 2 |
| Magistrate | 12* | 14** | 6 | 0** |
| Bankruptcy | 0 | 0 | 18 | 12 |
| Total: | 32 | 38 | 34 | 22 |

*The magistrate judges use courtrooms that do not meet minimum design guide standards.
** By the 2nd quarter FY 2000, six magistrate judges will relocate to the Roybal FB.

| | Proposed Existing Roybal | | Proposed New CT | | Change | |
|---------------|--------------------------|---------------|-------------------|---------------|-------------------|---------------|
| | No. of Courtrooms | No. of Judges | No. of Courtrooms | No. of Judges | No. of Courtrooms | No. of Judges |
| District | | | | | | |
| - Active | 0 | 0 | 17 | 25 | (3) | 3 |
| - Senior | 0 | 0 | 7 | 11 | (3) | (1) |
| Magistrate | 16 | 18 | 0 | 0 | (2) | 4 |
| Bankruptcy | 18 | 18 | 0 | 0 | 0 | 6 |
| Total: | 34 | 36 | 24 | 36 | (8) | 12 |

GSA

PBS

PROSPECTUS - SITE AND DESIGN
NEW U.S. COURTHOUSE
LOS ANGELES, CA

Prospectus Number: PCA-01001
Congressional District: 33

Alternatives Considered (30-year, present value costs)

| | |
|------------------|---------------|
| Lease | \$314,336,000 |
| New Construction | \$236,025,000 |

Recommendation

SITE AND DESIGN

The 30-year, present value cost of construction is \$78,311,000 less than the cost of leasing, an equivalent annual cost advantage of \$5,094,000.

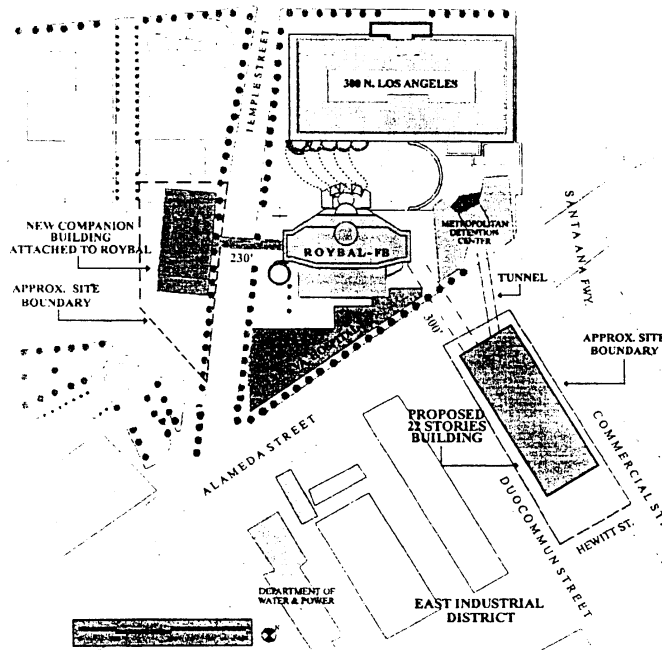
Certification of Need

The proposed project is the best solution to meet a validated Government need.

Submitted at Washington, DC, on _____

Recommended _____
Commissioner, Public Buildings Service

Approved _____
Administrator, General Services Administration



U.S. District Court, Central District of California, Los Angeles
Impact to the Court of working in multiple locations
September 1999

Background: The District Court is housed in two facilities in downtown Los Angeles, the Federal Courthouse at 312 North Spring Street and the Roybal Federal Building three blocks away at 255 East Temple Street. The Spring Street building currently houses 12 district judges, 9 senior district judges, 14 magistrate judges, the main clerk's office, jury assembly, a USMS holding cellblock, Probation, the US Attorney (criminal division) and Pretrial Services. The Roybal building houses 7 District judges and 2 senior district judges, the Post Indictment Arraignment (PIA) hearing room, satellite clerks's office, a second USMS cellblock, the USMS administration and a satellite Pretrial office. There are four vacant Article 3 judicial positions currently being filled by congress which will also be accommodated within the two buildings. By the beginning of next year (2000) six magistrate judges will move from the Spring Street facility into the Roybal building, further dividing the Court.

Additional facilities are required to house the entire court family. A satellite Probation Office, and US Attorney Office (civil division) and USMS squad room are housed in a third federal building, at 300 North Los Angeles Street located approximately halfway between the Spring Street Courthouse and the Roybal building. The Federal Public Defender is housed three blocks south of the Roybal building in a leased facility on Second Street.

Path of travel between buildings: The Spring Street courthouse and the Roybal Federal building are approximately three large city blocks apart. The most direct path between the two crosses two busy streets at mid block via poorly timed pedestrian lights and requires negotiating a number of steps at three different points. Therefore it is not handicapped accessible. This most direct path passes in and out of the Federal Building (300 North Los Angeles Street) going through security, and having to use an employee entrance, adding time to the journey and effectively eliminating it for public use.

A second path of travel along Temple Street increases the travel distance to approximately four city blocks, and is the route generally used by the public. Those in wheel chairs would need to travel approximately five city blocks since not all of the Spring Street entrances are accessible. All paths must cross at least two busy streets.

Impact of Multiple locations: Due to these separate facilities the court and court agencies have been forced to run split operations. Split operations cause the following problems.

Confusion to the public: The public is confused by the multiple locations and often reports to the wrong facility. This includes the public filing documents, jurors reporting for jury duty, lawyers and litigants, contract employees, job seekers, vendors delivering goods, law enforcement officials (often with in-custody arrests), and delivery services.

Inefficiency to the court and court agencies: Immeasurable time is lost each day as court proceedings and hearings are delayed waiting for court participants to travel between the two facilities or for the appropriate documents to be requested and delivered from the main clerk's office. There is a potential to further impact proceedings if crucial time sensitive documents, such as temporary restraining orders or emergency stays of execution, are not received in time for proceedings. Administrative meetings require participants from both facilities and are encumbered by travel time between them. Magistrate judges and staff on criminal duty (PIA) must relocate to the Roybal building bringing work, and sensitive documents with them as there is inadequate time to return to their chambers between arraignments. Pretrial Service Officers must race between buildings to conduct interviews with those arrested, confirm information and prepare pre-sentencing reports under strict time limitations so bail can be set.

Additional costs: Additional costs are incurred hiring vendors to move furnishings, books and equipment between buildings. Additional automation costs are incurred wiring multiple sites and providing necessary infrastructure and cable runs to each location. The use of multiple facilities requires duplication of equipment, services, and staff which places a heavy burden on each agency's limited operating budget.

Additional Risks: Additional risks are incurred by judicial officers who routinely walk the predictable path between the facilities to attend meetings and/or to conduct court business. Courtroom deputies are subject to risk when transporting valuable evidence or contraband such as drugs and money between facilities in highly public areas. Court staff and judicial staff working late into the night often need to retrieve books or documents, or return to their car parked in the other facility, walking through a poorly lighted high crime neighborhood after hours. The USMS is subject to additional risk while moving high threat prisoners on public streets between the facilities. The USMS's ability to respond with adequate manpower to an emergency situation is severely hampered by the time required to travel between the two buildings.

Additional Staff required: The court and court agencies must employ additional staff to ferry and track documents, evidence, mail, supplies, equipment, and furnishings between buildings. Additional staff is required by the USMS to provide security checkpoints at each facility, and support two cellblocks and prisoner transportation operations. The district court must employ additional staff to escort jurors between facilities to assure they do not lose their way.

Impact of weather: All of these factors are exacerbated by seasonal severe weather patterns including heavy rains, strong winds, high temperatures and poor air quality.

Attachment 5

**Comments on OMB Revised Prospectus
for New Courthouse in Downtown Los Angeles**

How is the project included in the President's Budget different from the one proposed by GSA?

It is different in two respects: First, it requires Roybal be used for magistrate judges and a companion facility be constructed adjacent to Roybal to house district court judges instead of building a new free standing facility for both district and magistrate judges. Secondly, it significantly reduces the number of courtrooms to be built.

Is using Roybal a problem?

Yes. To avoid the current insurmountable functional problems associated with operating out of split facilities, any plan to reuse the Roybal building must include a seamless transition between Roybal and a new facility. A seamless transition would include:

- 1.) One main entry for both buildings.
- 2.) Connected and *efficient* circulation between facilities for *each* of the following; secure circulation for prisoners, restricted circulation for judges, and unrestricted circulation for public.
- 3.) Close proximity between district and magistrate courtrooms to allow one central cell block to serve both courtrooms.
- 4.) Close proximity between all courtrooms and the clerk's office.
- 5.) Close proximity between jury assembly and all courtrooms.

These types of relationships can only be obtained by building a new facility which is immediately adjacent, and physically connected to the Roybal building at multiple levels.

What options are available that would allow a new building for the district court to be built adjacent to Roybal?

There are three possible options all of which have been previously studied but none of them are considered feasible;

- 1.) Demolish the Veterans Administration Building immediately east of Roybal and build a new courthouse on that site. This multi-million dollar facility was constructed in 1991 on a small triangular site. The small size and shape of the site cannot accommodate a courthouse without major compromises to the floor plan or provide room to allow the facility to expand to meet the courts 30 year needs. Tenant relocation and site

preparation costs made this option one of the most expensive options studied with respect to 30 year development and leasing costs. Additionally the demolition of the VA building has unfavorable political and economic implications.

- 2.) Construct a facility immediately south of Roybal, across Temple Street on property currently owned by the City of Los Angeles. This small and awkwardly shaped site cannot accommodate a courthouse without major compromises to the floor plan or provide room to allow the facility to expand to meet the courts 30 year needs. Links to the Roybal facility would be long, over 225 feet, and need to pass over a major street. However such above grade links violate city planning guidelines and therefore are not allowed. A below grade tunnel by itself would provide insufficient linkage to Roybal, require a costly relocation of major utilities and potentially conflict with a subway line. Movement of prisoners from the Metropolitan Detention Center to the new facility would be so circuitous it is likely they would be bussed and a second holding cellblock would need to be constructed in the new building.
- 3.) Construct a facility immediately west of Roybal. The area available is too small to accommodate a courthouse so a portion (at least 25%) of the Federal Building at 300 N Los Angeles Street would have to be demolished to make room for it. Partial demolition of the Federal Building had been extensively studied and rejected by GSA due to the unfavorable long term revenue implications to the Federal Building Fund.

In addition, each of the three options would be adversely constrained by the need to align new floors with existing floor elevations of Roybal which are to small (14'-6" slab to slab) for district court facilities which generally require slab to slab floor height of 20 to 21 feet.

How does the proposed courtroom sharing impact this project?

All Judicial Conference guidelines with respect to courtroom sharing had been implemented into this project; eleven senior judges had been planned to share eight courtrooms. However, OMB arbitrarily cut the scope of this project by an additional nine courtrooms. OMB's project proposes building out *five less courtrooms for district and senior district judges than we currently have* and this is expected to meet the courts needs for the next ten years.

Does the scope proposed by OMB have other impacts to the court's program?

All modifications to the project scope were made without any input from the court in spite of numerous offers by the court to discuss this with OMB. Other program reductions may have been made but have not yet been identified to the court. Therefore this response may not encompass all factors.

Was the scope of work originally proposed by GSA adequately researched and studied?

Close to a million dollars in consultant fees have been spent over the past three years studying over a dozen different alternatives. These findings are documented in the Suitability of the Roybal Building for U.S. Court Expansion, dated August 1996 by Abide International, Inc.; the U.S. Courts Feasibility and Master Plan, dated June 24, 1997 by Kaplan, McLaughlin, Diaz; the Roybal Study: a Supplement to the Feasibility Study/Master Plan, dated November 1997 by Kaplan McLaughlin Diaz; the Prospectus Development Study: Alternative 4, dated March 31, 1998 by Kaplan, McLaughlin, Diaz; Prospectus Development Study: Alternative 5, dated March 27, 1998 by Kaplan, McLaughlin, Diaz; and the U.S. General Services Administration Courthouse Reinvestment project: Los Angeles Courthouse Analysis, dated November 1998 by Ernst & Young.

It would appear OMB disregarded, or did not understand these studies as it was the conclusion of all parties who actively participated throughout the process and understood the numerous constraints and complexity of this project, that the most cost effective solution, which addressed the program requirements, was a stand alone facility sized to accommodate the entire District Court. This was the project proposed by GSA.

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Senator VOINOVICH. Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR
FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you, Mr. Chairman.

First, I want to thank both the witnesses who are here today, Mr. Bob Peck, who has been to Montana, and I would like to say, as a former associate to the great Senator from New York, is a superior public servant. I've dealt with Mr. Peck, and I can tell you, Mr. Chairman, he is tops.

Also, Judge Jane Roth, who has been before the committee several times, has done a great job of explaining the courts' and judiciary's view on courthouse construction.

I want to thank you again, Judge Roth, for all the work that you've done on behalf of the judiciary. I'm looking forward to hearing your testimony.

I personally believe, Mr. Chairman, that the partnership between GSA and the courts is a crucial one, and, to their credit, they have both put a lot of effort into making this partnership work.

This cooperation has, over time, restored my confidence, I must say, in the courthouse review process. They've come a long way.

I want to stress one thing, though—and I've said this before—it is vital to our legal system that we do provide proper space, proper security, and proper facilities for judges and the courts. And I'm not talking about Italian marble corridors or golden chandeliers, but I am talking about the proper stature of courthouse buildings that befit our judicial system and assist our distinguished judges in their crucial constitutional responsibilities.

I might say to you, Judge Roth, that, frankly, I am sitting here as a Senator in large part because of the civil liberties courses I took in college. I learned to revere our judicial system. I became more cognizant of the impact on our democracy that Supreme Court cases produced in the hallmark civil liberties trials in our country's history. I have a very high regard for the judiciary.

I am very pleased that the President has included new courthouse funding in his fiscal year 2001 budget. It was very distressing that the Administration did not include such funding for the judiciary in its budget for the past 3 years.

I understand how distressed and frustrated the courts are about this past omission; however, I do not believe that proposed legislation that would circumvent the cornerstone of the current review process is in order. I have spoken to Judge Roth and to Judge Stahl before her about my concerns. I am committed to helping them attain their budget goals, but I believe we need to work within the current review system, which we all spent a lot of time on in this committee. The broader the review of courthouse construction, the broader will be the support for the program.

I would say to both Judge Roth and Mr. Peck that the courthouse program now has very strong support in this committee. Virtually all members of this committee wrote to the President last fall supporting funding for priority courthouse construction. And, while the Administration did not include full funding for the courts' priority list, I hope that this committee and the Budget Committee can explore how best to accommodate the fiscal year 2001 Judicial Conference requests.

Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you, Senator Baucus.

Senator Moynihan.

**OPENING STATEMENT OF HON. DANIEL P. MOYNIHAN,
U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. Mr. Chairman, thank you.

Welcome, Major Peck and Judge Roth.

I would open, sir, with only a general observation, which is that for the nearly 24 years I have served on this committee, during part of which we had the great services of Robert Peck, we have been dealing with this bizarre problem that OMB and we impose on ourselves, which is the requirement that any Federal building be financed entirely in one budget year, and that the building that might have an 80-year use span or 180-year is paid for in year one.

One of the results of that policy has been, over time, is that, instead of building new courthouses, we've leased them. And at several points I can think—my memory is getting vague—we tried to set a ratio that we would get occupancy of 60 percent in owned facilities. Is that about right, sir?

Mr. PECK. We started at 80, came down to 60.

Senator MOYNIHAN. Yes, we started at 80 and came down to 60. But I don't think we ever got to 60. We'll hear, no doubt, from Mr. Peck about that. So what you get is rent stubs. It is just not logical. I mean, no business would operate this way. They would capitalize their capital investments over time.

Then we came up with the idea of lease to own, and, if I can say—and I'm sure that Judge Roth would agree—we have a very happy instance of this in the Thurgood Marshall Building across the street here, which was the third building in the complex that was designed by the McMillan Commission after they took the Pennsylvania Railroad Station from the bottom of Capitol Hill and moved it down to its present site, and two buildings meant to flank it. One was the Post Office, now the Postal Museum. Then there was an empty lot on the other flank.

The Judiciary needed an administrative building, and we were able to get a brilliant design, and it was built for us by Boston Properties. We have 24 years to go until we own it completely. In the meantime, we brought people in from rented space at a lower rent in this lease-to-own space, because owning the land you get so much of an advantage.

Then, just as we were beginning to think that was working out, the Budget Enforcement Act of 1990 said you have to put all lease-to-own costs in one budget. That's bizarre. I don't think there would be any real estate business in the world that would operate that way. All it does is raise our costs needlessly and irrationally, and it has, among other consequences, that courthouses don't get built. You can't quite rent a courthouse; you have to build it. You may end up renting it after it has been built.

And that's our case, and it is a long history, but I think it is central to the concerns you have been showing.

I thank you.

Senator VOINOVICH. Thank you, Senator.
Senator Graham.

**OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR
FROM THE STATE OF FLORIDA**

Senator GRAHAM. Thank you very much, Mr. Chairman.

I won't belabor the point, but I very much appreciate what Senator Moynihan has just said about the issue of exercising fiscal pragmatism in how we go about financing Federal buildings.

I'm concerned about another pragmatic aspect that relates to what goes on inside the buildings—the purpose for which we construct them in the first place.

This year the Office of Management and Budget is recommending a new approach to Federal courthouses in terms of the relationship of judges to courtrooms. Frankly, this has caused a great deal of concern in the rapidly expanding areas of my State, where there are unusually heavy caseload demands upon the judges, witnessed by the fact that last year the Congress expanded by four the number of Federal district judges in our State, and there's great concern among the judiciary that these changes in the relationship of courtrooms to judges will have an adverse effect on the Administration of justice. So I am going to be interested in understanding what the rationale of the change in the position is and what its implications in terms of constructing courthouses, cost to construct, and the ultimate use of the courthouses for their intended judicial purpose.

Thank you, Mr. Chairman.

Senator VOINOVICH. Thank you, Senator.

Mr. Peck.

STATEMENT OF HON. BOB PECK, COMMISSIONER, PUBLIC BUILDING SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. PECK. Thank you, Mr. Chairman, and thank you, Senator Baucus and Senator Moynihan and Senator Graham.

I would like to summarize my statement, and if I may have it placed in the record and, if it is possible—I think GPO can do this—including the graphs and charts at the back, because they are important to the way we run our business.

I would also like to say this is the first time I have been in front of this committee since Senator John Chafee passed away, and I had 4½ very educational and happy years in this committee working for Senator Moynihan, but also working very closely with the staff of Senator Chafee, and was also fortunate to be here when he was chairman of this committee for so long. He was a great Senator, I thought, and a great patriot, and I am very sorry he is no longer with us.

To put our program in perspective—and I think it is important to do so, because the committee reviews only our major capital projects—I would like to talk a little bit about GSA and GSA's building function in the larger context.

GSA is, in fact, the largest owner/operator of commercial real estate in the United States. We manage 350-million square feet. I recently saw that the largest real estate investment trust is now up to about 100-million square feet. We have about 185 or 190 million that we own, and the remainder we lease, as Senator Moynihan started to talk about.

We house one million Federal employees, and that's our job—to provide them with productive workplaces and places where the American public can feel proud of their government and can be well-served by those employees.

Approximately 55 percent of the space we manage is in nearly 2,000 government-owned buildings, the remainder is in 6,400 privately owned buildings in which we lease space.

Our funding comes principally from the rents we charge to the more than 100 Federal agencies we house, and that's the important thing about our budget. The thing to know is that, unlike so many other Federal agencies, we not only can talk about running in a business-like way, we, in fact, are a business. We collect rents, we have expenses, and, as I always say to our employees, that means we have a bottom line which we can track.

More than 90 percent of the \$5.5 billion we will spend in this fiscal year is paid out in the form of contracts to the private sector, so we are, as they say in business, highly leveraged. We are contracted out. Our people, I believe, are the best, most competent contract supervisors in the U.S. Government. We are fast in contracting and we are very good superintendents of work.

It is important to note, however, that in fiscal year 2000 and again in fiscal year 2001, more than half of the expenditures that we make will simply go in the form of lease payments to private buildings.

When I worked here in the late 1970's and early 1980's, we were approaching a \$1 billion rent bill. We now have a \$3 billion rent bill. But, as I say, that affects our net income.

We are operating more like a business than we have before. As I mentioned last year, Mr. Chairman, we have established nine performance measures, much like those used in the private sector, which have quickly become known as the "Big Nine" in our organization, and they are not just talking points to our staff. They have allowed all 11 regions to compete with each other, and we have begun giving out awards to our employees. Let me be clear—we give out financial bonuses to our employees based on whether they are meeting performance improvement goals or not.

I would just note that I have copies of an article that appeared in the "Federal Times" on March 6. It says, "Rewards for Employees Reap Rewards for Agency." That's exactly the case. Rewarding our employees for doing a better job managing our buildings means that we have more net income at our disposal for the important things that we have to do.

In business they say you get what you measure, and we have found that. If you will refer to the charts at the end of my testimony, you can look for yourself. Our funds from operations—a business measure which really means net income—have increased approximately 38 percent from fiscal year 1998 to 1999. We did that in about six quarters.

We reduced non-revenue-producing space in our total inventory from 13 percent to 10 percent in just the last fiscal year. And if you look at the graph, you will note that the number is down actually to 4 percent vacancy in leased space where we can, by consolidating vacancy, get out of a lease altogether, if we don't need the space.

In Government space we are having a tougher time that's because we need more money for the repairs and alterations that make government-owned space—some of it, in old buildings—ready and available for new tenancies. I'll talk about that a little bit more later.

Our operating costs per square foot in government-owned space are approximately 13 percent lower than the private industry aver-

age. So when people ask me if we should simply turn our management operation over to the private sector, I say, "Well, not until they can do it as well as we can."

The average rents we pay in our leased buildings across the country are at or below the average rate that private sector tenants pay, as they should be. We are a great tenant and we pay on time and we always pay. We've not gone bankrupt, have no prospect of it, and we avoid cost to the Government in the tens of millions of dollars for that.

We've reduced by 38 percent—a magic number for us, it looks like—the amount of time it takes us to lease space for our client agencies.

Our customer satisfaction measures, which are important because you can save a lot of money at the expense of your customers, have actually increased. We started counting in 1993 in a poll that we take with the Gallup organization, so that we are honest—we don't do the numbers, they do. We've increased from 74 percent to 80 percent in 1998, and you'll see in the chart at the back also that this percentage has gone up steadily every year, and it's because our people focus on those numbers.

As I said, the net income that we produce has a direct bearing on the capital program we are proposing. By pricing more realistically and reducing expenses, we've produced more net income, which is our only available source to upgrade our buildings. The only money we requested for repairs and alterations to existing Government buildings is money that we generate ourselves.

Now, as Senator Moynihan says, no real estate business in the world operates this way. Many State and local governments don't operate this way. We have unique budget scoring rules in the Federal Government which may or may not, depending on whose interpretation you believe, prevent us from leveraging the value of our real estate.

To be clear, there are other Federal agencies that have been authorized by Congress to engage in public/private partnerships in which they are able to leverage a piece of Federal ground, have a private sector developer either build or renovate buildings, as the military is doing in military housing, and then lease them back to the agency. This is something which this committee has talked about for a long time.

I will note that we are proposing some new construction funding out of our net income this year, and I will talk about that later.

Costs is not the only consideration. As Senator Moynihan and Senator Baucus have talked about, we believe that the American people deserve quality when we build. Quite honestly, we believe that they deserve a quality building when we lease a building and cause it to be built for the Government to lease for a long time. In fact, that was one of the issues we dealt with in Helena, MT, Senator. Approximately 20 years ago we built a building, or caused a building to be built which is not as high a quality building as the Government or the people of Helena deserve. So, we have improved the way we do design.

Last month, the "Architectural Records" magazine had an article noting that GSA has really turned itself around and is a leader in high-quality design and not lavish design, as Senator Moynihan, I

believe, once said. There's a difference between grand and grandiose, and we believe we have stuck to the grand, meaning buildings that reflect the dignity of the U.S. Government.

We have improved the way we integrate our site and design decisions with local planning and development needs—by the way, something else we learned in Helena, MT, and Billings, as well.

Finally, we have kicked off what we call a "First Impressions Program," because many of the experiences that the American public has with the Federal Government and the impression they have of how well we do our job is the impression they gain when they walk into a Federal building. We believe that those building lobbies and entryways should be clear, crisp, and informative, and not, as they are in too many cases, I believe, dark and confusing.

But, to get to our capital investment and leasing program, as you noted, we have a substantial new construction program and a substantial repair and alteration program. I'll just note for you that here, too, we have brought in business-like measures. When we decide how to allocate the money that we are permitted to spend in the President's budget, we have set some business-like criteria, including the use of a private sector method in which we determine a return on investment, which basically means if we put a certain amount of money into a building to be repaired, we expect to see a certain return in the level of rent we charge. This approach is similar to the way that private sector people decide whether or not to do a project. It's the way we do it, as well.

We have a particular problem with our owned inventory. More than half of our buildings are more than 50 years old. Nearly a quarter of the inventory is historic. Although we are proposing a very substantial budget this year of \$721 million for major and minor repairs, an 8 percent increase over the year 2000, I will just note that the amount of money we allocate for repairs and alterations is about 2 to 2.5 percent of the market value of our inventory. The private sector benchmark is to spend 2 to 4 percent of that value on an inventory.

When you have an old and aging inventory, you should probably be at the high end of that range, rather than at the low end, as we are.

Moreover, if we don't fix up our buildings, when we go to set rents, we have to lower them. As a building deteriorates, you have to charge lower rents. If you charge lower rents, you have less money available to repair, and then, again, you charge lower rents and you can get yourself into a real vicious cycle.

Again, we are proposing what we believe is an adequate repair and alteration program to keep up with needs, but I note that we have a significant backlog, which I don't think we are yet addressing, although we are working on it.

For new construction, we are proposing to fund seven border stations through revenues generated by the building fund—in other words, out of our net income. We are proposing demolition and construction of the new U.S. mission to the United Nations, and the acquisition of a site and design for a new FBI building.

And I will note again, this is a bit of a departure. Although we had funded border stations out of our net income before, we have not, in the past several years, in my memory, proposed funding out

of our net income for major projects like the U.S. mission to the U.N. and the FBI field office. We believe that some projects like that which are of urgent security needs should be funded immediately out of net income.

But we do, as we have always said in the past, believe that most new construction needs to be funded out of direct appropriations. The Congress has acknowledged this over the last 10 years or so with several billion dollars worth of appropriations for new buildings.

As you noted, Mr. Chairman, we are requesting funding for seven courthouse projects. We are also requesting funding for the Food and Drug Administration consolidation in Montgomery County, Maryland, and a new building for the Bureau of Alcohol, Tobacco, and Firearms in Washington.

Finally, I'll just note that we have requested authorization for a new construction project in Suitland, MD. The Department of Commerce last year was provided an appropriation for a new building. It is very important for the National Oceanic and Atmospheric Administration and it is critical to the Nation's weather forecasting. We need an authorization to be able to actually spend that money.

A number of Senators have already talked about our courthouse program, and I will note that the Administration's view is that courtroom sharing can be a cost-effective means for providing space needed by the courts. By going to a courtroom sharing model, we have eliminated 22 courtrooms in the seven courthouse projects that were proposed in the budget from what we had originally studied.

The savings in fiscal year 2001 budget from the reduction in courtrooms is approximately \$25 million, and we believe that that could save another \$33 million in future years.

Again, in the project that Senator Boxer referred to in Los Angeles, we believe we can save about \$85 million by constructing a companion building to the Roybal Building in Los Angeles.

Courtroom sharing is something that has been discussed for many years. The issue is fundamentally this: where there is a large courthouse with many judges, we are proposing a separate office for each judge. Let me be clear that we are doing that. But not every courtroom is in use every time, and I do believe that it is possible to share courtrooms in large courthouses. In some cases judges do this already, not necessarily because they want to, but because we simply don't have enough room.

Now, I have to be honest with you. We don't have clear and convincing evidence, as the lawyers would say, of what the right ratio might be once you start talking about sharing. However, neither do we have clear and convincing evidence that it is necessary to have one courtroom for every active judge. There is, however, a tradition that this is the case.

The courts have undertaken a utilization study—which unfortunately is not yet ready—to determine whether sharing is feasible. I will say that the Office of Management and Budget and GSA have talked for years about what the sharing ratio might be.

This year the Administration proposed a ratio of two-thirds. I believe—although I was not privy to the final decision on what ratio of sharing would be used—that this two-thirds ratio was based on

a GAO study of several years ago which suggested that courtrooms are in use about 65 percent of the time.

As I said, we are all new to this issue, and that's the ratio we have proposed for this year.

Finally, we have proposed to you 12 lease prospectuses which are over the threshold limit. This is a bit misleading in the sense that, although they total approximately \$80 million in obligations in fiscal year 2001, this is just the tip of the iceberg. Once you start leasing you lease for a long time.

I suspect, although I have not run the numbers on these particular leases, we are talking about at least \$500 million in total Federal cost just on the period of those leases to which we are currently obligated.

We are working to control the growth of our leased inventory. We have sort of leveled off at about a 55/45 government-owned to lease ratio, in part because we are building new courthouses.

Interestingly enough, our focus on net income has forced us to look at this issue. When we lease a building we basically pass through the cost to our tenants. It generates no net income for us. It is not a good fiscal contributor to our program, so we have an added incentive to move toward government-owned buildings.

I have only two more points.

We do believe that it would be useful to take a look at raising the threshold limit. We have noted that if we were to increase the threshold limit to about \$5 million, you would see only three fewer construction prospectuses and a few fewer lease and repair and alteration prospectuses. The latter two tend to be somewhat routine. We believe that you would still be able to focus on large construction projects, which have traditionally been the concern of this committee and that in the House.

My final point is this: we have, since the Oklahoma City bombing, doubled our rate of spending on security. It is a very serious topic for us. Our security people, as we discussed last fall at a conference that Senator Moynihan was kind enough to keynote, we have a very difficult mission in the Public Building Service. Our job is to protect the people who work in the building, the people who visit it, and, at the same time, to keep our buildings from becoming fortresses that are foreboding, forbidding, and unwelcoming to the American public for whom they are built.

In order to do that, we have, in the past several years, refocused the mission of the Federal Protective Service. We have increased cross-training so that eventually every uniformed officer will also be an expert in physical security. We have intensified our intelligence efforts. We have intensified training of every part of the organization, and we have just upgraded the contracts for the private security guards.

I have to tell you, I am very concerned that a bill that was just approved by the House Transportation and Infrastructure Committee would jeopardize security by making the Federal Protective Service, which is currently an arm of the Public Building Service, a separate agency within GSA.

Here is my concern in a nutshell: security is not something you can do in a vacuum. The design and management of our buildings need to be welded with the security force. They need to be fused

and seamless, not polarized; I believe a separate security service would be a huge mistake. It is a solution to a problem that does not exist.

Some in the ranks in the Federal Protective Service possibly would like to see a separate service. I think those are some of the members who are still going on a model which should have gone out the window when Oklahoma City happened.

I need your support if this bill comes to the Senate. I hope I can talk to you further about this very serious issue.

That concludes my prepared statement, and I will be happy, obviously, to answer any questions you might have.

Senator VOINOVICH. Thank you, Mr. Peck.

At the request of the members of the committee, we'd like to hear from Judge Roth, and then have the two of you, if you would, be kind enough to respond to our questions.

Judge Roth, we are very happy to welcome you again this year. As I mentioned to you earlier, we have made some progress.

STATEMENT OF HON. JANE R. ROTH, U.S. JUDGE, THIRD CIRCUIT COURT OF APPEALS, CHAIRMAN, JUDICIAL CONFERENCE COMMITTEE ON SECURITY AND FACILITIES

Judge ROTH. Thank you, Mr. Chairman.

It is a pleasure for me to be here on this very rainy morning. I will summarize my statement. I will touch upon courtroom sharing, but if there are any additional questions from the members of the committee, I will be very happy to answer them.

My name is Jane Roth. I serve as a judge on the Third Circuit Court of Appeals and as chairman of the Judicial Conference's Committee on Security and Facilities.

I appreciate the opportunity to appear before the subcommittee today to discuss the courthouse projects scheduled for fiscal year 2001 under the Judiciary's prioritized 5-year plan, and also to summarize the Judiciary's continuous efforts to review and improve management of the courthouse construction program.

We appreciate the continued willingness of this subcommittee, of the full committee, and of your staff to work with us to make improvements. In particular, we hope you will authorize projects at the levels originally submitted by GSA to the Office of Management and Budget, which will incorporate all projects that can be ready for design, site, or construction contract award in fiscal year 2001.

President Clinton's fiscal year 2001 budget request includes \$488 million for seven new courthouse construction projects. This request for courthouse projects is the first since fiscal year 1997. The President's request does not, however, include all the projects which GSA proposed to OMB.

We are concerned by the Administration's failure to include funds for all the projects which need site, design or construction funding in fiscal year 2001.

We are also concerned by OMB's reduction of the size of the projects which were submitted to you. We are informed that the funding levels for these seven projects is based on an assumption that only two courtrooms will be provided for every three active district, senior magistrate and bankruptcy judges.

We ask that you take action to restore the levels of funding for the courthouse program to those proposed by GSA prior to OMB's arbitrary action.

The shortsightedness of OMB's actions is obvious when the courts are experiencing an ever-increasing work load.

Statements from Judge Edwards in Washington, DC.; Judge Conway in Las Cruces, NM; and Judge Sretney in Buffalo, NY have been provided, and I would also like to present at this time statements from Judge Hatter in Los Angeles, CA and Judge Davis in Miami, FL. I ask that they be included in the record to help you appreciate the impact of OMB's reduction.

Judge ROTH. The Administration chose not to request funding for courthouse construction in the budget for the previous 3 years. Congress was able to appropriate funds for courthouses in only one of these years. This lack of funding has created a backlog of projects and has placed GSA woefully behind schedule in delivering needed space for the courts. The courts, therefore, must continue to operate in facilities that are unsafe, overcrowded, and sub-standard.

The Judicial Conference's fiscal year 2001 request includes 19 projects which are ready to go. The total cost of these projects is about \$800 million, based on GSA's September 1999 estimates. Seventeen of these projects were included in GSA's original request to OMB.

In addition, based on current information, two more projects should be ready for construction contract award in fiscal year 2001.

All of these projects are needed and will only fall further behind schedule if not funded. A listing of these projects in priority order is attached to my statement.

The work load of the Federal courts has grown tremendously over the past 10 to 15 years, largely as a result of legislative efforts to wage a Federal war on crime and the illegal drug trade.

The courthouse projects on the list for funding in fiscal year 2001 are in areas of the country where there is dynamic population growth combined with an increase in law enforcement activities.

I have attached to my written statement fact sheets that describe the current situation and the need for the fiscal year 2001 projects in the Judicial Conference's 5-year courthouse project plan.

In recent years, the judiciary has continually reviewed and significantly improved the operation of the courthouse construction program. As part of our ongoing commitment to cost containment and program assessment and evaluation, we contracted with the consulting firm of Ernst & Young to review our entire space and facilities program. The study, which is close to completion, will address courtroom sharing and utilization, our long-range planning process, courthouse design assumptions, internal space management policies, business practices, funding mechanisms, and resource allocations strategies.

We expect a final report at the end of April for review by the Conference's Committee on Security and Facilities. In the meantime, however, it is critical that the courthouse construction program continue to move forward.

Ernst & Young has reported to the judiciary that the court projects requested by GSA in the fiscal year 2001 budget are the

result of methodical planning and review processes put in place by the Judiciary and GSA.

On courtroom sharing, for the past few years this topic has been in the forefront of congressional and executive branch inquiry. It has been suggested that, because most courts are not in use 100 percent of the time, Federal judges should be able to share courtrooms in order to save the cost of construction.

The GAO report, which estimated 65 percent actual use of courtrooms, did not have a recommendation on courtroom sharing. The Rand Report did not have a recommendation on courtroom sharing. Both reports advised that further study should be done. It was for that reason that the Judiciary has contracted with Ernst & Young to provide the report that they are presently preparing.

Ernst & Young will recommend that every active district judge have a courtroom for that judge's use; that there are possibilities for courtroom sharing among senior judges, depending upon the work load involved, but that sharing of courtrooms by active judges under the circumstances of the judiciary is not possible.

If you conclude that 65 percent use of one courtroom by one judge should be upped to 100 percent use of two courtrooms by three judges sharing the two courtrooms, you are, in effect, saying that a courtroom must be used 100 percent of the time. This is an impossibility in the judicial system, where you cannot predict the length of a trial, you cannot predict whether a trial will take place in the first place, or whether a trial will be settled on the courthouse step. If it were, you can't plug a new trial into the courtroom for that day. There is a certain lead time that is required, there's certain notice necessary in order to move one trial up to replace a trial which did not take place. You must consider these factors in courtroom scheduling. You must consider the cost and expense of delays in trial.

When I was a lawyer practicing in Wilmington, DE, the Delaware State courts for a while were unable to provide a courtroom for the scheduled trials. I had the experience of arriving in the courthouse with my clients to take a case to trial to be told at the courthouse door that, "We're very sorry. We don't have a courtroom for you today. Go home. Come back again when we can reschedule you."

This is not justice. This is not just to the litigants, it is not to the system of administration of justice.

It is factors like this which Ernst & Young are taking into account in their recommendation. The Judiciary very strongly supports the position that the Judicial Conference took in 1997 that administration of justice requires one courtroom for every active district judge.

In Federal courts, moreover, the cost of a courtroom, when compared over its lifetime to the overall cost of the courthouse, is not substantial. In Federal courts where courtroom sharing among active judges has occurred out of necessity, judges have reported serious difficulties. For example, the 3 to 2 ratio of courtrooms to judges suggested by OMB is currently in effect in the Federal District Courthouse in Brooklyn, NY, while a new facility is under construction.

Senator MOYNIHAN. Exactly so. That has been a disaster.

Sorry, Mr. Chairman.

Senator VOINOVICH. That's all right.

Judge ROTH. The judges, staff, and others affected have struggled to make it through this temporary situation, but, as Senator Moynihan said, it has been a disaster. They have maintained the operation of their court, but it has been at a very serious toll on the stamina and the whole structure of the court system in that district to keep the court going.

The judges in Brooklyn are uniform in concluding that courtroom sharing has strained the operational effectiveness of the court, and that courtroom sharing, as a permanent policy, would be counterproductive.

A 3 to 2 judge-courtroom ratio causes chaos in a system that requires an orderly process in order to be fair and just.

The judiciary continues to review and update its prioritization of courthouse projects using a weighted scoring methodology. I am very concerned, however, that continued delays in funding courthouses or reductions in the sizes of the buildings could result in a breakdown of this prioritization process, with individual districts attempting to fulfill their needs without regard to the established process.

We ask that you take action to authorize the new construction projects on the attached list in fiscal year 2001 at the levels originally calculated by GSA in September 1999.

Thank you for the opportunity to testify before the subcommittee. I would be pleased to answer any questions that you might have.

Senator VOINOVICH. Thank you, Judge Roth.

If I am not mistaken, this list that I have before me that starts with Los Angeles and goes down to Erie, PA—there are 18 projects on this list—the projects submitted by OMB, but for Buffalo, and I think Springfield is left off the list because it is not ready—does that reflect your priority list?

Judge ROTH. Yes, it does, Mr. Chairman.

Senator VOINOVICH. Which I think is pretty significant. In fact, in effect, your process of going through and ranking, and you've come back and said these are the priority projects, which is comforting.

Mr. Peck, I want to congratulate you on doing an outstanding job. I echo the comments of Senator Moynihan. I had an opportunity to observe carefully the job that your folks are doing in Cleveland, and also have been impressed with your testimony last year in terms of empowerment of your employees and incentive systems and your performance standards. It would be comforting to know that other Federal agencies did adopt performance standards and that they had some meaning in terms of their compensation. That would, I think, go a long way to improve the delivery of services and the quality of services in the country.

Since this issue of two courtrooms for three judges is on the table, the question I have is: did the Office of Management and Budget consult with the General Services Administration in making their recommendation, or did they make this recommendation based on something that someone else had submitted to them?

Mr. PECK. It depends on what the meaning of "consult" is.

Senator VOINOVICH. Well, they're putting their budget together, and "consult" means they sat down with you, and either you suggested to them, when they put their budget together, that they ought to give consideration to this option, or, in the alternative, after you submitted it they came back to you and said, "You know, we have a new idea or a good idea, and we can cut our costs and get more done."

Mr. PECK. That's not exactly the way it happened.

We had, over the past several years, talked to them about the possibility of courtroom sharing. And I have to say, we do agree that it must be possible to share courtrooms in some instances, and here are the instances. If one were to have a courthouse in which there were, say, 44 judges, I think it would be safe to assume you could probably do with 40 courtrooms, perhaps 38. On any given day, some of the judges are on vacation or at a conference, for instance.

If you have four judges in a courthouse, which is the case in a number of courthouses, it is not as clear to me, just intuitively, that you can make do as well with three. It's quite conceivable that all four are there a good measure of the time.

The problem is that none of us quite know what the right number would be or where the cutoff would be.

We had talked to OMB in years past about, at some point, sort of forcing the issue by saying we should probably take some money off the table in a couple of courthouses, and we never quite got to where we might be.

I will just tell you, quite candidly, this year we submitted a project list, as everyone knows, that included basically the design guide requirements, which is one courtroom per active judge, and actually revised our list a second time, when asked by OMB to come back with one that would allow no departures from that guideline. In some courthouses, there have been requests for even additional courtrooms.

So we came back with what was called a "departure list," and OMB then came back with the list that was based on the two-thirds sharing.

As I said, I was not privy to the coming up with that number, and it's hard to know what the scientific number would be. So I don't want to fault OMB for coming up with a number, which one could at least say is something that you might try. On the other hand, I can't really say with great confidence that I know that this ratio will work in every single instance.

Senator VOINOVICH. Well, would you conclude that maybe in some instances that system would work and other circumstances it wouldn't?

Mr. PECK. My hunch—and we're all going on hunches—is that this system could work on very large courthouse projects—and I don't know what "very large" means. In my mind, projects having more than 25 or 24 courtrooms could accommodate sharing. In courthouses smaller than that level, I'm not sure. I suspect you could in one with 16 or 12, but I don't know. We don't really know enough.

And I was hoping the Ernst & Young study would be available by now, quite honestly, because you need to look at what kinds of

things judges do in their courtrooms, how often do they need a large well, as opposed to not needing it, and all those kinds of issues.

Senator VOINOVICH. Will the Ernst & Young study come back, and was that the question that was asked of them to come back with the recommendations?

Mr. PECK. Yes, sir, and at the urging of the Congress. So it has been going on for a while.

Senator VOINOVICH. Because I know that, according to—65 percent of the courtrooms—the courtrooms were utilized 65 percent of the time, according to this.

Mr. PECK. I have to say, I mean, Judge Roth said that. It is true that, to some extent, a judge having a courtroom available for court—I have been a lawyer—the judge saying, “I’m ready to go to trial” does force people to settle, and knowing that the courtroom is available is significant. And, as she noted, too, sometimes you have it scheduled, and the day of the trial everybody says, “I really don’t want to go through with this,” so the courtroom is then vacant for that day or several days. It is therefore not quite fair to say that this was a total waste of space.

The other thing to put in perspective, I previously noted some numbers. We save about \$1.9 million, on average, by cutting out a courtroom and its ancillary spaces, such as a holding cell. We have to put that in the context of the larger projects. When we build a courthouse, we’re building space for the clerks, often the probation office, the U.S. Attorneys, and sometimes the U.S. Marshals, so there are lots of other spaces. It is a marginal cost reduction.

On the one hand, it is not that much per courtroom. In the total program, however, significant sharing would generate a lot of savings. But whether you can get significant sharing and still carry out the functions of the court I still think is an open question.

Senator VOINOVICH. Well, it is interesting that the GSA estimate was \$714 million, and then the OMB came back with theirs and it was 675. You’re talking \$39 million. I don’t know what the percentage is, but that doesn’t seem to be such large savings as a result of going to this new system.

One last question, and that is technology. Does that have any impact at all, in terms of, let’s say, the subject that we’re talking about now, in terms of courtrooms?

I know in our county, Cuyahoga, Cleveland, we have some really outstanding work being done by judges using technology. Does that at all impact on the size of courtrooms or needs or anything of that sort?

Mr. PECK. It has not had an impact on the size of the courtrooms. It does, to a certain extent, on the expense. But I have to say, most of the expense is not in the cost that you are seeing here—the actual cost of construction—although we’re doing a lot of what are called “raised floors” so you can easily get to the cabling below. The courts are spending a lot of money on technology in the courtroom and on visual displays.

Senator VOINOVICH. But it has got no impact on space or anything of that sort?

Mr. PECK. It hasn't yet. We have found that there is enough space so far in the wells of the courtroom to accommodate the equipment, and so it has not. We have a 2,400-square foot standard courtroom size, which seems to be adequate to accommodate this at the moment.

And remember, too, we build courtrooms with higher ceilings, which are basically a floor-and-a-half or close to a two-story space, compared to the normal office floor. So you have a little bit of room to play with there, getting your cabling underneath the floor without adding any more space.

Senator VOINOVICH. Judge Roth, would you like to comment? And then I'll ask Senator Baucus if he has any questions.

Judge ROTH. Yes, I would. Thank you, Mr. Chairman.

I think another factor to take in mind, which you pointed out, is that the cost of the extra courtrooms is not that significant. Our figures indicate to us that, over the lifetime of a courthouse, the cost of a courtroom and its ancillary rooms, like holding cells, is \$50,000.

If these courtrooms are not built, it is going to be that much sooner that the judiciary is going to have to come back to you and say, "We are busting at the seams of this courthouse. We need a new courthouse built."

So I think when you balance the cost of the courtroom against the greater need we're going to have at a sooner time for more courthouses, that is a counter-balance.

I think there is a cost to the whole litigation process if you are attempting to utilize courtrooms 100 percent of the time, because, as I said, you can't predict how long a trial is going to last. In a criminal trial you can't force the defense attorney to commit up front whether his client is going to testify or not, so that in scheduling for trials you have to estimate the amount of time.

In civil trials you have a little more control over the length of the trial, but even then, with a juror or a witness who can't appear as scheduled, you simply cannot say, "This trial will begin at this moment and end at that moment."

The GAO study did not include the scheduling of the courtrooms that were examined. It did not determine that the lights were off in Courtroom A because there was nothing to be done or because there had been a scheduled procedure which had been canceled at the last minute.

Ernst & Young has taken all these factors into account, has interviewed judges, has interviewed people involved in the whole process, and, as I mentioned, we understand that their report will support the position that there should be one courtroom for every active district judge.

Senator VOINOVICH. Thank you, Judge.

Senator Baucus.

Senator BAUCUS. Yes. Thank you very much, Mr. Chairman.

We'll all be looking at that report when it comes out, obviously. I understand, too, that the Appropriations Committee has requested a report, and that, too, will be interesting when it is available.

I'm just wondering, Judge, is there any trend over the number of either civil or criminal cases that are brought as to whether they

actually go to trial? Is there a trend? Is it the same percent filed go to trial on the civil side as indictments on the criminal?

Judge ROTH. Most civil cases get settled, most criminal cases result in a plea agreement. The Administrative Office of the U.S. Courts keeps statistics on that. I certainly can provide the committee with those statistics if you would be interested in having them.

I know that the Federal sentencing guidelines have, I believe, resulted in a higher percentage of pleas in criminal cases because of the acceptance of responsibility benefits that a defendant can receive.

Frequently, there is no plea until the defendant sees that the trial is imminent in a criminal case. There is no settlement in a civil case until there is a courtroom where the trial will be scheduled, the lawyers know that the scheduling is firm, and that on that day they are going to have to appear with their client and go to trial. That's when the lawyers really sit down and think about what is the likely outcome of this case. Am I better off making an offer, accepting an offer? Many, many cases, settle within the last week before the trial.

Senator BAUCUS. Right. Now, this 65 percent figure, has that been static the last 10 years, or is that also an evolving figure?

Judge ROTH. That is a one shot, a GAO team saying—

Senator BAUCUS. Is that one shot over a year, over a month, or—

Judge ROTH. I don't think it was that. I'm not sure of the period. It was one shot in 12 courts. Looking at that one shot, they said further study is required. Rand said further study is required. That's why we contracted with Ernst & Young.

Senator BAUCUS. I see. That was just a snapshot taken of 12 courts?

Judge ROTH. Exactly.

Mr. PECK. That's my understanding, too. They just walked through and saw if the courtroom was in use or not. They didn't ask—I don't think—many questions about why.

Senator BAUCUS. It was a very comprehensive study.

[Laughter.]

Senator BAUCUS. Nevertheless, Judge Roth, I mean, I do think what Mr. Peck said has some ring of truth to it. That is, there may be a very large courthouse where it might be reasonable to schedule rooms—and whether the ratio is not 2 to 3, or it may be 44 to 45, or something like that. Who knows? I mean, why are you saying that absolutely, categorically in no case can there be fewer courtrooms than judges in a courthouse?

Judge ROTH. Senator Baucus, I think we should keep in mind, too, that the areas with large courthouses are the very busy areas. Los Angeles, CA, and Miami, FL are, for instance, two courthouses which are affected on the list this year. They are among the busiest courts in the country. The courtrooms there are very busy.

If you cut down on the number of courtrooms in those buildings, because of the nature of the business there, the large percentage of criminal cases which are being tried there, the growing population and the expanding case load, I think that you are going to find yourself, in a very short time, needing a new building in such

an area if you attempt to shortchange a large building by one or two or four courtrooms.

The building is estimated for 10 years out. By the time the building gets built, we're already 7 years out, so that we are almost at the full capacity of the building. In some areas with a high case load, as you have in Florida, and California, when you are 7 years out you have already bypassed your 10-year-out forecast.

I think one can say theoretically that it is easier to share in a large building, but when you take the practicality of where these large buildings are, I don't think it is a wise decision to say we should reduce the courtrooms in these projects.

Senator BAUCUS. You make some very good points. I appreciate that.

I have a couple other questions. No. 1, Mr. Peck, there is a discrepancy in the funding of border stations in the north compared with the funding of border stations in the south. For example, the station in Raven, MT, is \$577,000. Well, three border stations in Texas cost in the neighborhood of \$2 million each—four times, roughly. Why?

Mr. PECK. It is a fair question. Your numbers are about right. Senator BAUCUS. I hope so.

Mr. PECK. Our budgets for the border stations are based on the requirements that are given to us by what are collectively known as the "inspection agencies," such as Agriculture, Immigration, and Customs. Although you should really talk to them, the real answer is that the requirements for inspection tend to be more onerous on the southern border than on the northern border. I don't want to speculate on that, particularly, so that I don't cause an international incident.

There are more-intensive secondary inspections, for example, on the southern border than on the northern border when you have truck traffic coming through, and that seems to be the case when we took a look at it. This seems to be what is driving the cost right now, the cost differential right now.

[The information referred to follows:]

RESPONSE BY ROBERT PECK TO A QUESTION FROM SENATOR BAUCUS

Question. Please explain the discrepancies in funding for the Northern border versus the Southern border projects.

Response. The following projects were proposed in the fiscal year 2001 budget:

| Southern Border | |
|--|--------------|
| Eagle Pass, TX, Phase II Expansion | \$28,108,000 |
| Del Rio, TX, Phase III Expansion | 22,144,000 |
| Fort Hancock, TX | 2,400,000 |
| Northern Border | |
| Jackman, ME | \$7,053,000 |
| Raymond, MT | 6,544,000 |
| Sault Sainte Marie, MI | 12,465,000 |
| Rooseville, MT | 7,645,000 |

Border stations are built to meet the needs and requirements of the Federal inspection agencies. The higher overall costs of proposed facilities along the Southern border is attributed to a number of factors:

- Inspection of commercial and non-commercial traffic is different along the southern border due to required immigration and drug interdiction efforts.
- Site development costs is substantially more costly at southern border stations than northern border stations. This cost differential is primarily due to amount of land area needed. Less dock space, queuing, and secondary inspection area, for example, are needed at the northern border. The average land area at stations on the northern border is 7 acres. Along the southern border, this land area is 26 acres.
- Traffic volumes for commercial and non-commercial vehicles, buses, and pedestrians are often substantially higher at southern border stations. For instance at Eagle Pass and Del Rio, TX, the non-commercial traffic totals nearly 2,000,000 vehicles a year at each station, while the traffic count for Jackman, ME, Raymond, MT, and Roosville, MT, does not reach 100,000 vehicles a year per station. In addition, the commercial traffic at Del Rio and Eagle Pass (59,000 and 105,000 respectively) exceed the commercial traffic at Raymond and Roosville (17,000 and 25,000, respectively). The larger traffic volumes are reflected in larger facilities, resulting in a higher project cost.

There are cases along the southern border where smaller facilities are required, such as the Fort Hancock, TX, project. Along the northern border, we are developing projects of a larger scope, such as one at Ambassador Bridge, Detroit, MI.

Senator BAUCUS. OK. I'd appreciate it, though, if you would take a look at that. And we will, too.

I want to thank you, Judge, as the chairman has said, for ranking courthouse construction. That has been a matter that we have been talking about over the last couple years, and I deeply appreciate that Judiciary has ranked.

A question I have for the Administration is: here I have this list of construction projects, courthouse construction projects that the Judiciary has ranked, and the Administration has agreed with this ranking on No. 1, No. 2, No. 3, No. 4, No. 5, and then suddenly things change. The Administration slips down to—bypasses Buffalo, NY, and it bypasses Springfield, which apparently is not ready, and it goes to eight. Then it bypasses El Paso, Mobile, Fresno, Norfolk, Las Cruces, and ends up at Little Rock, AR. What happened?

Mr. PECK. I know that last one looks strange. Let me explain.
[Laughter.]

Mr. PECK. I have an answer. Let me start at the top.

Eugene and Springfield were simply dropped out because of site issues. In one case at least, the site we originally thought we were going to get for a courthouse has turned out not to be a site we're going to get, for various local community reasons. In Springfield, also, we've had trouble getting a site, so we're just not ready to go forward with construction in fiscal year 2001.

Miami, which was also funded—you have to remember that OMB decided on an overall amount of discretionary spending it was prepared to put into this program. This is where I was not consulted and, quite honestly, would not expect to be. I mean, they moved some mountains internally to make the funding available that they did.

Miami was the next one ready to go as a construction project, and it fit within the cap.

The other projects, starting with Buffalo and running through Nashville onsite and design, at least, and some additional design for Erie, PA, were just beyond the point. OMB decided on what their overall spending limit was going to be and knocked out every

project beyond that except for Little Rock. In Little Rock, we have already done a design, unlike all the other projects where we haven't even started a design. The scope of the project changed a bit, and so we just needed \$1.8 million more to finish the design and then be ready to move forward with construction. I mean, this was the justification for Little Rock.

On Little Rock I have to say, I can't say this is categorically the rationale I'm pretty certain that this is the answer on Little Rock and not anything that might otherwise strike you.

To be perfectly blunt, I think the President in Little Rock is concerned with construction of the Presidential Library and not with the renovation of this courthouse.

But there, too, I have to say there are a couple of other projects. Buffalo was the next one onsite and design that was in priority order. There was a \$3.6 million number, and just, whatever the cutoff was, it didn't make the cutoff. We haven't started the design process on Buffalo. We all do recognize that Buffalo and the others are necessary projects.

Senator BAUCUS. Judge, do you have any comments on this change in priority from the Judiciary's point of view?

Judge ROTH. No, I don't, Senator Baucus.

Senator BAUCUS. OK. I thank the chairman.

Senator VOINOVICH. Thank you.

Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, may I just add to the comments that Judge Roth has made and volunteer that we've had a test of the two courthouses for three judges in Brooklyn, the eastern district of New York, which involves lots of the issues of war on crime and illegal drugs that you speak of and has Kennedy Airport and all those things.

Sir, the judges—it is beyond us. We have a court. It has been financed and not asking for anything. I'm just reporting they just found it was very difficult.

Among other things, as the judge says, the fact that there is a courtroom there ready for a trial is a huge inducement to settlement, and if you know that, well, OK, the next thing is you're going to be sitting in front of a Federal judge and think about that, it's just—and part of the dignity of the judiciary, a judge has his courtroom.

The last 15 years, we have been adding two death penalties a year to the Federal code, and putting them into these courthouses.

In 1955, we made a certain amount of history by restricting habeas corpus so we could get to, you know.

I think it is fair to say, if you had to pick a country in which they had free elections as against a country in which they had habeas corpus, pick habeas corpus every time. But we got rid of that so there would be more.

And OMB has advised the President to sign all these bills, both kinds of Presidents. It comes with ill grace, it seems to me, at this point, to say, "But we don't want to have enough courtrooms to try the cases."

But I would like to ask, if I can, Major Peck, what is this business of taking the Protective Service out of the Public Buildings,

which puts up the buildings with those services in mind and having another bureaucracy and another—what's going on there?

Mr. PECK. Well, I have to say—

Senator MOYNIHAN. Surely it is not going to be cost effective.

Mr. PECK. Right. The bill that has passed the House Committee actually has some beneficial provisions in it that would increase pay for the Federal Protective Service officers and clarify their jurisdiction, which is important. This idea, however, of separating the Service, I'm not quite sure where it came from or why it was considered a good idea. But you are right; there would be additional administrative costs.

But, for me, the fundamental issue is that it is a simplistic response. Some sense that if one simply makes an agency independent, it will be more effective. In this case, it seems that just the opposite is true. For the people who do security, this is a service which is not in business to serve warrants or to enforce the drug laws in our communities. It is in existence solely and its jurisdiction is restricted to defending Federal property, and the Federal property under the jurisdiction of GSA.

So it seems quite logical that you would want them to be joined at the hip with the people who decide whether the door is going to be fixed, whether a security alarm which is broken will be made to work.

That is, in fact, what we have. But, I mean, obviously, ideas don't come out of nowhere. I think there has been on the part of people in the Federal Protective Service a sense that they were somewhat neglected. I think the opposite has now happened. Some of the members I believe now believe that they, at least from me, are being too closely scrutinized, having been left on their own to define the mission, themselves. I do know a little bit about security and defining mission from the military, and I have defined the mission, and perhaps in a way that some don't like.

The mission is security in the buildings, and some would prefer to chase speeders down Interstate 95, a jurisdiction we don't have, and shouldn't have, and don't need to be expert in because others do it and do it better.

So, you could say, we have a little internal family argument.

We have devoted, as I've noted, more resources to training and to technology, and I believe we are doing a great job; I worry that some of the impetus for this separate service is, in fact, to get out from under some of these reforms, and I'm quite concerned about what the result could be.

Senator MOYNIHAN. Well, I couldn't more agree. The idea that you have put up buildings with security in mind, you run them with security in mind, and that security involves the specific officers who are assigned it.

Judge ROTH. Excuse me, Senator Moynihan, could I add something to what Mr. Peck has said?

Senator MOYNIHAN. Your Honor?

Judge ROTH. The security of the courts is the responsibility of the U.S. Marshals Service, and under them the court security officers, and we are very concerned about this legislation because it does not define how the Federal Protective Service's jurisdiction would line up with the Marshals Service.

Senator MOYNIHAN. Yes.

Judge ROTH. We tried to get an amendment in to clarify that this legislation would in no way impinge upon the legislative responsibilities of the Marshals Service. We were unable to get that amendment in, and for that reason we have very serious concerns about this legislation.

We also feel that the more cooks you have providing security—and my committee is involved with court security—the more cooks you have, the more problem you're going to have getting a good soup out, and for that reason we think we have enough chefs.

Senator MOYNIHAN. I will stop right there, Mr. Chairman, and suggest to you that when that bill comes over here we let it go nowhere. I just offer that as a thought.

Thank you very much.

Senator VOINOVICH. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman.

I share what I think is the feeling of this committee that the idea of having a policy which restricts the number of courtrooms to less than the number of active judges is wrong-headed, but I would even go beyond that and say the idea of having a single policy for every one of the 95 Federal districts is also nonsensical.

If I could use as an example the situation in the southern district of Florida, which is one of the districts affected by this judgment, of the 95 U.S. Federal districts, last year the No. 2 district in terms of jury trials was the southern district of Texas, with 293 jury trials. The No. 1 district was the southern district of Florida, with 375 jury trials, approximately 80 jury trials more than No. 2.

Second, it has an overall per-judge caseload which is 30 percent higher than the national average.

Third, this is a courthouse which started planning in 1993, the 10-year window being, therefore, to the year 2003. Under the current construction standards, it won't be open until the year 2004, and if it has to undergo redesign it might be 2005 or later, so we are already at least 1 year, and with this at least 2 years behind the 10-year window.

So, for all of those reasons, this seems to me to be a peculiarly inept policy, and then to attempt to apply it as if all of the 95 Federal court districts were homogenous adds to the absurdity.

You indicated that the Office of Management and Budget, Mr. Peck, had not consulted with you before they made this change.

Judge Roth, was there any consultation with the Judiciary before this recommendation was made?

Judge ROTH. There was none at all, Senator.

Senator GRAHAM. This would also seem to me analogous, if you had a school that you were about to build and you felt that it might be over cost, to have as the only way to reduce cost to cut out the classrooms, as opposed to maybe reconsider whether you wanted to put in parquet floors in the gymnasium or something maybe less expensive. Was there any consultation—if the goal was to reduce the cost of courthouses, was there any consideration of what the range of alternatives would be, or was the only alternative that was considered by OMB to reduce the number of courtrooms?

Mr. PECK. Senator Graham, I think that the OMB was starting from the assumption which is right, that we have a fairly sophisti-

cated benchmark system for deciding on the basic costs for a courthouse, given the amount of square footage we have. It allows for a certain quality level and then adjusts for labor markets and construction costs. Once you're there, the only way to reduce the cost is to reduce the scope of the building, or the size that you are going to build, and I think that is where they were going.

Having said that, I have to say I do fundamentally agree with you that on this issue of courtroom sharing, if it is to be done at all and done in an intelligent way, you would have to do it on a case-by-case basis, and you would have to look at the kind of cases that are in a courthouse. Some courts, like in Miami, have a lot of multi-defendant cases, which drives you also to different decisions about what kinds of courtrooms and how many courtrooms you have.

If one would ask me, that's how I would go about trying to decide where I would support sharing.

Senator GRAHAM. There's one other factor that I would like to request to get numbers analogous for those I'm about to give for the southern district of Florida. The estimate is that this courthouse, which has been under planning and design, as I indicated, since 1993, will cost \$2.5 million to redesign the building that is already just about construction-ready, and if there is a 6-month construction delay, the estimate is there will be an additional cost of \$1.6 million, and, as the chief judge feels, there, in fact, will be a 12-month delay, that number will double to 3.2 million. So somewhere between a third and a half of the projected savings is going to be eaten up in the cost of redesign and the additional construction cost incident to delay.

I'd be interested in your evaluation of those numbers for the southern district of Florida, as well as the other courthouses which are on the list. How much is the real savings after you take into account the consequences of redesign and delay?

Mr. PECK. I can't vouch for those numbers. We could provide you with an estimate.

There are a couple of projects on the list that were far enough into design and approvals—the Washington Courthouse comes to mind, too—that there will be both a time and fiscal cost to going back and redesigning. Whether that eats up the savings you'd have otherwise, I don't know. We'll have to take a look at that. We could provide that if you want.

[The information referred to follows:]

RESPONSE BY ROBERT PECK TO AN ADDITIONAL QUESTION FROM SENATOR GRAHAM

Question. What is the "real" savings for the projects on the priority list?

Response. The real savings from the fiscal year 2001 courthouse construction program will be \$140 million. Of the seven projects in the President's budget, Los Angeles and Richmond are new design starts, and Little Rock is the continuation of an on-going design project. Consequently, there will be no redesign cost impact on these projects. The courtroom sharing policy has no impact on the Gulfport, MS, project. The policy has a minimal effect on the Seattle project; the elimination of one courtroom will not affect the construction schedule for the courthouse.

The Miami and Washington, DC courthouse projects will require significant redesign to accomplish courtroom sharing, and the following describes the cost impact on each project.

COURTROOM SHARING IMPACT ON THE MIAMI, FL, PROJECT

The Miami project was suspended at about 40 percent of the total design effort for a 16-courtroom courthouse during the month of March 2000. GSA's redesign strategy assumes a simple scope reduction by removing 1 of the 4 courtroom floors and adapting another courtroom floor to accept additional chambers. The building reduction redesign will cost approximately \$1,000,000 and take an estimated 3 months to accomplish. The construction cost savings achieved by removing departures from the U.S. Courts Design Guide and sharing courtrooms is approximately \$12,000,000. Therefore, the total net savings to the project will be approximately \$11,000,000.

Any delay in issuing clear direction beyond August 2000 will translate into higher costs than reported in the fiscal year 2001 construction prospectus, regardless of the pursued option, including the full 16 courtroom courthouse. Depending on which option is exercised, 16 or 8 courtrooms, construction costs due to inflation are estimated to be up to \$260,000/month. Additionally, delay beyond this date will also slip the construction award into fiscal year 2002.

COURTROOM SHARING IMPACT ON THE WASHINGTON, DC, PROJECT

GSA estimates that the redesign (including management fees) of the DC Courthouse will cost approximately \$1,200,000 and can be completed within 11 months. The construction cost savings achieved by sharing courtrooms is approximately \$6,700,000. Therefore, the total net savings to the project will be approximately \$5,500,000. Any delay in issuing clear direction beyond June 2000 will translate into higher costs than reported in the fiscal year 2001 construction prospectus. Additionally, delay beyond this date will also slip the construction award into fiscal year 2002.

The concept for the redesign proposes the elimination of the northern portion of the building above the loading dock. The loading dock, chambers and offices within this space would be reprogrammed within the remaining annex, from space made available from the reduction of four courtrooms. In the future, the northern portion of the building can be constructed and the building concept completed.

Senator GRAHAM. I'd like to move to a different topic with my remaining time, if I've got some remaining time, Mr. Chairman, and that is the issue of security that you referred to, Mr. Peck.

I recently visited Jacksonville, FL, where there is a Federal building under construction, and the comments that were made to me were that the security standards that GSA is requiring are making it very difficult to build Federal buildings inner city, that they are almost forcing construction to go to suburban locations in order to be able to get the amount of setbacks and other security requirements.

In the case of Jacksonville, where they are building a building downtown, because of security reasons they were disallowed the request to connect to a light rail system which serves downtown Jacksonville so that people could go directly off the light rail into the Federal courthouse.

It seems to me that we have one Federal policy of security that is undercutting important Federal interest in terms of enhancing the quality of our inner cities and older downtowns and effectively using public transportation.

Mr. PECK. I know the Jacksonville project and I know of its potential connection with the light rail system. I didn't know that in the last design I had seen, there was a connection. I'll have to go back and take a look.

[The information referred to follows:]

RESPONSE BY ROBERT PECK TO AN ADDITIONAL QUESTION FROM SENATOR GRAHAM

Question. Please followup on the connection between the light rail system and the new courthouse under construction in Jacksonville, FL.

Response. GSA and local civic leaders from Jacksonville did discuss creating a secondary entry directly from the public transit station early in the design process. However, we decided that a connection would be inappropriate for the following reasons:

- *Aesthetics.*—The building is set back from the station to create a public plaza in front of the courthouse. This provides a sequence of urban space starting at the transit station, then proceeding through a public plaza, and ending, finally, in the Federal Courthouse. GSA felt strongly that this would provide a more pleasing effect to the pedestrian than a direct entry—elevated above the courthouse plaza—into the building. Moreover, the pedestrian traffic to and from the transit station and the courthouse animates the public plaza, which would be missing with a direct, elevated connection.

- *Security.*—U.S. Marshals and the local court considered a second entry unacceptable because it would have increased security risks.

- *Expense.*—A second entry would have required an additional U.S. Marshals entry station—fully equipped and manned with its costly personnel.

We believe the single entry design in Jacksonville is an example of GSA's commitment to creating urban spaces that are both inviting to the public and secure for the building tenants.

You have put your finger on a very important issue for us.

One, some happy news: in Miami, the courthouse we have designed does have a significant setback on all sides. We are trying to turn that into an amenity for the city, a pleasant place, by turning the area into a park. We've even talked to the judges with some support about having a little cafe, a place that you can actually attract people.

I have to say, some of the security folks, both in the Marshals Service and I think some of my own, are aghast at the suggestion that you might actually have people in their security setback. But one of the lessons of security is the more people there are, the more good people you attract to an area, the harder it is for the bad people to have their way.

This is a real difficult issue. I mean, we have done the following things: we are re-evaluating our security criteria and rewriting them. There has been a tendency, since Oklahoma City—and, in fact, with respect to the embassy program, as well—again to have a one-size-fits-all policy that, for instance, a 100-foot setback is absolutely necessary. Well, without getting into the real numbers, we know if 100 feet is good, 200 feet is probably better and 500 feet is better still, and you wonder where that number quite comes from.

There are other ways to provide security. Some of them, however, are expensive. If we really believe that there is, as there is in some cases, a risk of an explosion near a building, you either need a setback, or you need to strengthen the structure of the building, which adds expense. But at least there is that alternative.

We are quite concerned, because we are pushing hard on the downtown policy. As I think you know, we have an Executive order from two Presidents, Carter and Clinton, that we are abiding by, and we are concerned that we might not be able to get sites.

With respect to the courthouse program, it is almost a given that you have to be downtown. Very few courthouses have strayed out to the suburbs, and we don't see that happening.

We also believe there are lots of ways you can be creative and provide security and do it in downtown areas. Some of it, I have to say, is going to take some leadership on the part of all of us in recognizing that there are some risks, no matter what you do, that

you do the best you can to deal with the most-likely risks, and that all of us in the public service have to live with perhaps a little bit more than people in the private sector do.

Senator GRAHAM. If I could just close, Mr. Chairman, I think at some appropriate time a hearing on this specific subject of the effect of GSA policies, including security policies, on the desire to have the Federal Government with a presence in our major downtown areas, would be a valuable contribution to this dialog.

Senator VOINOVICH. A good suggestion.

It would be interesting if you could give us some information about where they are being built and if there is a movement toward moving things toward the suburbs. Just take the last 3 years. That would be interesting just to see what the statistics are.

[The information referred to follows:]

RESPONSE BY ROBERT PECK TO A QUESTION FROM SENATOR VOINOVICH

Question. Please provide information related to the courthouse construction program for those that are being built in downtown areas and those that are moving toward the suburbs.

Response. GSA has reviewed the locations for the courthouse projects that are currently under construction. Of the 14 projects that will be completed in Fiscal Years 2000, 2001, and 2002, 13 courthouses are in their city's Central Business Districts: St. Louis, MO; Tucson, AZ; Hammond, IN; Omaha, NE; Montgomery, AL; Phoenix, AZ; Albany, GA; Las Vegas, NV; Cleveland, OH; Corpus Christi, TX; Greeneville, TN; Jacksonville, FL; and Brooklyn, NY.

One courthouse project is in a suburban location on Long Island, Central Islip, NY. The courthouse is being built on a donated site adjacent to a county courthouse to form a judicial center in the community. Congress amended Title 28 of the U.S. Code to designate Central Islip, NY, as a place for holding court.

Mr. PECK. Interestingly, I believe we are connecting the Cleveland Courthouse with a pedestrian walkway to Tower City, aren't we?

Senator VOINOVICH. Yes, you are. Yes. And that's a public/private partnership, and I congratulate——

Mr. PECK. We may have an inconsistency going on here. We'll take a look.

Senator VOINOVICH. OK.

I've got a couple more questions.

First of all, if we continue to Federalize crime in this country, which seems to be the tendency, you won't have enough courtrooms. You're going to be squashing judges in because you're just not going to have the space. This is not a good idea because you're going to need more space. By the time you build the new ones, they will be obsolete. So that's one argument, logical one, common-sense one.

The other is I'm pleased that you are finding that your employees in the Federal service can do a good job of maintaining your buildings, which I have contended. There's always a tendency to think that the only way to get anything done properly is to privatize. I think you are finding that you've got good employees in the Federal Service, and if they are given the training and the empowerment, that they can get a job done. I think this needs to be said more often, because there is a feeling about that the only way you can get anything done is to send it out to someone else. I think that our Federal employees can do a darned good job if they

are given the training and the tools and the empowerment to get the job done.

And the last thing is that—maybe Senator Moynihan might be interested in this—you're asking for money for authorization to build the U.S. mission to the United Nations. It is my understanding that we haven't been able to even appropriate enough money to tear the building down. I wonder if we ought not wait for that to happen before we authorize the construction of the building.

Senator MOYNIHAN. Mr. Chairman, if I could interject, the building is falling down, so there really won't be—

[Laughter.]

Senator BAUCUS. While we're on foreign buildings, Mr. Chairman, what is the status of their embassy in Beijing?

Mr. PECK. Fortunately, I don't have to do the embassies. The State Department does those. I can find out.

Senator BAUCUS. I can tell you it is a mess.

Mr. PECK. Interestingly, there is a security issue that we can't build a building in Berlin because our security standards don't mesh with the city plan for Berlin. They gave us one of their great sites. In Beijing I know it is an old building and also great security concerns, probably made all the stronger by Ambassador Sasser's having been nearly held captive in his building.

Senator BAUCUS. To say it is an old building is an understatement. It was given to us many, many years ago by Pakistan. It is an embarrassment to America.

Mr. PECK. A great legacy.

Senator VOINOVICH. Can you comment on that U.N. question, please?

Mr. PECK. Yes, sir, on the U.S. mission, it is true that I believe the appropriators last year did not appropriate. We have a design. We are ready to go. Obviously, we are not going to demolish without approval.

I mean, we could get stuck in this who goes first issue, and, obviously, we urge the committee to approve this project in full and let us go ahead as we get the funding.

It really is necessary. The building is old. You can hear from my comments, I am not an alarmist on security, but this is a building that really has no security. It is not adequate to the size of the U.S. mission.

No matter how one feels about the United Nations, we clearly have a presence there. We are the host country. The U.S. mission building is across from the U.N. Building. It is just in a terrible state, and we think the project is needed.

I'd suggest going—obviously, it is your call. I'd suggest going ahead and approving it and letting us go and talk to the appropriators and see if we can get the funding.

Senator VOINOVICH. OK. Are there any other questions?

[No response.]

Senator VOINOVICH. Well, we'd like to thank you very much for being here.

Mr. PECK. Thank you.

Senator VOINOVICH. The meeting is adjourned.

[Whereupon, at 11:40 a.m., the subcommittee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Thank you, Mr. Chairman, for holding this hearing on GSA's fiscal year 2001 Capital Investment and Leasing Program including the courthouse construction program.

I am pleased that the President's fiscal year 2001 budget request includes seven new courthouse construction projects, the first such request since fiscal year 1997. Congress has recognized the need to provide the judiciary with adequate, secure space for courts and I am happy that the Administration has followed suit to acknowledge this need.

The absence of courthouse funding in the budget for 3 years, with Congress only able to appropriate funds in one of those years, has placed GSA behind schedule in delivering needed space for the courts and created a lengthy backlog of projects. Although, the Administration's fiscal year 2001 proposal still falls short of funding the courthouse projects which this committee has already authorized, it is a good first step.

There are two courthouse projects which I would like to bring to the committee's attention.

First, the current space and security situation at the Richmond, Virginia, courthouse facility is inadequate and warrants action. The court complex is operating at full capacity and most court and court-related components are experiencing operational difficulties. There is no room within the existing facility to accommodate any growth. Any further delay of the project would impede greatly the court's ability to accomplish its work. Thankfully, the site and design for the Richmond Courthouse, housing the entire District Court and Bankruptcy Court, is among the seven courthouse projects in the budget proposal.

Second, I am concerned that the existing courthouse at Norfolk has run out of space and presents serious security concerns. It is one of the 18 projects which this committee has authorized and identified by the judiciary as one of the most crucial needs. Prisoners, litigants, jurors, public and judges share the same elevators and hallways. Funding for the annex project is needed to remedy the existing problems and provide for the 10-year needs of the court. The current problems and inadequacies have reached a critical level and immediate funding is needed for construction of the annex project, which will allow the courts to meet their mission in the Eastern District of Virginia. Unfortunately, the present budget does not include funding for this necessary project.

I also have two concerns over the present courthouse proposal.

My first concern is over the ranked priorities for courthouse construction in the President's budget. After much deliberation this committee recognized that a priority order established by the judiciary would be the most fair solution in ranking which of the many courthouse projects would begin site, design or construction work. Although the Administration budget does provide funds for six of the top seven projects identified by the judiciary, it does not strictly follow the order prescribed and deviates in one case. I suspect my colleagues from New York will bring this issue up in greater detail but I wanted to register my concern as I do not wish there to be precedent established that would delay projects identified as necessary in my state or in my colleague's districts.

Lastly, I wanted to bring attention to the courtroom sharing issue. A number of Federal judges in the Commonwealth of Virginia have brought to my attention the decision by OMB to have all judges share courtrooms contrary to established Judicial branch policies. Although no representative of OMB is here to explain their rationale, I wanted to let the committee know that I am concerned with this decision on many fronts and am eager to understand the rationale.

Thank you, Mr. Chairman.

STATEMENT OF ROBERT A. PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE,
GENERAL SERVICES ADMINISTRATION

Good morning, Mr. Chairman and Members of the Subcommittee, my name is Robert A. Peck and I am the Commissioner of the Public Buildings Service. Thank you for inviting me here today to discuss the Fiscal Year 2001 Capital Investment and Leasing Program. Before I discuss the specifics of our program, I would first like to give you an overview of our overall responsibilities and highlight a number of Public Buildings Service initiatives that are improving the way we do business.

BACKGROUND

GSA's Public Buildings Service is the largest owner/operator of commercial-style real estate in the United States, managing 350-million square feet of space in office buildings, courthouses, laboratories and border stations, and housing one million Federal employees. Approximately 55 percent of that space is in 1,993 government-owned buildings, housing nearly 500,000 employees. The remainder of the space and employees is housed in approximately 6,400 privately owned leased buildings. Our customers include all Federal departments, independent agencies and commissions, the Judiciary, and Members of Congress.

Our funding comes principally—in fiscal year 2000 it is coming exclusively from the rents that we charge to the more than 100 Federal agencies. The rent revenues, expected to amount to approximately \$5.5 billion in fiscal year 2000, are deposited into the Federal Buildings Fund (FBF) and are used to operate the government's buildings, pay rent to the private sector for our leased space, provide security, and fund our administrative costs. More than 90 percent of the \$5.5 billion we plan to spend in fiscal year 2000 will be paid out in the form of contracts with the private sector. More than half of the fiscal year 2000 expenditures, \$3 billion, will go toward lease payments in private buildings.

Since the Oklahoma City bombing, we have doubled our rate of spending on building security, doubled the size of our uniformed force, and improved our security organization to upgrade its capabilities and focus it on the violent threats we face.

Improved Performance through Businesslike Measures

While we carry out the public buildings program in accordance with government contracting procedures and socio-economic preferences, we are now operating more like a business. Our performance measurements link our budgeting process to performance in tangible ways. We have established nine performance measures, which have quickly become known as the "Big Nine" in our organization. These measures have allowed our 11 regions to compete among each other to do our business in the cheapest, best, and fastest manner possible. Regional budget allocations and even individual bonuses are tied directly to a region's ability to meet specific performance improvement targets.

In business, they say you get what you measure and we have found that, too. Since we began our "Linking Budget to Performance" program, we have had the following results:

- Our funds from operations have increased approximately 38 percent from fiscal year 1998 to 1999.
- We have reduced the non-revenue producing space in our total inventory from 13 percent to 10 percent in just the last fiscal year.
- Our operating costs per square foot in government-owned space are approximately 13 percent below the private industry average; in the past 3 years, our cleaning costs per square foot have actually gone down, while the private industry average has gone up.
- The average rents we have paid in our leased buildings across the country have been at or below the average rate that private sector tenants pay, with a cost avoidance to the government in the tens of millions of dollars.
- The average time it takes us to negotiate new leases for client agencies is down from 244 days in 1996 to 152 days in 1999, a decrease of 38 percent.
- Our energy consumption was reduced 17.3 percent from 1985 to 1999. Our goal is to further reduce this another 2.7 percent by the end of fiscal year 2000 and an additional 10 percent by the end of fiscal year 2005.
- Our customer satisfaction scores, measured in hundreds of buildings by the Gallup organization, have improved steadily from 74 percent in 1993 to 80 percent in 1998. Our long-term customer satisfaction goal is 85 percent.

These results are depicted graphically in an attachment to my statement.

This improved financial performance has a direct bearing on the capital program we are proposing. By pricing more realistically and reducing expenses, we have produced more net income, which for us is the only available source of funding to upgrade our aging buildings, and thus provide Federal workers the productive workspace they need. Increased net income allows us to propose more capital improvement projects. We are proposing some new construction funding from the FBF, as well. We consider this to be a secondary priority for FBF net income and are recommending it for some urgent security and law enforcement projects only.

Improving the Public Quality of Public Buildings

In addition to focusing on our bottom line, the Public Buildings Service has a broader goal of improving the benefits that Federal buildings bring to local commu-

nities across the country, recapturing the tradition of quality and vitality in Federal buildings that was begun by Washington and Jefferson.

- We are designing and constructing landmark public buildings that are efficient and dignified, sources of community pride, and positive government investments in their localities.
- Our urban livability program has improved the way we integrate our site and design decisions with local planning and development needs. We are making public building plazas centers of downtown activity, in the tradition of the American courthouse square.
- We have kicked off a First Impressions program to redesign the entry and lobby areas of our Federal buildings, making them more welcoming and functional as well as secure for the public and employees.

THE CAPITAL INVESTMENT AND LEASING PROGRAM

This month we submitted to Congress the GSA Fiscal Year 2001 Capital Investment and Leasing Program, which you have before you today. We are pleased to note our proposed budget request this year includes a substantial new construction program as well as an increase in the amount proposed for critical repair and alteration projects.

The highlights of the program include:

Projects Funded from the FBF

- 9 prospectus-level (non-courts) design and new construction projects estimated at \$82,351,000;
- 14 prospectus-level repair and alteration projects budgeted at \$349,278,000;
- 12 prospectus-level repair and alteration designs for future projects at \$21,915,000;
- An ongoing chlorofluorocarbon reduction and energy-saving programs budgeted at \$10,000,000 and \$20,000,000, respectively; and
- A glass fragmentation program budgeted at \$30,000,000.

Projects Funded from a Direct Appropriation to the FBF

- 2 new construction projects—the FDA consolidation in Montgomery County, MD, for \$101,239,000 and ATF Headquarters project in Washington, DC, for \$83,000,000; and
- 7 new courthouse construction projects totaling a budget request of \$488,464,000.

Capital Planning

Our Capital Investment and Leasing Program plays a key role in providing the necessary resources to maintain the current real property assets and acquire new or replacement assets. Our proposed projects are evaluated in the context of the entire national portfolio. We consider three options when evaluating our client agency requirements: construction and acquisition, repair and alteration, or leasing space from the private sector. When evaluating and prioritizing our capital program, we consider a number of factors:

- Economic justification in terms of financial return and present value cost;
- Project timing and execution;
- Physical urgency based on building conditions;
- Customer urgency; and
- Historic preservation and community considerations.

Repair and Alteration Program

More than half of our government-owned buildings are older than 50 years and nearly a quarter of the inventory bears historic designation, so we have a particularly significant need for funds to maintain and renovate our existing inventory. Our first capital program priority therefore must be repair and alteration of our existing inventory to ensure that its value and condition do not decline. For fiscal year 2001, we are proposing a budget of \$721.2 million, an 8 percent increase over \$665.6 million received in fiscal year 2000. Our annual repair and alteration program is approximately 2.5 percent of the inventory's replacement value, which falls within the range (2–4 percent) of private sector practice. However, given the age of the inventory, we are currently studying what is an appropriate level of funding.

To help allocate the limited resources of the FBF for repair and alteration projects, we use a Return on Investment (ROI) methodology—in addition to the criteria highlighted above. ROI determines if a project adds or detracts from the net income the building contributes to the FBF after project completion. Simply stated, if we invest dollars in a building, we want to make sure that the investment will

bring increased revenues. Using a ROI approach in evaluating projects assists our efforts in strengthening the long-term fiscal health of the FBF.

New Construction and Acquisition

Through revenues generated by the FBF, we are proposing to fund 7 border stations; demolition and construction of a new U.S. Mission to the United Nations; and the acquisition of a site and design of a new Federal Bureau of Investigation (FBI) Field Office. By increasing our net income—through new pricing policies and our focus on performance measures—we have released some of that net income for modest, yet urgent, security-related new construction projects. Nonetheless, we continue to have unmet needs in our existing buildings and our first priority for the use of net income is for building repairs and alterations.

Through a direct appropriation, we are requesting funding and authority for 7 courthouse projects across the nation, the FDA consolidation in Montgomery County, MD, and the ATF Headquarters project in Washington, DC. You will also notice a request for your Committee to authorize the Suitland, MD, NOAA project. Design funds for this urgently needed facility, which will house some of the nation's most important weather satellite technology, was provided in the Department of Commerce's fiscal year 2000 appropriation. Our request for authorization, along with an advance appropriation requested in the Fiscal Year 2001 President's Budget, will allow GSA to proceed expeditiously with the design and construction of this important facility. Our fiscal year 2001 budget request also includes advance appropriations in fiscal years 2002, 2003, and 2004, which will complete funding of the FDA consolidation in Montgomery County, MD.

As you know, this is the first year the Administration has requested a courthouse program since 1997. The fiscal year 2001 funding request for new courthouse construction reflects the Administration's view that courtroom sharing is a cost effective means for providing the space needed by the courts. This has resulted in the elimination of 22 courtrooms in the 7 new courthouse projects proposed in the budget. Although some redesign will be required, GSA's fiscal year 2001 budget request was reduced by approximately \$25 million as a result. Our projections indicate that the expenditure of almost \$33 million will be avoided in future years as these projects move from the design phase into construction. Additional significant cost savings of approximately \$85 million will result, for instance, from the construction of a companion courthouse to the Roybal Building in Los Angeles, as opposed to a new stand-alone courthouse.

The following table summarizes the status of the courthouse construction program:

| Project Stage | Number of Projects | |
|----------------------------|--------------------|---|
| Completed | 25 | 9 completed in 1999 |
| Construction Funded: | | |
| Under Construction | 15 | 9 to be completed in fiscal year 2000* |
| Construction Pending | 6 | Fully funded and authorized |
| Partially Funded: | | |
| Site Acquisition | 3 | Received only site funding/authorization |
| Design | 1 | Received only design funding/authorization |
| Site and Design** | 12 | Received only site and design funding/authorization |
| Total Projects | 62 | |
| Total Dollars | \$3.5 Billion | |

*Albany, GA; Central Islip, NY; Hammond, IN; Las Vegas, NV; Montgomery, AL; Omaha, NE; Phoenix, AZ; St. Louis, MO; Tucson, AZ
 **The Seattle, WA, Courthouse project is an example where GSA is in the site acquisition and design process. GSA will not proceed with construction until such funding and authorization are obtained.

The 25 projects that have already been completed provide 244 courtrooms for the Judiciary's use. The 9 projects that will be completed this fiscal year will add 123 courtrooms to the inventory.

The remainder of the new courthouse construction program is projected to cost approximately \$4.5 billion. This amount includes construction funding for the 16 projects that have received only partial funding and also includes full funding for the 97 projects that have received no funding to date.

Leasing Program

This year we have also submitted for your consideration 12 lease prospectuses. These 12 leases total approximately \$80 million in obligations in fiscal year 2001. These prospectus-level leases represent a small percentage of our \$2.94 billion rental of space budget request for fiscal year 2001.

By managing ourselves in a more business-like manner, we are working to control the growth of our leased inventory. As mentioned previously, one of our performance measures is the amount of vacant space in our inventory. We focus on reducing vacancy in both owned and leased space by renovating and backfilling vacant-owned space, realigning space assignments to consolidate vacant space, and where possible, buying out leases and moving tenants from leased to vacant-available space in Government-owned buildings. We believe our efforts have been successful. The proposed \$721.2 million repair and alteration program, for instance, will allow us to backfill more than 1.1 million square feet of vacant space in our owned inventory, which in many cases involves moving client agencies back into government-owned buildings from leased space.

CONCLUSION

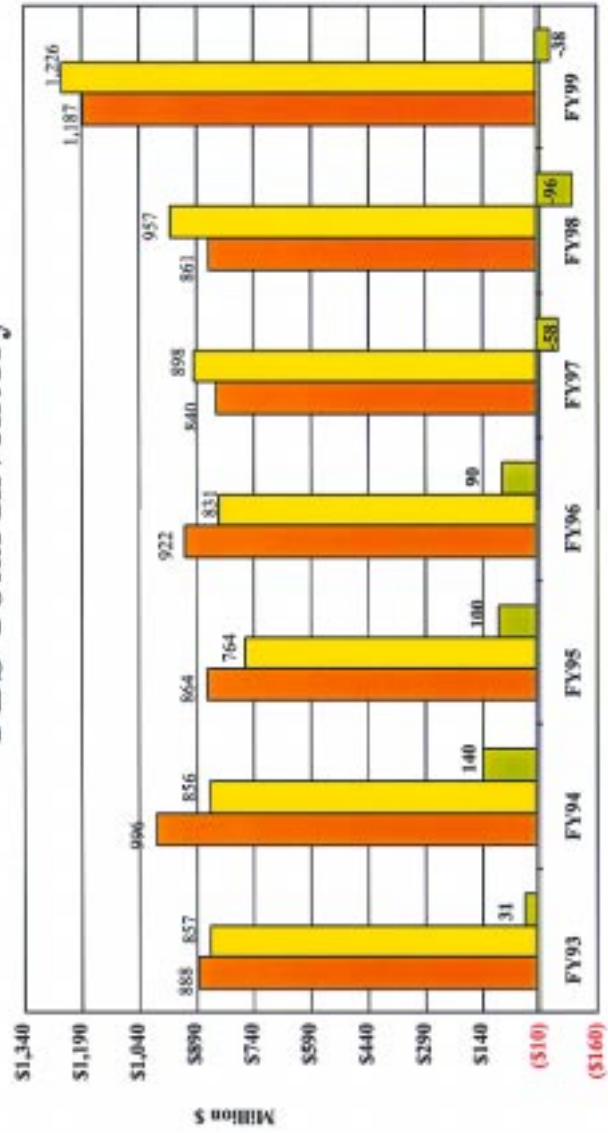
While the FBF can support maintaining our existing inventory and a modest new construction program to fund border station needs and specialized law enforcement needs, such as the occasional FBI building, it cannot support a large-scale new construction program, such as that needed by the U.S. courts. This is evidenced by the \$3 billion Congress has appropriated to the FBF between fiscal years 1990–2000.

To propose a large new construction program as we have this year, it is necessary for us to ask for an appropriation to the FBF. We have found, however, that our business-like approach has helped us maximize the net income from our portfolio, and in turn, invest more in our existing inventory. The higher our net income, the higher the number of prospectus-level repair and alteration projects we are able to submit to Congress. A higher net income also allows us to fund more new construction projects within the FBF, which is evidenced by the \$102,194,000 we submitted in the fiscal year 2000 budget and the \$107,085,000 we are proposing for fiscal year 2001.

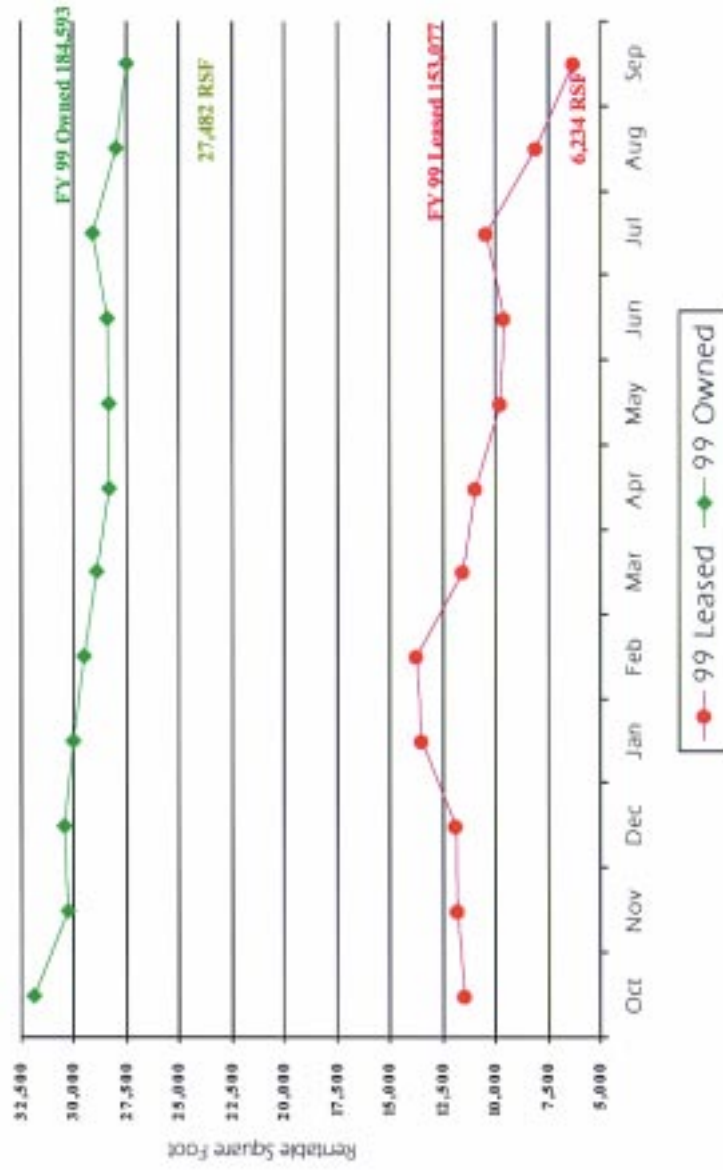
Last year marked the 50th anniversary of the founding of the General Services Administration. We were created as an outgrowth of the Hoover Commission in 1949. Over the past year we have been evaluating the impact that additional asset management tools would have on the Government's management of real estate. We are working closely with the Administration, and hope in the near future to submit a proposal that Congress agrees will allow us to operate our real property inventory even more effectively. Finally, we are also evaluating the need to increase the prospectus threshold above the fiscal year 2001 level of \$1.99 million. We believe a higher threshold would enable us to meet agencies' space needs—such as replacing a single building systems or backfilling vacant space—more rapidly than the current threshold allows, and would still provide for the Committee's review the significant capital improvement and construction projects that Congress has traditionally been concerned about.

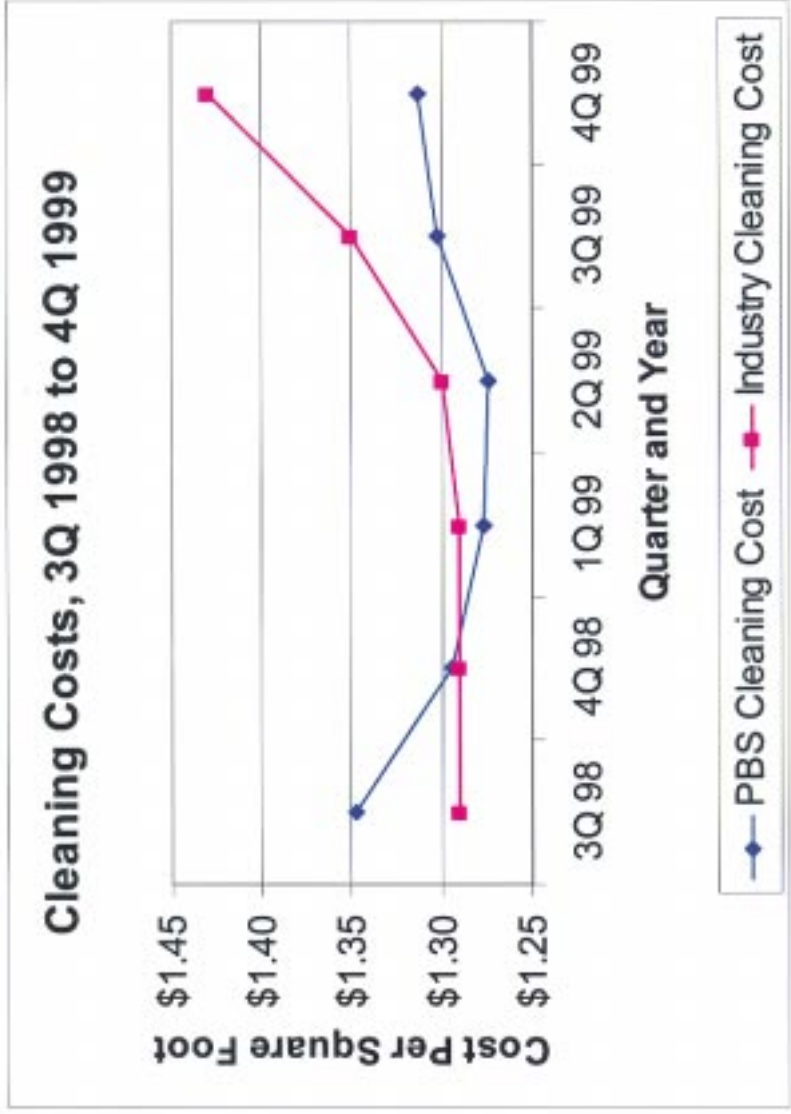
Mr. Chairman, this concludes my formal statement. I would be glad to answer any questions that you may have about our proposed Fiscal Year 2001 Capital Investment and Leasing Program, or any other aspects of the public buildings program.

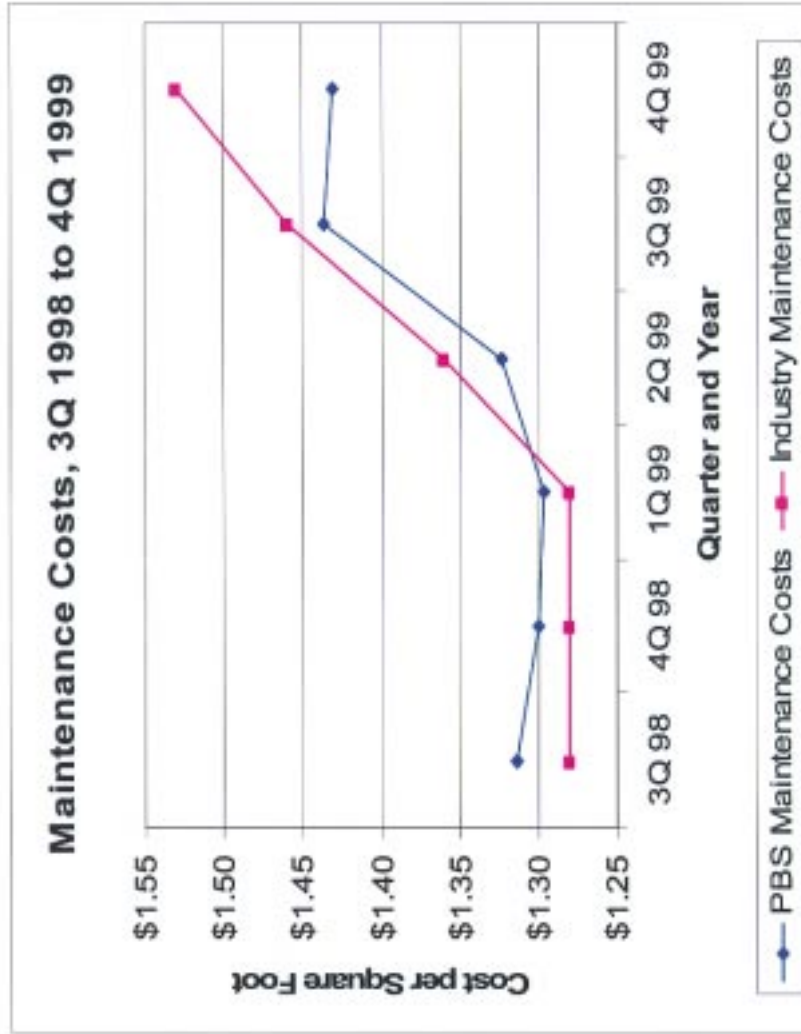
Funds From Operations PBS Total Inventory



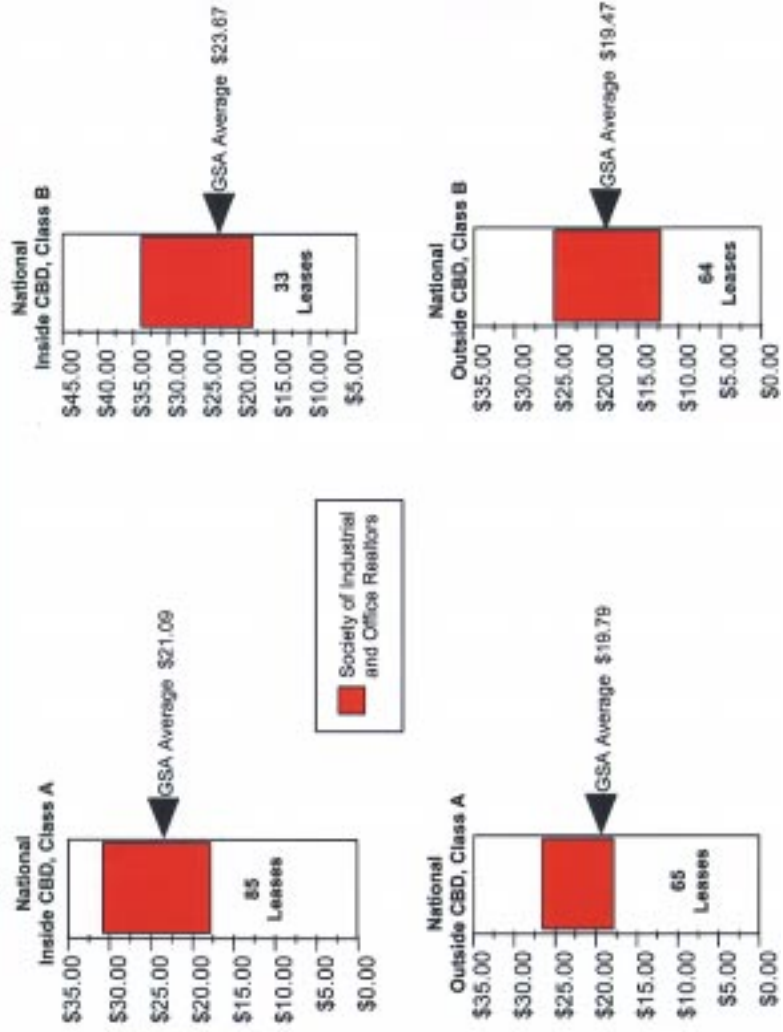
Space in the PBS Inventory Producing No Revenue



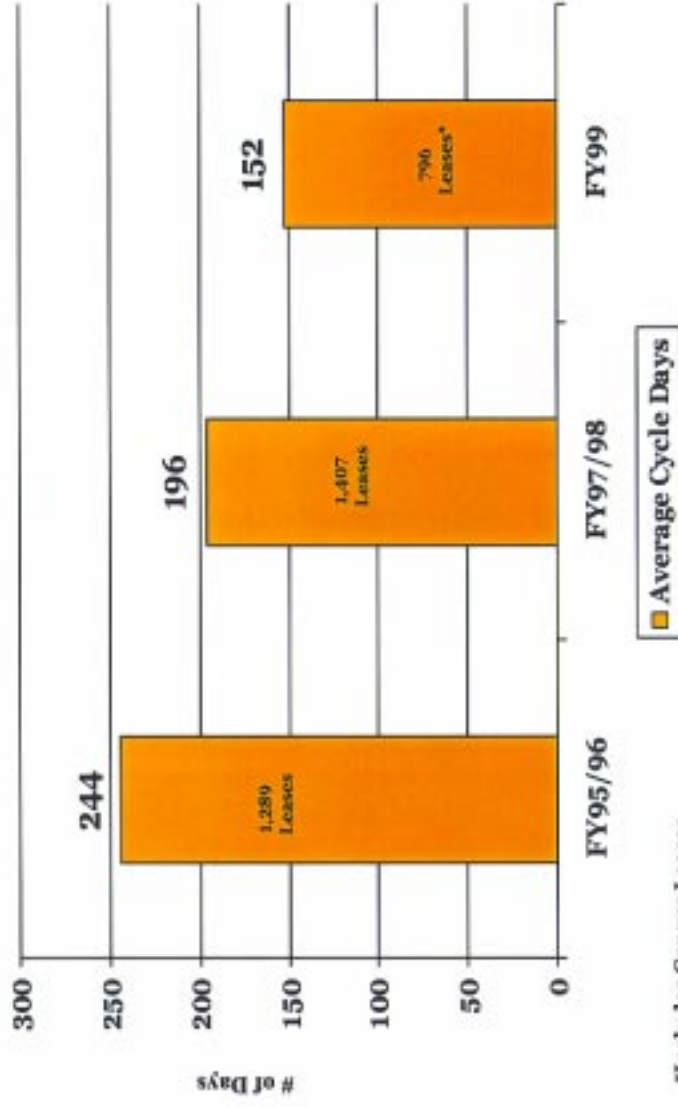


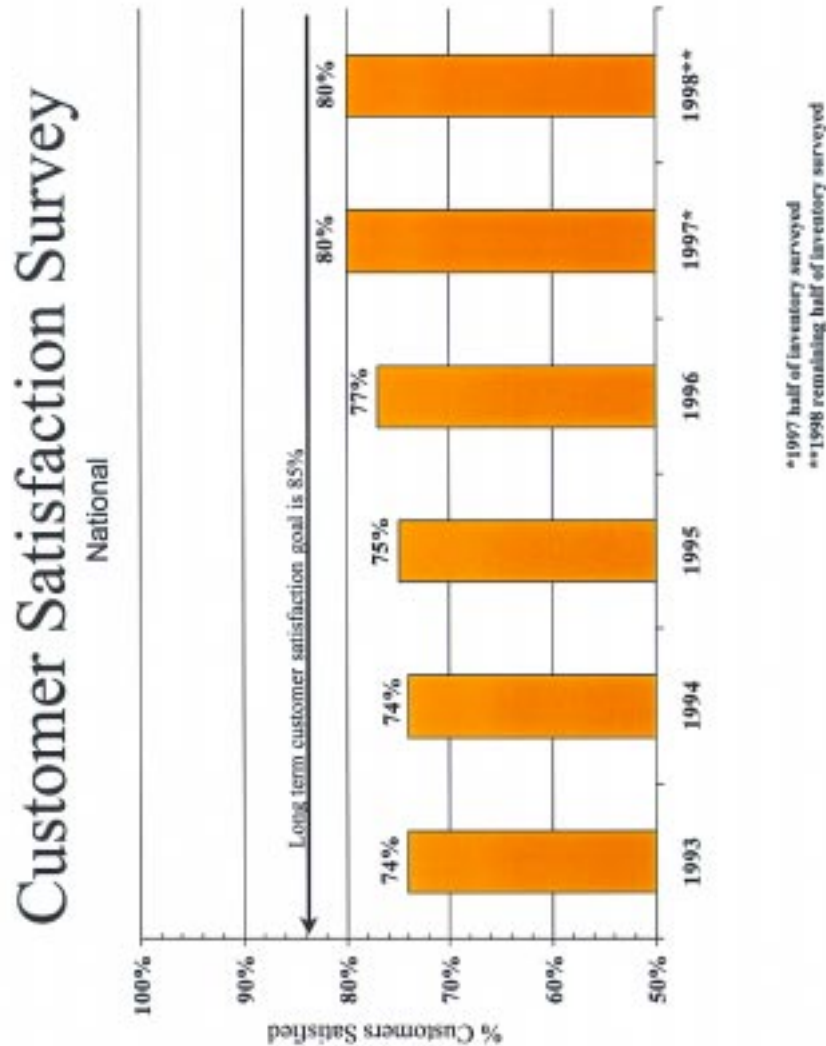


Average Fully Serviced Office Lease Cost/Sq.Ft. vs Industry Range



Cycle Time for New Leases





RESPONSES BY ROBERT PECK TO QUESTIONS FROM SENATOR VOINOVICH

Question 1. If you would please explain for the committee the current status of the U.S. Mission to the United Nations. (NOTE: There was no funding available for the demolition of this building in the fiscal year 2000 Treasury, Postal Appropriations bill.)

Response. The U.S. Mission to the United Nations project requires demolition of the existing U.S. Mission building and the construction of a new U.S. Mission building on the existing, government-owned site. Congress authorized \$3.163 million for design and \$4.3 million for demolition. P.L. 105-277 (FY 1999 appropriations) including \$3,163,000 for design of the new building.

The project's architectural design contract was awarded in June 1999; design will be completed in December 2000. GSA requested \$4.022 million for demolition in fiscal year 2000, and as you note, we did not receive that appropriation. The GSA fis-

cal year 2001 budget includes a request for \$58.3 million for the demolition and construction phase of the project.

As we testified, to correct serious security and functional inadequacies in the existing building, we need the new U.S. Mission building. With design nearing completion, it becomes more critical that we proceed to demolition and construction. Delaying construction once design is complete always increases cost. We are preparing to move U.S. Mission staff to temporary leased space during the demolition and construction. GSA is currently conducting a solicitation for this leased space.

Question 2. What are your views regarding S. 1564, the Cochran, Federal Courts Budget Protection Act?

Response. S. 1564 would require the Administrative Office of the U.S. Courts to submit the Judiciary's annual budget request directly to Congress, bypassing the regular Federal budget review process. The Judiciary's submission would include funding requests for new construction, site acquisition, and repair and alteration activities for courthouses and other space occupied by Judicial branch agencies.

GSA opposes S. 1564 for the following reasons:

- A primary role that GSA serves within the Government is to consider the *total housing needs of all Federal agencies within a community*. This bill would allow the Judiciary in isolation, i.e., without considering the needs of other agencies, such as the U.S. Marshals Service and U.S. Attorneys office, or even non-court-related agencies that may have a housing need, to develop courthouse projects. When looking at the space requirements of the Federal community, we also survey the existing GSA inventory for vacant or underutilized space. Under S. 1564, the Judiciary could potentially request construction funds for new court space even if we have available space in existing Federal facilities. This is clearly not the most financially prudent way to obtain maximum value from the Federal real estate portfolio.

- GSA's *benchmarking system* allows us to set an appropriate, objectively determined budget for each proposed courthouse project. This benchmark takes into account the unique needs of the courts and is adjusted for the variation in construction costs in different parts of the country. Although S. 1564 would have GSA provide estimates to the courts, the process contemplated by the bill would compromise the independence and credibility of our benchmark estimates.

- S. 1564 also *complicates funding* for courthouse construction, site acquisition, and renovation projects. For instance, GSA performs many preliminary studies and analyses, such as environmental impact studies, prospectus development studies, and site acquisition analyses, before requesting funding for capital projects. GSA funds these studies from an account within the Federal Buildings Fund that is separate from the construction account to which the Judiciary's appropriated funds would be deposited. It is unclear in S. 1564 how such studies would be funded.

- GSA would also *lose reprogramming flexibility*, including (1) reprogramming funds among other GSA new construction projects and court new construction projects; and (2) reprogramming from other budget activities within the Federal Buildings Fund. Our ability to shift funds to compensate for up to 10 percent escalations in construction costs—funds which have to come out of economies in our other projects or programs—is key to the effective and timely completion of projects.

In summary, we believe the current system is one that is highly objective and allows for the necessary checks and balances against which the courts' assessment of its space needs are evaluated.

Question 3. Could you please explain the model that OMB used to determine courtroom sharing at a ratio of 2 courtrooms for every 3 judges? Do you agree that in some instances, like in the case of Miami and DC, that changes to the design may increase the total cost of construction of these projects?

Response. OMB asked GSA to identify the total number of resident district judges, including senior judges, who would sit in each of the seven courthouse locations. OMB then calculated two-thirds of that number, and rounded up, if necessary, to the next highest whole number to determine the number of district courtrooms to be provided. For example, if there would be 8 district judges in a location, 6 district courtrooms would be constructed: $(8 \times \frac{2}{3} = 5\frac{1}{3}, \text{ rounded to } 6)$. The number of magistrate courtrooms and bankruptcy courtrooms to be constructed in each location was calculated in the same way.

With regard to Miami and Washington, DC, both projects would require redesign to accomplish the necessary reductions in project scope. However, the total cost of the projects, including redesign costs, will be reduced by eliminating departures from the U.S. Courts Design Guide and following the courtroom sharing model. The total estimated project cost for Miami will be reduced from \$148,068,000 to \$137,072,000. This reduction is a result of eliminating 4 courtrooms that are departures from the U.S. Courts Design Guide and 4 courtrooms as a result of the shar-

ing policy. The total estimated project cost for Washington, DC will be reduced from \$115,201,000 to \$109,153,000 due to courtroom sharing. We estimate the costs of re-designing to be \$1.5 million in Miami and \$1.2 million in Washington. The additional design costs for both courthouse projects are included in the above estimated project costs.

RESPONSE OF ROBERT PECK TO QUESTION FROM SENATOR SMITH

Question. I am interested in the development of the Southeast Federal Center property next to the Washington Navy Yard. This is property owned by GSA, and I would like to know what plans if any, GSA is considering for its future use?

Response. The Southeast Federal Center (SEFC) comprising 55 acres on the Anacostia waterfront, is the largest federally owned tract in Washington, DC, suitable for development. The site is a historic district eligible to be listed on the National Register of Historic Places. GSA has included a \$5 million request in its fiscal year 2001 budget to complete construction of the SEFC seawall and to accomplish additional environmental assessments. The total remediation cost for the SEFC is \$35 million.

GSA has had various plans in the past to develop the property. In fiscal year 1991 and fiscal year 1993, Congress appropriated \$198 million to construct new headquarters buildings at the SEFC for GSA and for the Army Corps of Engineers. In fiscal year 1994 and fiscal year 1995, Congress rescinded that appropriation. In fiscal year 1999, GSA proposed an appropriation of \$14 million for design of a \$294 million DOT headquarters on the site. In conjunction with the request for design funds, a prospectus requesting authorization of the DOT headquarters as a new construction project was submitted to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works. The Committees declined to approve the prospectus for a construction project, and instead authorized GSA to lease space for DOT.

We are investigating alternatives to develop the SEFC and are reviewing authorities proposed in the House legislation regarding the site's development. Because of past development funding constraints and recent rethinking of planning objectives for the area, and because GSA has become more knowledgeable about urban redevelopment strategies that have worked around the country, GSA favors mixed-use development (i.e., a mix of office, retail, housing and possibly other uses) for the site, rather than the exclusive Federal office construction envisioned in earlier GSA plans. Moreover, the move of some 6,000 personnel of the Naval Sea System Command into the Navy Yard next door, bringing employment at the Navy Yard to more than 11,000, increases the desirability of the SEFC as a mixed-use location.

Last fall, GSA retained a real estate consulting firm to evaluate mixed-use development opportunities at the SEFC. The consulting firm has determined that there are a number of development opportunities, which include office space, approximately 500 housing units, a 200-room hotel, and limited retail.

One potential development opportunity for a portion of the SEFC remains the headquarters for the Department of Transportation (DOT). Currently, GSA is procuring 1.35-million square feet of leased space to consolidate DOT in downtown Washington, DC. We are employing a two-step procurement to consolidate DOT. As part of the procurement, GSA is offering for sale at fair market value an 11.7-acre parcel at the SEFC. Two developers who took us up on the offer to use that site to construct a DOT headquarters, were invited to participate in phase 2 of the procurement; two offerors proposed building on sites elsewhere in the city, and one offeror is proposing to retain DOT at its current location. GSA plans to make an award for the DOT headquarters project in September 2000.

GSA also believes that the SEFC and the Anacostia waterfront area in general would be a likely place for and would benefit from having on the site what developers refer to as a "destination" use: a cultural or entertainment facility that draws large numbers of people, both residents of the city and tourists. One such destination use that has been suggested might be an expanded Navy Museum, relocated from its current building in the Navy Yard, and possibly a separate Navy Museum, with display areas and a parade ground, as well. We believe these uses would stimulate development of the SEFC and surrounding area, as well as fulfilling an important public purpose.

RESPONSE OF ROBERT PECK TO QUESTION FROM SENATOR BAUCUS

Question. The courts and OMB seem to be at opposite ends of the spectrum on this issue. What factors should be considered in an effective courtroom sharing model?

Response. Ideally, a courtroom sharing model should analyze the local court's current and projected workload and courtroom utilization as well as the current and projected numbers of judgeships, including senior and visiting judges, for that location. OMB requested this information and similar data from the Administrative Office of the U.S. Courts as long ago as the fall of 1998, but it was not provided.

RESPONSES BY ROBERT PECK TO QUESTIONS FROM SENATOR REID

I was very disappointed to learn that the Office of Management and Budget did not include in the President's budget request funds in the amount of \$24 million for repairs and alterations to the Foley Federal Building and United States Courthouse in Las Vegas, Nevada. I have been informed that the General Services Administration did, in fact, request OMB to include this funding in the President's budget request, but that OMB failed to act upon this request. I was even more disappointed to learn that the repairs and alterations request for the Foley Federal Building and Courthouse was the only GSA courthouse R&A not included by OMB in the President's budget request.

Question 1. What reason or reasons did OMB provide as to why this R&A request in the amount of \$24 million was not included in the President's budget request?

Response. OMB's overall framework for developing the fiscal year 2001 program is that capital projects not scheduled for award until late fiscal year 2001 or early fiscal year 2002 are not proposed for funding. This project's design is scheduled for a late fiscal year 2001 design completion and a construction award for December 2001. Consequently, this project was not included in our fiscal year 2001 program.

Question 2. What reason or reasons did OMB provide as why this was the *only* R&A courthouse request not included in the President's budget request?

Response. OMB did not single out this project. As explained above, the proposed renovation has a late estimated design completion and a construction award date of early fiscal year 2002. Given this late construction award date, this project was not included in the President's budget request.

Question 3. Why, in the opinion of GSA, was this funding not included in the President's budget request?

Response. As previously explained, OMB's framework for developing the capital program is that projects not scheduled for award until late in the fiscal year, or early in the following fiscal years are not proposed for funding. Because the project is not scheduled for construction award until December 2001, this project was not included in the President's budget request.

Question 4. Why, in the opinion of GSA, was this the only R&A courthouse request not included in the President' budget request?

Response. The Foley FB-CT project has a late estimated design completion and an estimated construction award that slips into early fiscal year 2002. The schedule was the reason this project was not included in the President's budget request.

Question 5. Upon examining the 13 projects, which were included for Repairs and Alterations, OMB is requesting funds greater than \$24 million for eight of those projects (an additional request is for \$23 million). Clearly Las Vegas was not excluded because it is the most expensive project. Would you please address this discrepancy?

Response. The schedule, not the cost of this project relative to other renovation projects, was the reason this project was not included.

Question 6. I would also like to remind you that the district court will be moving into the George (new) Federal Building and Courthouse in just a few months. What will happen with the Foley Building if funds are not appropriated until Fiscal Year 2002? Will we have an unusable building for more than a year? What additional costs would this incur? Please address these concerns as well.

Response. The U.S. Bankruptcy Court, the Small Business Administration, and other executive agencies will remain in the building. Vacant space in the building will either be altered first or used as swing space for building tenants to facilitate the renovation of their current space. Vacant space not required by current building tenants will be backfilled by executive agencies relocated from leased space.

Since The project is not scheduled to begin until fiscal year 2002, delaying the appropriation of construction funds until fiscal year 2002 will not impact the project costs.

[From the Federal Times, March 6, 2000]

REWARDS FOR EMPLOYEES REAP REWARDS FOR AGENCY

(By Renee McElveen)

You will not find the agency's stock listed on the New York Stock Exchange.

But that does not stop managers and employees at the General Services Administration's Public Buildings Service from sharing in the agency's financial gains.

Last June, 518 employees of PBS' Northeast/Caribbean region received cash awards totaling \$538,000 for improving their region's performance.

And in mid-February, 201 employees of the New England region won cash awards totaling \$322,000.

PBS executives say a 2-year-old bonus program that rewards high performers is paying off. In short, they say, the culture of the Public Buildings Service is changing: Employees are thinking more creatively about their jobs, trying innovative ideas to better their performance at the agency, which is charged with buying, leasing and maintaining office space across the country for Federal agencies.

Satisfaction among PBS customers has risen from 74 percent in 1994 to 80 percent in 1998. Vacant rental space has decreased from 12.3 percent in 1998 to 9 percent in 1999. The time it takes to sign a lease has been reduced from 250 days in 1996 to 150 days in 1999.

For PBS Commissioner Robert Peck, the bonus program he helped create in 1998 has not only improved performance at his agency but also has generated millions of dollars in savings that he has plowed back into PBS operations. "We are rewarding people for the right things," Peck said.

And this is reflected in the agency's bottom line.

In fiscal 1999, PBS generated \$5.4 billion in rent revenues and is projected to top that with \$5.6 billion in 2000. Peck estimates rent revenues will reach \$5.8 billion in 2001.

Under the program, called "Linking Budget to Performance," employees and regional bureaus are rewarded for exceeding performance goals. Peck said employees refer to the program as the "Big Nine," after the nine performance areas that employees from GSA's 11 geographic regions strive to exceed by the end of the year, in competition with each other.

Agency employees can earn performance awards—and regional offices can earn bigger shares of the PBS budget—by increasing net income, improving customer satisfaction, decreasing administrative costs, decreasing the amount of vacant space, reducing the cleaning costs of buildings, reducing building maintenance costs, reducing lease costs and keeping construction costs within budget and keeping construction projects on schedule.

When Peck joined PBS in 1995 there were 38 performance measures in place for the agency's employees.

STREAMLINED PERFORMANCE GOALS GET RESULTS

"You can't manage to 38 performance measures," he said. "You can't even remember 38 performance measures."

Jan Ziegler, then-acting assistant commissioner for PBS' Office of Business Performance, was charged with building the program. To develop a smaller, more effective set of performance measures, Ziegler looked to the private-sector real estate industry, studying its best business practices in 60 markets across the country.

One key national goal of the PBS program is achieving an 85 percent customer satisfaction rate. To qualify for an award, a region must exceed the national goal.

For fiscal 1995, the Northwest/Arctic Region had scored 83 percent on its customer satisfaction survey, conducted by the Gallup Organization. The 1998 survey results indicated a score of 87 percent—two percentage points over the national goal—making it eligible for a bonus.

Another performance measure is financial performance, which is measured by such criteria as cleaning costs of buildings per square foot.

In 1998, the Northeast/Caribbean Region achieved building cleaning costs averaging \$2.01 per square foot, compared with the industry average of \$2.22. By the end of the performance period, the region had reduced cleaning costs to \$1.98 per square foot, beating the industry average by 24 cents. For 1999, those costs increased six cents in the same region, compared with an industry increase of four cents, but the region still beat the industry average by 22 cents. On order to be effective, a measure has to be something that the people who get measured have some influence over," Peck said.

Although the PBS awards program is only 2 years old, top agency managers are excited about the results and the changes they see in employee performance.

"It's really profoundly changed behavior out in the field," said Paul Lynch, assistant commissioner for the agency's Office of Business Performance.

He said he sees employees working together to meet the performance goals. They view the buildings they are responsible for as assets, Lynch said.

Tony Costa, assistant regional administrator for public buildings in the National Capital Region, is responsible for 1,700 employees. Since the awards program was instituted, he has seen significant changes in the way business is conducted on a daily basis.

He said employees are now focused on how their performance contributes to the achievement of regional goals. During his weekly business meetings with staff, discussions center on the numbers—why performance is improving or declining in a particular area, and how they can fix problem areas.

"The employees recognize that the things they do every day have an impact on the department," Costa said.

In addition to changing employee behavior, the awards program has brought out a sense of competition among the Public Buildings Service's 11 regions, Peck said.

The region achieving best overall performance in the nine categories wins custody of a traveling trophy until the next winner is announced.

The first overall winner in 1998 was the Northeast/Caribbean Region. With that honor, the region—which includes New York, New Jersey, Puerto Rico and the U.S. Virgin Islands—received a \$6.2 million award. Of that, \$5.7 million was available to be reinvested in repairs and upgrades to the 560 buildings overseen by the region. The remaining \$538,000 was distributed as awards to 518 employees.

On Feb. 14, the New England Region won PBS' best overall performance award for 1999. The region, which includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, was awarded \$2 million. Of that, \$1.68 million can be reinvested in the 388 buildings the region oversees. The remaining \$322,000 was distributed among 201 employees as cash awards ranging from \$360 to \$2,400.

Peck plans to present the awards later this month.

"If you want to change the culture of an organization, you don't do it by putting up glitzy posters and conducting teleconferences," Peck said.

Instead, he said, motivate employees to think how they will accomplish the agency's mission from the moment they leave home in the morning. This bonus program has done that, he said.

STATEMENT OF JUDGE JANE R. ROTH, U.S. COURT OF APPEALS FOR THE
THIRD CIRCUIT

Mr. Chairman and Members of the Subcommittee: My name is Jane Roth. I serve as a judge on the Third Circuit Court of Appeals and as chairman of the Judicial Conference's Committee on Security and Facilities.¹ I appreciate the opportunity to appear before the Subcommittee today to discuss the courthouse projects scheduled for fiscal year 2001 under the judiciary's prioritized Five-Year Plan and also to summarize the judiciary's continuous efforts to review and improve management of the courthouse construction program.

For the past several years we have worked closely with the Congress and the General Services Administration (GSA) on the courthouse construction program. We appreciate the continued willingness of this Subcommittee, of the full Committee, and of your staff to work with us to make improvements. We look forward to working with you on the projects for fiscal year 2001. In particular, we hope that you will authorize all projects that can be ready for design, site or construction contract award in fiscal year 2001 at the levels originally submitted by GSA to the Office of Management and Budget (OMB).

President Clinton's fiscal year 2001 budget request includes \$488 million for seven new courthouse construction projects. This request for courthouse projects is the first since fiscal year 1997. The judiciary appreciates the fact that the Administration has acknowledged the need to provide adequate, secure space for courts. The President's request does not, however, include all the projects which GSA proposed to OMB. We are concerned by the Administration's failure to include funds for all the projects which need site, design or construction funding in fiscal year 2001. We are also concerned about actions taken by OMB to reduce the size of the projects. We are informed that the funding levels for these seven projects are based on an

¹The Judicial Conference of the United States is the judiciary's policymaking body.

assumption that only two courtrooms will be provided for every three active district, senior, magistrate, and bankruptcy judges.

The Judicial Conference, at its March 14, 2000 meeting, considered the unilateral efforts of the Office of Management and Budget to impose a courtroom sharing policy on the judicial branch, and the Conference condemned these efforts as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the judiciary. By statute, the judicial councils of the circuits have the authority to determine the need for court accommodations. (See 28 USC 462 (b)). Once the need for accommodations is approved by the council, the Director of the Administrative Office of the United States Courts requests the GSA Administrator to provide them. The Administrator is directed by law to do so. Any action, taken by the Office of Management and Budget (OMB) to reduce the scope and size of the projects, as approved by the councils and GSA, would appear to violate the governing statutes. We ask that you take action to restore the levels of funding for the courthouse program to those proposed by GSA prior to OMB's arbitrary action.

The shortsightedness of OMB's actions is obvious. The courts are experiencing an ever-increasing workload. To delete courtrooms from buildings that should last for decades will only cause the judiciary to come back to this Subcommittee shortly after a building is occupied in order to seek funding for expansion or major alterations to a brand-new facility. I will further address the actions taken by OMB and the concept of "courtroom sharing" later in my testimony.

CURRENT STATUS OF THE PROGRAM

The Administration chose not to request funding for courthouse construction in the budget for the previous 3 years. Congress was able to appropriate funds for courthouses in only one of those years. This lack of funding has created a backlog of projects and has placed GSA woefully behind schedule in delivering needed space for the courts. The courts, therefore, must continue to operate in facilities that are unsafe, overcrowded, and substandard. The Judicial Conference's fiscal year 2001 request includes 19 projects which are ready to go. Eighteen of the projects require authorization by this Subcommittee. The Environment and Public Works Committee previously authorized construction of the Savannah project. The total cost of these projects requiring authorization is about \$750 million, based on GSA's September 1999 estimates. Seventeen of these projects were included in GSA's original request to OMB. In addition, based on current information, one more project (in Fresno, California) should be ready for construction contract award in fiscal year 2001. All of these projects are needed and will only fall further behind schedule if not funded. A listing of these projects in priority order is attached to this statement.

Our prioritized list of courthouse projects was established with the goal of requesting approximately \$500 million for site, design and construction in each fiscal year. The judiciary would have kept to such a schedule if our construction budget requests had been recognized by the Administration in the fiscal years in which they were presented. In fact, if our projects had received funding in this manner, the cost of the fiscal year 2001 projects would have been closer to \$500 million than the \$800 million that we are asking for.

In addition to creating backlogs, delayed funding of scheduled courthouse projects can result in significant cost increases. Although at one point GSA estimated that construction costs were increasing an average of 3-4 percent for each year of delay, there have been several situations where the escalation factors have been significantly higher. For example, in Seattle it appears that costs increased in 1 year by about 8 percent due to the rising construction market costs—not because of any change in the project.

The workload of the Federal courts has grown tremendously over the past 10 to 15 years, largely as a result of legislative efforts to wage a Federal war on crime and the illegal drug trade. The courthouse projects on the list for funding in fiscal year 2001 are in areas of the country where there is dynamic population growth, combined with an increase in law enforcement activities. Moreover, as the criminal caseload has grown in number and complexity, the civil jurisdiction of the Federal courts has also broadened and the number of bankruptcy filings has risen substantially. Finally, we have seen major growth in probation and pretrial services, with a staff of over 7,000 supervising about 30,000 pretrial defendants and 100,000 released offenders a number roughly equal to the inmate population of the Federal prison system.

Court facilities must keep pace with the need for additional judges and court employees to handle these increased workloads. The same Administration that proposes shrinking courthouses is also asking for increased funding this year for additional border patrol agents and U.S. Attorneys and for the construction of Federal

prisons. Such law enforcement activities inevitably result in an increase in the judicial actions that must be handled in the Federal courts.

Many of the existing court facilities were built over 50 years ago and have not been or cannot be altered to meet the needs of a modern day justice system. Generally, older courthouse structures cannot accommodate the technological advances necessary for a modern court. Security for jurors, witnesses, court employees, judges, and the public is compromised as they use the same hallways and elevators through which the Marshals bring individuals who have been charged with or convicted of serious crimes. In addition, problems with deteriorating heating and cooling systems as well as other building infrastructure problems will persist unless action is taken to fund the projects. Without the necessary funding, the Federal judiciary will continue to face serious space and security concerns. We have provided subcommittee staff with a fact sheet on each courthouse project that describes the current housing situation and the need for a project at that location.

As I noted earlier, this is the first time in the past 4 years that funding has been included in the President's budget request for courthouse projects. The fact that a request was submitted to the Congress this year is a result of efforts made by this Committee, other Members of Congress and the judiciary to impress the importance of a courthouse construction program upon key White House decisionmakers. The Committee's letter last year to the President was undoubtedly very helpful. We also met with the White House Chief of Staff during the fall of 1999, and he assured us that consideration would be given to a program in fiscal year 2001. As I noted earlier, however, the Office of Management and Budget unfortunately chose to reduce the number of courtrooms in each of the projects. OMB in fact developed its own courtroom sharing policy which is contrary to the policy approved by the Judicial Conference in 1997. This was done without any study, analysis, or understanding of the judicial system.

THE JUDICIARY'S EFFORTS TO STRENGTHEN THE COURTHOUSE PROGRAM

Independent Review of the Judiciary's Space and Facilities Program

In recent years the judiciary has continually reviewed and significantly improved the operation of the courthouse construction program. Workforce growth and changing security and operational requirements pose significant challenges for this important program. It has been nearly 12 years since the judiciary last conducted an independent management review of its facilities program. As part of our on-going commitment to cost containment and program assessment and evaluation, we contracted with the consulting firm of Ernst and Young to review our entire space and facilities program. The study, which is close to completion, will address courtroom sharing and "utilization," our long-range planning process, courthouse design assumptions, internal space management policies, business practices, funding mechanisms, and resource allocation strategies. A critical dimension of the study involves having Ernst and Young solicit the views of interested parties such as the relevant congressional committees and others in the Congress, GSA, OMB, the General Accounting Office, judges, attorneys, the United States Marshals Service, and other court users. Ernst and Young is using teams of experts in architecture, construction, economics, and other areas to explore the issues raised and to develop recommendations.

We expect a final report at the end of April for review by the Conference's Committee on Security and Facilities. After our Committee considers the consultant's recommendations, we will have to seek approval of any policy changes from the Judicial Conference. In the meantime, however, it is critical that the courthouse construction program continue to move forward. It makes no sense to delay action on the courthouse program because of an ongoing study—such a policy would hamper innovation throughout the government. Moreover, Ernst and Young has reported to the judiciary that the court projects requested by GSA in the fiscal year 2001 budget are the result of methodical planning and review processes put in place by the judiciary and GSA.

Courtroom Sharing

For the past few years, the topic of courtroom sharing has been in the forefront of Congressional and executive branch inquiry and media speculation. It has been suggested that because most courtrooms are not in use 100 percent of the time, Federal judges should be able to share courtrooms in order to save the cost of constructing courtrooms. Recognizing these concerns, in 1997 the Judicial Conference thoroughly reviewed the matter and adopted a policy on courtroom sharing. This policy balances the essential need for judges to have an available courtroom to fulfill their responsibilities with the economic reality of limited resources. It provides one court-

room for each active district judge and for each senior judge who maintains a substantial caseload. For senior judges, who do not carry a caseload requiring substantial use of a courtroom, and for visiting judges, the policy sets forth a non-exclusive list of factors for circuit councils to consider when determining the number of courtrooms needed at a facility. Each of the projects on the attached list incorporates this policy.

Notwithstanding the Conference's policy, I would like to emphasize that there is no research which supports courtroom sharing. In addition, the doctrine of separation of powers creates serious constitutional concerns if the executive branch should attempt to establish courtroom usage policy. Finally, it should be noted that none of the 50 state-court systems has ever adopted a policy of sharing courtrooms.

Simplistic approaches to the assessment of courtroom needs, such as the use of queuing theory, might suggest that one can simply add up the average number of hours that judges spend in courtrooms and then calculate the number of courtrooms that would be needed if all of those courtroom hours were perfectly distributed. There are many fundamental flaws with this notion, the foremost of which is the assumption that a court is akin to a post office or bank, where litigants, witnesses, jurors, probation officers, interpreters, court reporters, prisoners, and others are lined up and waiting outside the courthouse door for the next available courtroom. Under these conditions, due process, public openness, security, and notification requirements would be essentially abandoned.

Additional costs and delays for litigants, including the largest litigant in the Federal courts—the Federal Government itself, would also be significant. Delays in criminal proceedings will cause potential problems with the Speedy Trial Act and increase expenses for the Department of Justice's U.S. Attorneys and U.S. Marshals and for Federal public defenders. The last-minute cancellation of even one civil jury trial due to the lack of a courtroom can result in many thousands of dollars in legal fees and expert witness costs for the litigants.

The actual cost of a courtroom is an extremely small portion of the construction budget for a courthouse. The courtroom, however, is the essential tool used by the judge to accomplish his or her work, which is the timely disposition of cases pending before the court. Certainly, the minimal savings that might be realized from deleting one courtroom from a courthouse is not worth the resulting loss of efficiency in the judicial process. Moreover, when compared over its lifetime to the overall cost of the courthouse, the courtroom cost is insignificant. The General Services Administration has estimated that it costs about \$1.5 million to construct a courtroom and its associated spaces (including jury rooms, attorney conference rooms, public waiting areas, and prisoner holding cells). With use of these facilities expected for at least 30 years, this equates to a construction cost for the courtroom of \$50,000 per year.

In Federal courts where courtroom sharing among active judges has occurred out of necessity, judges have reported serious difficulties. For example, the 3 to 2 ratio of judges to courtrooms suggested by OMB is currently in effect in the Federal district courthouse in Brooklyn, New York, while a new facility is under construction. The judges, staff, and others affected have struggled to make it through the temporary situation. Last minute changes, events that go over schedule, and other difficulties have resulted in wasted time for judges and other participants. Recently, a magistrate judge canceled a civil jury trial the week before its scheduled start because the court could not guarantee an available courtroom and the attorneys did not want to incur the potentially exorbitant expert witnesses' fees. The earliest date for rescheduling the trial was 2 months later. In another situation, a defendant seeking a hearing to determine whether he should remain in custody spent longer in detention than necessary because a courtroom was not available for his hearing. One judge, frustrated by his inability to obtain a courtroom, held a proceeding in a public park outside the courthouse. These actual experiences demonstrate the problems associated with courtroom sharing.

According to Ernst and Young, the judges in Brooklyn are uniform in concluding that courtroom sharing has strained the operational effectiveness of the court and that courtroom sharing as a permanent policy would be counterproductive. A 3 to 2 ratio causes chaos in a system that requires orderly process in order to be fair and just.

Prioritizing Courthouse Projects

The judiciary continues to review and update its prioritization of projects using a weighted scoring methodology. By continuously reviewing our priorities, we are able to ensure that changing circumstances at a particular location are taken into account so that necessary adjustments can be made. I am pleased to report that the process we established in response to Congress's suggestion that all projects be

ranked in order of priority has worked quite well. I am very concerned, however, that continued delays in funding courthouses or reductions in the sizes of the buildings could result in a breakdown of this prioritization process with individual districts attempting to fulfill their needs without regard to the established process.

A courthouse project is not proposed for consideration unless the district's long-range facility plan indicates that there is no more room for district judges in the existing facility. In virtually every proposed project, this determination is made after all executive branch agencies and court-related units (probation, pretrial services, the bankruptcy court) have been moved from the existing building. In this sense, the expansion capacity of the building is the primary consideration in determining the need to take some action.

The lack of sufficient space can cause great waste and inefficiency in court operations. In worst case scenarios, trial courts are split into separate facilities causing the dual management of records, prisoners, and duplicate security screening. In addition, security risks are a grave concern in all public buildings, including Federal courthouses. Tragic events in Oklahoma City, Oklahoma, shootings in courthouses in Topeka, Kansas, and Chicago, Illinois, and serious threats on the lives of judges who are trying international terrorists underscore the need for proper security arrangements.

SUMMARY

A number of new courthouses have been occupied over the past few years. Public reaction has been very favorable. The courthouses being delivered by GSA today are high quality, operationally efficient buildings that should last well into this century.

Many lessons have been learned as the Congress, GSA and the judiciary have worked together over the past several years on the courthouse program. We have incorporated many of the recommendations made by this Committee into our planning process and design standards in order to improve management of the program. We will be studying whether there are additional ways to control costs and make the program even more effective in the months ahead. Security considerations continue to be a major concern. The judiciary hopes the Committee will recognize the actions taken by the Judicial Conference as evidence of the judiciary's commitment to a productive and cooperative working relationship. It is imperative that the integrity of the judiciary's rightful role in determining courtroom usage remains intact; the constitutional rights to trial and due process are too important to be risked on whim. Nor should the guarantees of these constitutional rights, which rest upon the presumption of adequate, dedicated courtroom space, be held hostage to such uncertain, untested, and untried cost-saving schemes. We ask that you take action to authorize the new courthouse projects on the attached list in fiscal year 2001 at the levels originally calculated by GSA in September 1999. We are also committed to working with you on adopting appropriate recommendations from Ernst and Young's final report.

Thank you for the opportunity to testify before the Subcommittee. I would be pleased to answer any questions you might have at this time.

FY 2001 Courthouse Construction Projects—Judiciary Prioritized Plan

[In Millions of Dollars]

| | GSA Estimate | President's Budget Request |
|---|--------------|----------------------------|
| 1. Los Angeles, CA—S&D | \$36.203 | \$31.523 |
| 2. Seattle, WA—C | 179.365 | 177.93 |
| 3. Richmond, VA—S&D | 19.581 | 19.476 |
| 4. Gulfport, MS—C | 42.715 | 42.715 |
| 5. Washington, DC—C | 109.498 | 104.050 |
| 6. Buffalo, NY—S&D | \$3.599 | |
| 7. Springfield, MA—C | 41.378 | |
| 8. Miami, FL—C | 121.946 | \$110.950 |
| 9. El Paso, TX—S&D | 7.208 | |
| 10. Mobile, AL—S&D | 8.123 | |
| 11. Fresno, CA—C | 111.783 | |
| 12. Norfolk, VA—S&D | 9.593 | |
| 13. Las Cruces, NM—D | 1.900 | |
| 14. Little Rock, AR—D (addtl. design funds) | 5.428 | 1.82 |
| 15. Rockford, IL—S&D | 2.837 | |
| 16. Cedar Rapids—S&D | 13.606 | |
| 17. Nashville, TN—S&D | 13.784 | |

FY 2001 Courthouse Construction Projects—Judiciary Prioritized Plan—Continued

[In Millions of Dollars]

| | GSA Estimate | President's Budget Request |
|--------------------------|--------------|----------------------------|
| 18. Erie, PA—C | 27.013 | |
| 19. Savannah, GA—C | 46.462 | |
| Total | \$801.239 | \$488.464 |

RESPONSES OF JUDGE ROTH TO ADDITIONAL QUESTIONS FROM SENATOR VOINOVICH

Question. The courts and OMB seem to be at opposite ends of the spectrum on this issue. What factors should be considered in an effective courtroom sharing model?

Response. The judiciary has taken definitive steps to respond to the issues raised by the Congress about the number of courtrooms needed in new facilities. At its March 1997 session, the Judicial Conference adopted a policy on courtroom sharing that balances the essential need for judges to have an available courtroom to fulfill their responsibilities with the economic reality of limited resources. The policy is based on a judge's need for a courtroom rather than the particular status of the judge. It continues the standard of providing one courtroom for each active district court judge. In addition, with regard to senior judges who do not carry a caseload requiring substantial use of a courtroom and visiting judges, the policy sets forth a non-exclusive list of factors for circuit councils to consider when determining the number of courtrooms needed at a facility. Such factors include an assessment of workload anticipated to be carried by a senior judge and the number of years a senior judge is likely to carry such a caseload, as well as evaluation of the complement of courtrooms throughout the entire district. Courts are encouraged to provide for flexible and varied use of courtrooms.

Moreover, the Conference asked the judicial councils, which have the statutory authority to determine the need for court accommodations (28 U.S.C. sec. 462(b)), to develop a policy on sharing courtrooms by senior judges when a senior judge does not draw a caseload requiring substantial use of a courtroom, and for visiting judges. These circuit-wide policies assist the judiciary with containing the costs of court facilities, while assuring the appropriate number of courtrooms necessary to fulfill its constitutional mission.

The judiciary's policy of providing a courtroom for every active judge is well supported by scholars and others in the legal community. A 1996 study by an expert consultant, entitled *Courtroom Sharing Practices Among State and Local Trial Courts*, found that it was the policy in all 50 states to provide one trial courtroom for each judge. Studies, reports and standards produced by the Rand Institute for Civil Justice, the Brookings Institution, the National Center for State Courts, and the American Bar Association support the idea that reducing the number of courtrooms would result in trial delays and increased costs.

Any short-term savings to be achieved by building too few courtrooms will not be worth it in the long run. In addition to the grave risks to our system of justice, when all of the attendant costs are considered, it is doubtful that building fewer courtrooms will bring a long-term economic benefit to the government and the public. Given the expected continued growth of Federal cases in most districts, it will shorten the useful life of a courthouse and simply escalate future costs for needed expansion of courthouses that would be under-built for today's needs, much less the needs of the future.

Determining the number of courtrooms needed in a facility or whether a facility is needed at all are complex issues which defy simplistic answers. Courtroom time measurement studies do not provide the complete picture of courtroom utilization. Courtroom usage cannot be adequately addressed by simply counting the hours that the lights are "on" or "off" in the courtroom. Cases are assigned to judges, not courtrooms. Having an available courtroom is necessary to assure firm trial dates and a coherent approach to scheduling. This approach to courtroom usage appropriately takes into account the scheduled use of the courtroom or the "latent" use¹ of the courtroom. Firm trial dates promote settlement in civil cases and pleas in criminal

¹ The fact that a courtroom is readily available facilitates settlement because parties then seriously consider the risks and benefits of going to trial. This is known as "latent" use of a courtroom.

cases, thereby avoiding the need for and cost of trials. An available courtroom also permits timely handling of unanticipated emergency matters, such as requests for injunctions, grand jury problems, contempt hearings, and detention and bail appeals. Moreover, providing each active district judge a courtroom accommodates unscheduled opportunities to settle large multi-party cases, opportunities that may be lost without the immediate access to a courtroom. This practice also ensures that cases that go to trial are handled expeditiously, as encouraged by the Speedy Trial Act of 1974 and the Civil Justice Reform Act of 1990.

Courtrooms are scheduled for trial long before the actual trial date. If a case settles on the eve of trial, that courtroom is suddenly empty and cannot be rescheduled immediately due to basic due process noticing requirements. The empty courtroom is a sign that the judiciary is working (not that the courtroom is unnecessary), that trial has been avoided, and moneys have been saved by the courts, the litigants, and the public.

Courtroom scheduling is a dynamic part of a judge's case management activities to control hundreds of cases. In our judicial system, individual judges are accountable for the management of cases assigned to them and for the movement of their dockets. Research and practice have demonstrated the importance of setting a certain trial date to the expeditious disposition of cases. Many courtroom events are scheduled months in advance, and it is common to schedule more than one event to occur at the same time because of the uncertainties of the adversarial process. Taking the risk of conflicting dates is a close matter, even for a judge with an assigned courtroom, because cases and related events do not always play out as envisioned. With no guarantee of a courtroom, the risk is considerably higher.

Simply stated, courtroom-sharing is too important to be implemented based on a whim or speculation. In Federal courts where courtroom sharing among active judges has occurred out of necessity, the judges have reported serious difficulties. For example, the 3/2 ratio of courtrooms to judges suggested by OMB is currently in effect in the Federal district courthouse in Brooklyn, NY, while a new facility is under construction. The judges, staff, and others affected have struggled to make it through the temporary situation. Last minute changes, events that go over schedule and other difficulties have resulted in wasted time for judges and other participants. Recently, a magistrate judge canceled a civil jury trial the week before its scheduled date because the court could not guarantee an available courtroom and the attorneys did not want to incur the potentially exorbitant expert witnesses' fees. The earliest date for rescheduling the trial was 2 months later. In another situation, a defendant seeking a hearing to determine whether he should remain in custody spent longer in detention than necessary because a courtroom was not available. One judge held a proceeding in a public park outside the courthouse. These actual experiences demonstrate the practical effects of courtroom sharing. According to notes from Ernst & Young, the Brooklyn judges are uniform in concluding that courtroom sharing has placed a constraint on the operational effectiveness of the court and that courtroom sharing as a permanent policy would be counter-productive.

The judiciary strongly objects to OMB's recent action of applying its courtroom sharing policy. At its March session, the Judicial Conference took a position strongly condemning the unilateral efforts of the Office of Management and Budget to impose a courtroom sharing policy on the judicial branch, as an unwarranted and inappropriate intrusion into the constitutionally mandated independence of the judiciary. The judiciary was neither consulted nor informed by the President's budget office of its actions which impinge on the independence of the judiciary and raise serious questions of both the constitutional separation of powers and statutory law.

STATEMENT OF HARRY T. EDWARDS, CHIEF JUDGE, U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT

For the past 7 years, the courts of the District of Columbia Circuit have worked diligently with the General Services Administration to develop plans for annex construction and renovation of the E. Barrett Prettyman U.S. Courthouse. Michael Graves/SHG, Inc. will complete the architectural drawings on May 15, 2000. As of that date, the project will be ready for the construction bid process. Several independent studies have verified that the annex project is the most efficient and cost-effective way to solve the serious safety, security, and space problems endemic to the existing courthouse.

In short, there is no dispute over the justifications supporting the annex project. The United States Judicial Conference, the Office of Management and Budget, the General Services Administration, the Administrative Office of the U.S. Courts, and

the courts of the D.C. Circuit all agree that an annex should be constructed and the courthouse renovated. The only question is whether the annex project should be funded as presently designed or whether funding should be cut pursuant to an astonishingly misguided budget submission from OMB.

I. OMB'S PROPOSAL WOULD ACTUALLY INCREASE THE COST OF THE ANNEX PROJECT WHILE DECREASING THE SIZE AND FUNCTIONALITY OF THE BUILDING

The courts of the D.C. Circuit, with endorsements from the Judicial Conference of the United States, and the Administrative Office of the U.S. Courts, are seeking \$109,498,000 to complete the annex construction project. OMB, on the other hand, has submitted a budget proposal to Congress seeking only \$104,050,000 for the annex project. OMB's budget figure is premised on the assumption that \$5.4 million would be saved by the application of a new "courtroom sharing" policy that would eliminate four courtrooms from the project design. OMB is wrong. In fact, if the courts were required to redesign the annex project to satisfy OMB's specious courtroom sharing policy, the construction project would end up costing \$4.3 million more than the current design.

In other words, OMB's proposal would result in the government paying substantially more for a smaller, less functional building. Paying more for less normally defies good business judgment and common sense; and it is completely inexcusable when, as with OMB's proposal, it will result in a waste of taxpayer dollars.

A. *OMB's Proposal Would Add \$3 Million, Not \$940 Thousand, to Design Costs*

As currently designed, \$109,498,000 is needed to construct the annex and renovate the courthouse. OMB, however, has requested only \$104,050,000 for the annex project, on the erroneous assumption that the elimination of four courtrooms would save \$5.4 million. OMB has estimated that \$924,000 would cover the total amount required for the redesign effort. This figure reflects an unfathomable miscalculation. Indeed, according to GSA officials at the regional office responsible for managing the annex project, architectural redesign costs, alone, will exceed \$3,000,000 if OMB's design is adopted. OMB officials obviously do not understand what is at stake with the annex project.

The \$109 million annex project for which construction funding is being sought is the product of 7 years of exhaustive effort by countless people in numerous institutions. It is preposterous for OMB to suggest that the courts of the D.C. Circuit abandon the architect's work at this late date, especially when the construction of a redesigned (and less functional) building will cost more than the current design. The simple truth that escapes OMB is that a redesign effort would be a massive and costly undertaking, and to no good end.

First, the redesign effort would affect virtually every aspect of the completed Graves/SHG architectural design. This is so because the number and location of the courtrooms dictate the building massing and the exterior design. Furthermore, chambers, office, support, and mechanical space are inextricably linked to the location and placement of the courtrooms. There is simply no easy way to extricate four courtrooms from the project. OMB's proposal would necessitate a costly reconsideration and redesign of almost all annex floor plates, as well as the basic organization of the building.

Second, because the courthouse is situated on the Pennsylvania Avenue corridor in Washington, D.C., the exterior design and massing are subject to review and approval by the Commission on Fine Arts and the National Capital Planning Commission. These review processes are lengthy. Preliminary approval of the current design took more than a year to secure. If the exterior is reduced or reconfigured, as it necessarily must be under the OMB proposal, the approval processes must start anew. This adds additional time and cost to the redesign effort.

B. *OMB's Proposal Would Produce \$7 Million in Escalated Costs*

OMB's proposal, if implemented, would result in an extremely costly two and a half year delay. Currently, construction costs are estimated to escalate by 3 percent per year. For a project this size, the escalation costs alone are estimated to be \$7,000,000.

The Graves/SHG design was completed months ago and, under the current schedule, the construction documents will be finalized in May. If construction funds are approved by October 2000, a construction contract will be awarded shortly thereafter and groundbreaking will take place in January 2001. On this timetable, the annex will be completed in June 2003, and the renovations to the existing building will be completed by July 2004.

If the proposed OMB redesign is mandated, the entire schedule would be pushed back by more than two and a half years. The redesign effort could not start until

January 2001, when redesign funds would become available. It would then take a minimum of 2 years to complete the revised design; thereafter, it would take at least four to 5 months to procure a construction contract. At best, construction would begin in June 2003 and would be concluded in December 2006.

C. OMB's Proposal Involves Hidden Expenses of More Than \$681,000

In addition to the redesign and escalation costs, there are hidden expenses not reflected in the OMB calculations. There would be additional personnel costs associated with the government's management of the project during the two and a half year delay. The GSA regional office estimates that its share of the personnel costs would be at least \$390,000. And, this does not account for the time that would be contributed by judges and court staff members. For more than 2 years, the courts have spent thousands of hours working with the architects to ensure that the current design met the Circuit's operational requirements and complied with every national standard applicable to courthouse construction projects. This time and cost factor would be doubled if a redesign is required.

Finally, there would be increased costs for management and inspection services performed by consultants. These costs are estimated by the GSA regional office to be \$291,500.

Overall, implementation of the OMB proposal would cost the government and the taxpayers \$9,757,500 more than the \$104,050,000 OMB has estimated would be needed to construct the annex with four fewer courtrooms. In return, the taxpayers and the government would receive a smaller and less functional building that would not adequately address the Circuit's future space needs.

II. OMB'S PROPOSAL FAILS TO ADDRESS LONG-TERM PLANNING CONCERNS

A. The OMB Proposal Would Eventually Necessitate a Costly and Inefficient Dispersal of Circuit Operations

Quite apart from its faulty financial assumptions, OMB's proposal ignores the unique composition of the D.C. Circuit that, of necessity, must drive any responsible long-term building plan. In contrast to other Federal circuits, all courts of the D.C. Circuit—including the Court of Appeals, the District Court, the Bankruptcy Court, and the Magistrate Judges—together with their associated support units—the Circuit Executive's Office, Circuit Library, Clerks' Offices, Probation Office, Court Reporters' Office, as well as the U.S. Marshals Service and the Court Security Officers—are all housed in a single courthouse. This facilitates efficient court operations and convenient access for the bar and public.

The annex project, as currently designed, is the only viable means of maintaining all of these entities in one facility; it is also the only fiscally responsible option for accommodating the Circuit's future growth. The Circuit's growth projections are very conservative and they have been studied continuously throughout the life of the annex project. The project has been carefully designed to meet these needs. If the size of the annex is reduced pursuant to the OMB proposal, future growth cannot be accommodated on the current site. And court entities eventually would have to move from the existing courthouse site.

As demonstrated by the Feasibility and Prospectus Development Studies for the project, alternative housing options, including moving the various units to leased space and/or the construction of a new building on a separate site, are far too costly to be seriously considered. The studies found that by renovating and expanding the existing courthouse, the annex project provided the most cost-effective solution and the only one that would allow all Circuit operations to remain together for the long term.

B. The OMB Proposal Invites a Fiscally Unsound Use of the Limited Space Available for Long-Term Development

The Graves/SHG design makes maximum use of a very small but extremely valuable site. Given the physical limitations of the property and the height restrictions imposed on all Washington buildings, it is critical that the size of the annex shell, as originally authorized by Congress, remain unchanged. As currently designed, the project utilizes all of the remaining space on the site of the current courthouse. The intention is to build once and only once to meet all of the Circuit's needs well into the future. To do otherwise, as OMB proposes, would be fiscally irresponsible. Once construction is completed on the annex site, it would be virtually impossible to add to the site. And even if some design could be conceived to build out the annex, the redundant costs would be extraordinary. Thus, even if the redesign resulted in short-term savings, which it does not, it would make no fiscal sense in the long term. The annex project, as currently designed, is the Circuit's single best oppor-

tunity to address its current and future needs on the site of the E. Barrett Prettyman U.S. Courthouse.

Furthermore, maximizing use of this particular property, which is the last buildable site available on the Pennsylvania Avenue corridor, is consistent with good real estate management practices. As the land owner, the government is responsible for developing the property to its "highest and best use." The annex project, if executed as currently planned, will result in the best use of this unique site and will provide the highest return on the investment.

C. OMB's Proposal Will Delay the Remedy of Existing Security and Safety Problems

If the OMB proposal is implemented, the security and safety problems that the annex project is designed to remedy will go unanswered for 6 years due to the extended timetable. These problems have grown worse in the time that has elapsed since the planning and design process began and will only be exacerbated by continuing delays. These serious deficiencies demand immediate action. Failure to act in a timely fashion on this particular project could prove dangerous for those who must occupy and visit the building.

III. CONCLUSION

We strongly urge Congress to approve the \$109 million that the courts of the D.C. Circuit are seeking to construct a new annex and renovate the existing courthouse. OMB's proposal to redesign the annex project should be rejected. As already shown, the application of OMB's courtroom sharing policy to the annex project would produce absurd results, requiring taxpayers to pay more for a smaller, less functional building. The annex project is well beyond the point at which significant changes to the core design can be justified.

Throughout all phases of the annex project, the judges of the D.C. Circuit have made a concerted effort to ensure that the project yields a functional, cost-effective facility appropriate for modern court operations for many years to come. We have been purposely modest in our expectations and have required that the architects create a no-frills design which adheres strictly to every national standard, requirement, and policy adopted by the U.S. Judicial Conference.

The only responsible way to conclude the annex project is to proceed with the construction as currently planned. To do otherwise would result in a terrible misuse of government funds. We therefore look for the annex project to continue as originally authorized by Congress; and, to this end, we respectfully request that the full amount of funding needed to complete the construction—\$109,489,000—be provided.

STATEMENT OF EDWARD B. DAVIS, CHIEF U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF FLORIDA

I appreciate the opportunity to submit to the Subcommittee this statement relative to the construction of a new Federal courthouse for the Southern District of Florida in Miami.

The Miami courthouse was one of the seven courthouse projects included in the President's budget submittal for fiscal year 2001. GSA estimated the cost to complete the Miami project would be approximately \$122 million. However, OMB reduced the funding estimates requested by GSA to approximately \$111 million. According to the notes in the budget documents, these reductions assume courtroom sharing by all judges. As far as we are aware, no one in the Judiciary has ever discussed, much less consented to, the development of such a policy for this project, and its inclusion in the budget comes as a complete surprise. It is contrary to the Judiciary's current policy for courtroom sharing involving active and senior district judges. The effect of this sharing on the Miami courthouse will reduce the number of courtrooms planned by half, from 16 to 8.

Our Court urges the Subcommittee to overturn OMB'S decision for the following reasons:

1. *Our needs for courtrooms and chambers have been consistently underestimated.*—We have been the country's leader in trying criminal cases involving drugs since the mid-1970's. Our ability to dispose of drug cases, while maintaining a reasonably current calendar with civil cases, has been hindered by a lack of proper facilities.

As an example of this shortsightedness, when an Annex to our original Courthouse (the Tower annex) was finally erected in 1983 with 9 courtrooms and chambers, we had 10 United States District Judges residing in Miami. The chief judge volunteered to stay in the old Post Office facilities while the rest of us moved into

the Tower Building. This courthouse was inadequate to serve our then current needs, much less the 30-year requirements projected by GSA at that time.

We realized that additional space would be needed as projected by extremely high population growth, no letdown in the drug trade coming through South Florida, and an ever-increasing civil caseload. Ultimately, GSA suggested that two new 11-story buildings be erected on the block north of the current courthouses: one for the District Court containing 16 chambers and courtrooms, an Eleventh Circuit courtroom, and chambers for 5 United States Court of Appeals Judges; and another 11-story building to house the U.S. Attorney and his staff. The Bureau of Prisons, however, purchased one-half of the full city block, which the Courts had intended to use, for a much needed metropolitan correctional center. That facility is the largest in the United States.

Since both buildings could not be constructed side by side as originally planned, and as a stopgap measure, we agreed with GSA in 1993 to use the top four floors of the first building then under construction, the Federal Justice Building (subsequently renamed the James Lawrence King Federal Justice Building). It was originally intended to be an office building housing the U.S. Attorney and his staff. This allowed the 12th floor for the Eleventh Circuit Court of Appeals, the 10th and 11th floors for our United States District Court's courtroom functions, and a jury assembly room and Grand Jury facilities on the 9th floor of the building. The balance of the building (8 floors reduced from the 11 floors needed by the U.S. Attorney) was assigned to the Department of Justice for U.S. Attorney use. Although this has been an extremely helpful interim measure, since we had six new District courtrooms filled with judges taking full caseloads, we have already been requested to release space as soon as possible to the U.S. Attorney who has an overcrowding problem, and to consider giving certain space to the Eleventh Circuit Court of Appeals which is outgrowing its own space.

2. *The Southern District of Florida is the busiest trial court in the Federal System* [continuing]. The effort to reduce courtrooms obviously has a greater impact on a trial court burdened with extremely heavy trial schedules compared to courts that are not located in this sensitive part of the country where the drug trade imports so much of its illegal substances for further distribution. For example, this Court has tried more criminal jury trials than any court in the country, regardless of size, in each of the last 6 years. In addition, over that same period it has tried more combined civil and criminal jury trials per judge than any metropolitan court in the country. When you compare its trial activity to those of other busy Federal Courts in other large metropolitan areas, our Court more than doubles the criminal jury trial activity.

3. *The need for two large courtrooms.*—We have also requested two special proceeding courtrooms for judges to try multiple defendant cases. We try more long, multi-defendant criminal trials by far than any other court in the country. GSA's 1992 prospectus provided for six oversize courtrooms. We only requested two. OMB, without explanation, decided this second courtroom was not necessary.

4. *Savings by backfilling.*—We agreed that the old Post Office and Tower buildings be backfilled with Magistrate Judges and the Bankruptcy Court and the Federal Public Defender's Office taking over the old Post Office building, thereby saving substantial funds from currently leased facilities. Without sufficient courtrooms in the new courthouse, these savings will not be realized.

5. *The reduction is not cost effective.*—The design for our new courthouse has already been approved; is over 50 percent complete; and was scheduled to be 100 percent complete by mid-March, 2000. The absurd cost of redesign is certainly fiscally irresponsible. GSA estimates the cost of a complete redesign to be approximately \$2,300,000, and a 1-year delay could result in additional costs of over \$4 million. We are currently on schedule to break ground in March of 2001, and any delay will simply drive up costs and put scarce resources into the hands of contractors, suppliers and architects instead of much needed courtrooms.

6. *No space available for visiting judges.*—We have judges residing in Fort Lauderdale and West Palm Beach that receive Miami cases under our blind random filing system. Although this represents a limited number of cases, all judges have agreed to try cases where venue lies. These judges would have no space available to try the cases if this limitation on space occurred.

7. *The concept of locating all active judges in one building.*—Housing all active district judges and senior judges carrying large caseloads in the same building will lead to better performance and more efficiency. New judges will be able to seek immediate advice from more experienced judges. It will ease the transfer of hearings and other legal matters on short notice.

The inefficiency and cost of continuing to move judges, staff, jurors, prisoners and the public between two or three buildings are substantial.

Our studies, which we believe to be conservative, project 14 active district judges and 5 senior judges when the courthouse becomes available for occupancy in 2004. Our estimate is for 21 judges in 2015. By 2022, the projections show 31 judges (active and senior) located in Miami.

I believe no active district judge would move into a building where he or she would not be able to carry out his or her constitutional responsibilities of professionally disposing of caseloads that are overwhelming. Our courtroom is our office. Its lack of availability greatly impacts not only trials, but settlements as well.

8. *We believe that this action by OMB is impermissible as both a violation of constitutional separation of powers and statutory law.*—Under the current statutory scheme adopted by Congress, 28 U.S.C. § 462 provides that the Director of the Administrative Office shall provide accommodations, including chambers and courtrooms for the judiciary, but only if the Circuit's Judicial Council has approved the accommodations as necessary. GSA is authorized and directed to provide the accommodations requested by the Director.

The Court recognizes that Congress also has the exclusive power of the purse and the power to regulate property owned by the United States. In our case, the reduction of courtrooms does not involve an Executive agency carrying out the will of Congress, but rather an Executive agency performing a unilateral act that directly intrudes in the internal affairs of the Judiciary. We believe that to allow the executive branch to arbitrarily limit present and future courthouses to three judges for every two courtrooms would violate the separation of powers provisions of the Constitution as the Executive has no role in the provision of accommodations to the Judiciary beyond that provided by Congress.

In addition, the executive branch's actions in this instance has intruded not only on the Judicial Branch, but on the legislative branch prerogative whose 1993 prospectus called for the construction of 16 District courtrooms.

Mr. Chairman, I thank you for giving the Southern District of Florida the opportunity to express our views on this very important matter and urge that the full \$122 million be authorized for construction of the Miami courthouse.

STATEMENT OF JOHN E. CONWAY, CHIEF U.S. DISTRICT JUDGE, DISTRICT OF
NEW MEXICO

Thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to submit for the hearing record this statement regarding the Las Cruces, New Mexico courthouse construction project. In its fiscal year 2001 submittal to the Office of Management and Budget, the General Services Administration (GSA) requested \$1.9 million to design an annex to the Harold L. Runnels Federal Building and United States Courthouse, located at 200 East Griggs in Las Cruces. Unfortunately, the final budget did not include any funding for the Las Cruces project. I would like to explain to the Subcommittee today the current plans and need for space in the Las Cruces Division of the District of New Mexico.

DESIGN

As I just stated, the original request by GSA this year was for funding to design an annex to our existing facility. In March 2000, however, GSA conducted a feasibility study to determine the best alternatives to satisfy the 10-year projected space needs for the Runnels Building. Four alternatives were considered, and a preliminary decision has been made in the region that the preferred alternative is now to build a free-standing new courthouse, instead of an annex. I want to make you aware of this today, although a final decision at GSA headquarters has not yet been made. Under this plan, the new courthouse would be constructed just south of the existing Runnels building on land which is already federally owned and currently serves as an employee parking lot. The existing courthouse then would be backfilled with non-court agencies and serve as a Federal building for Las Cruces until such time as it would be needed for overflow from the newly constructed building.

DESCRIPTION OF THE EXISTING AND PROPOSED SPACE SITUATIONS

The existing Runnels Federal Building (Runnels Building), built in 1974, presently provides space for the U.S. District Court which includes district and magistrate judge functions, the Clerk's Office, the U.S. Marshals Service and the U.S. Probation Office. A further delay in the building project would require the U.S. Probation Office to move out of the Runnels Building into leased space and possibly even into modular facilities. U.S. Pretrial Services, the Federal Public Defender and the U.S. Attorney's offices have already been moved out and are housed in leased space apart from the Runnels Building. The Runnels Building has 2 district judge

courtrooms, 2 magistrate judge courtrooms, 1 small courtroom and 1 very small hearing room. Currently this space is utilized by:

- 5 district judges and 2 circuit judges (they will be assisting the district court with our caseload) who rotate from Albuquerque, Santa Fe and Roswell on a monthly basis;
- 2 magistrate judges, 1 recalled magistrate judge and magistrate judges who rotate from Albuquerque twice a month for 2-3 days;
- 2 bankruptcy judges, who take turns visiting from Albuquerque every 4-6 weeks, usually for a week at a time. (In addition, a bankruptcy trustee holds hearings in the Runnels Building if space is available, but the trustee often has had to use space in a nearby hotel for court proceedings).
- Various visiting senior district judges from districts outside the District of New Mexico (Judges from the Eastern District of Louisiana, the Western District of Michigan, the Western District of Texas and the Districts of Connecticut and Nebraska have held court recently at the Runnels Building).
- Numerous Federal agencies who use court space for administrative hearings and other official meetings include The Office of Hearings and Appeals (Social Security Administration), the Railroad Retirement Board, the Equal Employment Opportunity Commission, the Department of Energy, and the Immigration and Naturalization Service. This saves rental moneys for these agencies.
- Upon completion of the new courthouse, the current Runnels Building would be backfilled with non-court Federal agencies as previously stated. This will fill space needs for these agencies, as adequate office facilities in Las Cruces do not currently exist.

The new courthouse would have 6 courtrooms and 8 chambers for 2 district judges, 3 magistrate judges, 1 senior judge, the rotating judges and 1 bankruptcy judge. The building will house the grand jury room, a petit jury assembly area, the Clerk's Office, U.S. Probation and U.S. Pretrial offices. The U.S. Marshal's Service, sally port, holding cells and secure parking will also be part of the facilities.

SECURITY AND SPACE ISSUES UNIQUE TO THE LAS CRUCES DIVISION

Many of the space and security problems of the existing facility are related to the fact that the Runnels Building was not designed or intended to be used primarily as a courthouse. The Las Cruces Division of the District of New Mexico currently operates under substandard conditions and serious security deficiencies. The original occupants in the Runnels Building included the Federal Bureau of Investigation, the Internal Revenue Service, the Social Security Administration, the Department of Labor, the Bureau of Land Management, U.S. Soil Conservation, and congressional staffs, all of which have moved out to accommodate the court's dramatically increased space needs. The Runnels Building originally had a single courtroom which was used infrequently because there was no district judge residing in Las Cruces when the Runnels Building opened and only a part-time magistrate judge who operated out of his law office which was not located in the Runnels Building.

As a consequence, the Runnels Building does not have separate entrances and vertical circulation (stairs and elevators) for prisoners and judges and the public. Moreover, there has never been any secured parking. The U.S. Marshals Service does not have a secured sallyport for the delivery and intake of prisoners. Prisoners are driven into and unloaded in the small outdoor surface parking lot used by the judges and court personnel (see attached photos). This often results in judges, staff members, and other court personnel encountering prisoners being loaded or unloaded in the parking lot or awaiting entry at the same courthouse entrance used by both prisoners and judges. Also, the U.S. Marshal's Service does not have adequate holding cells inside the Runnels Building. This situation severely limits the ability of the U.S. Marshal's Service to safely process prisoners and to provide security to the judges, their staff, other building occupants and the public. There is a single elevator that is used by the judges, jurors, court personnel, criminal defendants, witnesses and the general public. This elevator is also used for building services, including deliveries and freight. Due to the lack of adequate space in the Runnels Building, defendants, their family members, and witnesses are forced to stand next to each other in the hallway awaiting the commencement of proceedings, often creating hostile and potentially dangerous situations.

The Runnels Building is set close to three public streets and has been subjected to a number of acts of vandalism including broken windows in a magistrate judge's chambers suite and the grand jury room. Judges' chambers on the 2nd and 3rd floors lack adequate security measures such as protective window glazing. The security of this facility was recently reclassified by the Tenth Circuit Council to a "highly critical" level.

Due to the shortage of adequate space in the Runnels Building the magistrate judge who was appointed in 1995 has been using the grand jury suite as his chambers and a converted conference room as a courtroom for almost 4 years. Two of the three courtrooms with full-sized jury boxes were constructed in space designed for office use and have columns that obstruct views. The petit jury assembly room, which is also used for other purposes such as training, meetings, etc., is severely undersized at 700 square feet. The heating and air conditioning system has been "piece-meal" in design and installation. This results in annoying temperature differences and uneven airflow throughout the entire building. Las Cruces experiences temperature extremes with many summer days having highs in excess of 100 degrees. At least two times during the past 6 months the roof has leaked above one of the courtrooms, causing significant water damage. GSA had indicated in 1994 that major systems in the Runnels Building were near the end of their useful lives. Since that time, modernization of the Runnels Building's systems has been on hold awaiting the pending building project.

CASELOAD

The District of New Mexico is ranked fourth nationally among the 94 Federal districts in criminal felony filings per judgeship. As of December 1999, about 65 percent of the district's criminal caseload was originating at the Runnels Building in the Las Cruces divisional office. The criminal caseload greatly increased over the prior year; i.e., 47 percent, and has almost doubled since 1995. In 1999 a total of 3,197 hearings were conducted before Article III judges in the entire district. Of those, 1,557 (49 percent) were held at the Runnels Building in the Las Cruces division. To accommodate the high number of hearings at the Runnels Building, judges have, on occasion, been forced to ask permission to use State court facilities when all of the courtrooms at the Runnels Building were occupied. During 1999 the magistrate judges of the district reported 8,048 preliminary felony proceedings (including initial appearances, attorney appointment hearings, detention hearings, bail reviews, preliminary examinations and arraignments). The two resident magistrate judges in Las Cruces handled 5,287 cases or 63 percent of this workload. The district is also currently ranked fifth in the Nation for trials completed per judgeship.

Las Cruces is the second largest city in New Mexico and is located 225 miles south of Albuquerque and just 45 miles north of the border of The Republic of Mexico. The population at Las Cruces has increased significantly over the past 5 years; Las Cruces is the ninth fastest growing city in the United States. Recently Congress funded substantial increases in the personnel of law enforcement agencies operating along the Mexican border. This soon will result in a rapid and even larger increase in the number of criminal cases that must be handled in the Las Cruces division. Based on the court's caseload projection, it is anticipated that within the next 10 years accommodations will be needed at the Las Cruces Division for 2 new district judges, 1 new bankruptcy judge, and 2 new magistrate judges in order to handle the anticipated caseload growth.

BANKRUPTCY CONCERNS

The bankruptcy judges routinely rotate to Las Cruces to hear cases. In addition, meetings of creditors convened by the bankruptcy trustees are also held in Las Cruces. Las Cruces and the southern end of the State are drawing a large influx of retirees which spawns service businesses, and due to low commodity prices, the copper industry is laying off large numbers of people. Las Cruces is the site of 20-50 percent of the creditors' meetings and a great deal of judicial workload originates in the southern part of the State as indicated by county code. There is a high emotional factor related to bankruptcy cases, but there is no security presence at the creditors' meetings when held in Las Cruces. Bankruptcy caseload filings for Albuquerque from 1995 through 1999 have increased by approximately 90 percent throughout this 5-year period. Bankruptcy reform legislation, which is currently pending in Congress, could have an impact on the future workload for the bankruptcy court.

CONCLUSION

If this project does not proceed as planned, the court will be forced to move judicial officers to leased buildings outside the existing facility. This will result in high costs to the government for leased space and will multiply security costs. Moreover, by leaving unaddressed the immediate space and security problems, the court operations at the Runnels Building would be further compromised. In closing, the court requests that the Subcommittee authorize the funds for this courthouse project.

Exhibit 1



Exhibit 2



STATEMENT OF WILLIAM M. SKRETNY, JUDGE, U.S. DISTRICT COURT, WESTERN
DISTRICT OF NEW YORK

I appreciate the opportunity to submit a statement to the subcommittee for the hearing record to explain the need for a new Annex to the United States Courthouse Building in Buffalo, New York.

My name is Bill Skretny and for the last 6 years I have been a member of the Judicial Conference's Security and Facilities Committee, now chaired by Judge Roth whom you heard from earlier, and additionally I am Chairman of its Subcommittee on Space Management and Planning. In part, it has been our job to assess needy courthouse construction projects. It is from this experience that I make the following comments.

The Buffalo Courthouse Annex project, for which the General Services Administration (GSA) has asked \$3.599 million to purchase a site and to hire an architect, now is No. 6 on the Federal judiciary's list of prioritized projects for fiscal year 2001.

Initially, we were very pleased to hear that after a 3-year hiatus, the President this year chose to include a funding request for the GSA's courthouse construction program in his budget submittal to Congress. That was short-lived, however, because we soon learned that the President's Budget skipped over the Buffalo Annex project, while funding other projects further down on the list.

More specifically, the President's budget included funding for construction projects numbered one through five (LA, Seattle, Richmond, Gulfport & DC) from the judiciary's prioritized list. But then, it skipped Buffalo at No. 6 and went on to No. 8 (Miami). It also added some design money for No. 14, Little Rock, Arkansas. To assist you, I have included a copy of the list of prioritized projects with my statement for your reference.

Frankly, this hasn't been all that good a year for Buffalo. If you are a sports fan, you probably know about the no-goal goal that cost the Sabres a chance for the Stanley Cup, and the miracle forward-pass lateral that eliminated the Bills from the playoffs. It's kind of like falling victim to Gaffuso's extension to Murphy's Law, that is, "nothing can be so bad that it can't get worse". Now this!

Honestly though, I am not discouraged because I truly believe justice is on our side and that with your enlightened intervention, it will come to fruition. For your edification, let me briefly explain "why" and three brief reasons for my optimism:

(1) Putting aside for the moment that additional delays inevitably will increase the cost of the Annex project, GSA is asking for a very modest \$3.599 million for site and design.

When the Buffalo Courthouse project first made the priority list approximately 4 years ago, it initially was for an entire new courthouse. At that time, the projected construction cost was approximately \$85 million. Today, ours is an Annex project which we expect to come in at a cost of approximately \$44 million.

From the outset we have been well aware of Congress' concern with fiscal responsibility and the reality that available dollars for national construction projects are finite. In a sense, we went back to the drawing boards with GSA, and after some serious soul searching and creativity, we tited upon an Annex, rather than an entire new courthouse building. This should result in the dramatic cost savings that I just mentioned. And importantly, it will still adequately meet our court and security needs. Thus, a very modest \$3.599 million is critically needed for site and design.

(2) The Annex design contemplates an over-the-street link from the main courthouse to the Annex. This is what makes our proposed Annex structure suitable, and obviates the need for an entire new courthouse. As I speak, there is one site and only one site that makes this project possible. It presently is available, but if the opportunity to acquire it now is lost, it may be irreparable.

(3) Finally, the Western New York community and the judiciary truly need this Annex project. For one thing, it will result in the preservation and full utilization of the present historic courthouse building in downtown Buffalo where it has served since 1938. For another, the Annex will remedy presently existing dangerous conditions that affect both the public and courthouse employees on almost a daily basis.

Specifically, the Dillon Courthouse is a historical building which cannot be altered to any major degree. As such, it has no separate elevators for transportation of prisoners, judges and the public. All users of the building must mingle, to some degree, on elevators and in hallways. This puts a great strain on the United States Marshals Service and others charged with providing security not only for the judiciary but also for litigants, witnesses, jurors, court staff and the public generally.

More to the point is a condition that involves my own courtroom. Virtually every time there are multiple-arrest roundups, prisoners are detained in holding cells immediately adjacent to the entrance ways to my courtroom and chambers. This often requires that courtroom proceedings be interrupted and staff alerted to warn of the

presence and transporting of prisoners. The inherent problems with this are self evident. Realistically, in a sense, we are on borrowed time. Something has to be done and the Annex is the answer.

I have attached a fact sheet which provides greater detail on the Buffalo Annex Project. On behalf of my Chief Judge, David Larimer and the other members of the bench in the Western District of New York, I want to thank the subcommittee for considering these comments and urge that \$3.599 million be authorized for site and design of the Buffalo Annex Project.

FY 2001 Courthouse Construction Projects—Judiciary Prioritized Plan

[In Millions of Dollars]

| | GSA Estimate | President's Budget Request |
|---|--------------|----------------------------|
| 1. Los Angeles, CA—S&D | \$36.203 | \$31.523 |
| 2. Seattle, WA—C | 179.365 | 177.93 |
| 3. Richmond, VA—S&D | 19.581 | 19.476 |
| 4. Gulfport, MS—C | 42.715 | 42.715 |
| 5. Washington, DC—C | 109.498 | 104.050 |
| 6. Buffalo, NY—S&D | 3.599 | |
| 7. Springfield, MA—C | 41.378 | |
| 8. Miami, FL—C | 121.946 | 110.950 |
| 9. El Paso, TX—S&D | 7.208 | |
| 10. Mobile, AL—S&D | 8.123 | |
| 11. Fresno, CA—C | 111.783 | |
| 12. Norfolk, VA—S&D | 9.593 | |
| 13. Las Cruces, NM—D | 1.900 | |
| 14. Little Rock, AR—D (addtl. design funds) | 5.428 | 1.82 |
| 15. Rockford, IL—S&D | 2.837 | |
| 16. Cedar Rapids—S&D | 13.606 | |
| 17. Nashville, TN—S&D | 13.784 | |
| 18. Erie, PA—C | 27.013 | |
| 19. Savannah, GA—C | 46.462 | |
| Total | \$801.239 | \$488.464 |

UNITED STATES COURTHOUSE, BUFFALO, NY

SITE AND DESIGN

The proposed project is for the site acquisition and design of an annex to the Michael J. Dillon U.S. Courthouse (Dillon Courthouse) in Buffalo, New York. Following completion of the annex construction, the entire District Court and most court-related functions will be housed in the Dillon Courthouse and annex. The Judiciary's Five-Year Plan for 2000–2004 included site acquisition and design of a new courthouse annex in Buffalo, in fiscal year 2000. However, the President's fiscal year 2000 budget did not include funds for any courthouse projects. While the President's fiscal year 2001 budget does include funding for some courthouses, it does not include funds for the Buffalo site and design project.

The Judicial Conference's policy on courtroom sharing, which balances the essential need for judges to have an available courtroom to fulfill their responsibilities with the economic reality of limited resources, was incorporated in the initial planning stages for this project. That policy provides one courtroom for each active district judge and for each senior judge who maintains a substantial caseload. For senior judges who do not carry a caseload requiring substantial use of a courtroom and visiting judges, the policy sets forth a non-exclusive list of factors for circuit councils to consider when determining the number of courtrooms needed at a facility.

Description of the Existing and Proposed Housing Situation

The Dillon Courthouse was constructed in the mid-1930's and has been at full capacity since 1993. The historic facility is unable to satisfy the current and projected space and technology requirements of the court. To accommodate the immediate need for space, the District Court has expanded into former bankruptcy courtrooms, pending completion of the annex. The Bankruptcy Court has been relocated to leased space. Other court-related functions, such as the U.S. Trustee and the U.S. Attorney, are also housed in leased space.

The annex will provide courtrooms and chambers for the District Court and Magistrate judge functions, the Court of Appeals, and part of the U.S. Marshals Service. It will also provide much needed grand jury space, prisoner processing and holding areas. Upon completion of the project, the Dillon Courthouse will be used for the Bankruptcy Court, jury assembly, the District clerk, the Probation Office, the U.S. Marshals Service, the U.S. Trustee's Office and other court-related functions. The following chart displays the current and proposed complement of courtrooms and judges for the Buffalo project.

| Judges | Current | | Proposed | | | |
|------------------|-----------------------|---------|-----------------------|---------|-------|-------|
| | Courtrooms and Judges | | Courtrooms and Judges | | | |
| | Judges | Ctrms | Judges | Ctrms | | |
| | | Dillion | | Dillion | Annex | Total |
| District | 2 | 2* | 4 | 0 | 4 | 4 |
| Senior | 2 | 2* | 3 | 1 | 0 | 1 |
| Magistrate | 4 | 3** | 4 | 0 | 4 | 4 |
| Bankruptcy | 0 | 2*** | 2 | 2 | 0 | 2 |
| Circuit | 0 | 0 | 1 | 0 | 0 | 0 |
| Total | 8 | 9 | 14 | 3 | 8 | 11 |

*Most of the courtrooms in the Dillon Courthouse are significantly undersized and functionally inefficient.
 **One of the magistrate judges requires chambers only.
 ***Bankruptcy court is currently in leased space. The courtrooms vacated by the Bankruptcy Court are too small and inefficient. These rooms will be converted to office space for use of the District Court.

In addition to addressing the immediate and projected space needs of the court, completion of the annex will allow the government to relinquish the leased location resulting in significant savings in lease payments. The chart below shows the current housing for the court and court-related activities located in leased facilities in Buffalo. These functions will be consolidated in the Dillon courthouse complex avoiding the expenditure of approximately \$693,886 annually.

| Current Leases | Current Occupant | Government's Annual Rent |
|-----------------------|------------------|--------------------------|
| Delaware Avenue | Trustee | \$81,894 |
| Olympic Towers | Bankruptcy | 611,992 |
| | Total Rent | \$693,886 |

SECURITY AND SPACE ISSUES

The completion of the annex project will resolve significant security and space problems currently with the Dillon Courthouse. Security is a major concern for the court in Buffalo. There is no secure parking area for judges; they must park either on the street or in an unsecured public parking ramp across the street from the courthouse. There is no secure circulation in the courthouse; the public, judges, staff, jurors, and prisoners all use the same corridors throughout the courthouse. There are no secure elevators for the movement of judges or prisoners. There is no sallyport for the movement of prisoners; therefore, the U.S. Marshals must bring prisoners into the courthouse from the street and escort them through the public lobby and onto the public elevators for transport to courtrooms located on five different floors of the Dillon Courthouse. The U.S. Marshals Service, in a recent survey of prisoner handling facilities nationwide, gave the Dillon Courthouse a score that is significantly below the minimally acceptable security and safety standards.

Due to these security problems, judges frequently have been approached by criminal defendants and their families and friends on the way to court appearances. These contacts are inappropriate and create a serious risk to the judges involved. Juror movement within the building is another concern. Although courtrooms are located on five of the seven floors, the jury deliberation rooms are all located on the fifth floor. Jurors, therefore, must use the public elevators when moving from the courtroom to the jury deliberation rooms. In addition to creating a risk for mistrial, this situation leaves the jurors vulnerable to contact by criminal defendants and their associates, the public and the media. On several occasions, jurors themselves have expressed concern regarding such exposure. These security threats for jurors

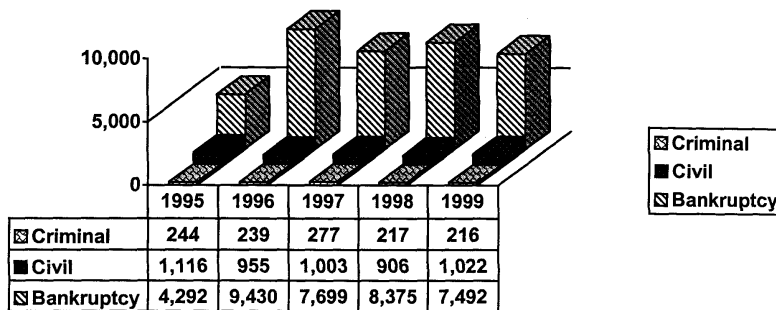
as well as the threat to the integrity of the judicial process occur almost daily; however, the current housing situation precludes virtually all mitigating measures.

The current facility also has functional problems that have a negative effect on court operations. For example, some of the courtrooms have visual obstructions such as structural columns that interfere with the jurors' ability to view litigants, attorneys or physical evidence introduced throughout a trial. Due to the age of the Dillon Courthouse, much work has been done on a piecemeal basis to maintain the building systems, including improvements to the heating and air-conditioning systems, installation of modern aluminum windows, and other necessary modifications. Also, a significant amount of asbestos abatement work has been required to ensure the building's safety. The building does not have the infrastructure necessary to support the introduction of new technologies; costly building upgrades would be needed to support the required technologies used by courts nationwide.

CASELOAD

The Buffalo Division serves as the headquarters location for the Western District of New York. The latest available statistics demonstrate the significance of the pending civil and criminal caseload in the Western District of New York and the growth of filings overall. The District has the 3rd highest rate of civil filings per judgeship of the entire 2nd Circuit. The District ranks 1st in the Circuit and 26th nationally with regard to the rate of criminal filings per judgeship. The pending caseload (both civil and criminal) renders the District 6th per judgeship out of the 94 district courts nationwide. A significant portion of the criminal caseload growth may be attributed to the ongoing drug enforcement initiatives by the U.S. Attorney's Office. In order to manage this growth, the court routinely assigns almost all felony and pretrial matters to the Magistrate judges. In addition, the Magistrate judges are responsible for a significant number of felony preliminary proceedings, civil pre-trial matters and settlement conferences.

The following chart illustrates the civil, criminal and bankruptcy case filings for the Buffalo Division from 1995 to 1999. As shown in the chart, bankruptcy filings have grown remarkably from 4,292 in 1995 to 7,492 in 1999. This reflects a growth of nearly 74 percent. After experiencing a slight decrease between 1995 and 1996, civil filings grew substantially from 955 in 1996 to 1,022 in 1999. The court expects this steady rise in filings to continue. Total criminal and civil filings in the district increased 15 percent from 1998 to 1999.



CONCLUSION

The court's housing situation in Buffalo has become critical due to security concerns and operational difficulties arising from the split facilities and the age of the building. In addition, there is no room within the existing courthouse facility to accommodate the projected growth of the court. Due to these factors, construction of an annex to the existing Dillon Courthouse has become essential. Completion of the annex project will centralize all of the court functions in one efficiently organized court structure eliminating many of the current security and space concerns in the Buffalo Division.

STATEMENT OF ROBERT E. COYLE, U.S. DISTRICT JUDGE, EASTERN
DISTRICT OF CALIFORNIA

I appreciate the opportunity to submit to the Subcommittee the following statement regarding the need for a new courthouse in Fresno, California and ask that it be included in the hearing record.

1. STATUS OF CURRENT COURTHOUSE

The present courthouse was originally constructed as an office building, with the courts occupying two courtrooms and a small amount of support space. Since that time, the court-related agencies have expanded to occupy 95 percent of the 137,000 sq. ft. building. The court-related agencies are literally scattered throughout the building, with portions of the Clerk's Office located on four separate floors and the basement. There is no further expansion space for either the court or the agencies presently located in the building.

The court currently occupies three full-sized courtrooms and five under-sized courtrooms built from what originally was office space. The five small courtrooms have low ceilings, obstructing columns, inadequate sightlines, security and acoustical problems. In the magistrates' courtrooms, prisoners must be taken down public hallways to get to two of their three courtrooms.

There are presently two active district judges, two senior judges, three magistrate judges, two bankruptcy judges and a visiting magistrate judge from Yosemite who assists us with the caseload in Fresno every other week. Current caseload statistics show that two additional judges should be authorized for the District, both destined for the Fresno Division. The Judicial Conference of the United States has approved these two judgeships and they are currently before Congress. However, there is no room for the two additional judges in our current location nor is there any space for additional magistrate and bankruptcy judges that are anticipated in the near future. We are also finding that the growth of the Fresno Division's weighted caseload is growing far beyond the projections or expectations in our long-range plan.

Listed below are the ten top districts in the United States for weighted caseload per judge for the calendar year 1999:

1. CA (S) 1,018
2. TX (W) 911
3. NM 764
4. NC (W) 686
5. AZ 655
6. CA (E) 619
7. FL (S) 609
8. TX (S) 603
9. NY (E) 597
10. VA (E) 590

You will note that the Eastern District of California is sixth on the list at 619. The weighted caseload per judge in the Fresno Division of the Eastern District of California is 862 and continues to increase dramatically each year. There is nothing to indicate that the rapid increase in caseload and filings will abate. During the first 2 months of the year 2000, we were 151 civil cases and 53 criminal cases ahead of the filings for the same period of time in 1999.

A. Security

The physical design of the current building creates security concerns as well as the inability for expansion. The building does not meet minimum security requirements as the building was designed primarily to house office space and not function as a courthouse. The circulation paths of the public, judges and prisoners are not only in violation of the Marshal's security procedures and the judiciary's design requirements, but are also in violation of all the rules of common sense.

In order for members of the court to reach their courtrooms each day, the judges enter and park in their own sallyport, but then must pass through the prisoner sallyport in order to enter the building at the basement level. They must then travel the same route used to transport prisoners, past the maintenance office and storage area, the maintenance shops, down a long hall and ultimately into what is commonly called the freight elevator. This elevator is also used by the prisoners, construction workers, and the GSA maintenance and janitorial staff and is therefore not available much of the day. This means the judges often ride with the public and the prisoners must be transported in the public elevators. When exiting the building, the judges leave their chambers, pass through the public hallways and the public waiting area for the courtrooms in order to enter the freight elevator and then pass through the same circuitous route to reach the basement level exit. Attached

to my statement are pictures of the prisoner sallyport area, first showing the prisoners going through in shackles and then our clerk walking through the same area on the way to her car. Also attached is a picture of prisoners being jammed into the freight elevator for transport to the fourth floor to the Marshal's main holding cells.

As a matter of interest, recently Judge Sandra Snyder exited the prisoner elevator in the basement to go to her car and promptly ran into a string of shackled prisoners being brought into the building for court appearances. The Marshals quickly lined the prisoners up against and facing the wall while she passed through the area. I have personally found myself, while entering or exiting the elevator and while in the sallyport, staring into the face of hardened criminals whom I have either just sentenced or had appeared before me.

The present prisoner population of the Fresno Division of the Eastern District is 495. Many times there are 30 to 80 prisoners delivered at a time to the courthouse, depending upon the size of the bus and the institution from which the prisoners are being transported. They must be brought into the building in groups and then placed in the main holding cells. The Marshals have no way of bringing them from the main holding cells on the fourth floor up to the fifth floor courtrooms except by going up a narrow, steep stairway from the Marshal's office. The prisoners are shackled while in the stairwell as if it were, in essence, a holding cell which creates a danger and a disturbance at the same time. At times as many as a dozen prisoners will have to be moved at a time to the temporary holding cells adjacent to the courtrooms. These holding cells were built to hold only two prisoners. Sometimes the prisoners intentionally provoke each other or are just noisy, causing disruption of the proceedings in the courtrooms on either side of the holding cells. On a law and motion day, there can be over 200 prisoners to be delivered for various motions, trials, etc. Many times the holding cells are so full that the Marshals have to place prisoners in the jury box in the courtroom, mixing male and female prisoners, who are supposed to be separated.

B. Condition of the Building

A seismic evaluation was performed on the building and a determination was made that the building was seismically unsound and that retrofit was necessary. It was determined that the cost of seismic retrofit would result in expenditures greater than the value of the building and the court would have to be located elsewhere during such retrofit. In addition, the court spaces are not up to code in fire safety. On the exterior of the building, the windows are actually covered by metal grates and therefore not accessible for ingress or egress in the case of fire or other disaster.

2. THE PROPOSED NEW FRESNO COURT PROJECT

As a result of the need for additional space and adequate security, GSA conducted a feasibility study which determined the necessity of a new courthouse and developed a prospectus which has been accepted by GSA with the approval of the Central Office and OMB. The city of Fresno demonstrated its strong support for the new courthouse by donating four-plus acres of land for the site on which the courthouse will be constructed. The city of Fresno has also agreed to build a 500-car parking structure for the new courthouse, as well as building a "people park" on one square block within walking distance of the new courthouse. Attached to my statement is an editorial which appeared in yesterday's *Fresno Bee*, describing the widespread local support for the project. An Environmental Impact Study has been completed and accepted. The architect, Moore Ruble Yudell, has completed Final Concepts which were presented to the General Services Administration on December 10, with approval given to proceed with final design and construction documents. Groundbreaking is anticipated in mid to late Fall of 2000.

3. BUSINESS OF THE COURT

Of the 94 districts, the Eastern District of California, Fresno Division, stands as follows in those statistics that are important concerning caseloads:

A. Weighted filings—862 weighted filings per judgeship in the Fresno Division. This would be the third highest in the United States and twice the national average.

B. The district-wide filings have increased an average of 18 percent per year, considerably higher in the Fresno Division. The district is the third fastest growing district in the Ninth Circuit and the eighth fastest growing district in the United States. Population statistics show that the San Joaquin Valley is the fastest growing area in the State with the assumption that one-fifth of California's population will be located in the Valley in a short period of time.

| District Wide | Ranking | |
|------------------------------|----------|---------|
| | National | Circuit |
| Filings per judge: 717 | 3 | 2 |
| Weighted filings: 619* | 6 | 3 |
| Pending per judge: 770 | 4 | 1 |

*Weighted filings per judge for Fresno is 862. Compared to other districts nationally, the Fresno Division ranks third in weighted filings per judge.

C. Number of pending cases—4th.

D. Total filings—3rd.

Unfortunately, the Fresno area is known as “the meth capital of the world” because of the many isolated locations in the area available to those persons who wish to manufacture methamphetamine. The Eastern District has the eleventh worst crime rate of the 94 districts, worse even than the Central and Northern Districts of California as set forth in the *FBI Crime Rates by Districts, 1994*.

As you can see, there is an urgent need for a new facility for the Fresno court. I urge the Subcommittee to authorize \$112 million for the construction of the Fresno courthouse. The \$112 million will permit GSA to build the project as planned and designed. Thank you for your consideration of this important construction project.









STATEMENT OF BERNARD H. BERNE, MD., PH.D.

I am a resident of Arlington, Virginia. I serve the Food and Drug Administration (FDA) as a Medical Officer and as a reviewer medical device approval applications. I am submitting this statement as a private individual and not as a representative of FDA or of any other organization.

I ask you to reject a proposal in the Fiscal Year 2001 Capital Investment Program for the U.S. General Services Administration (GSA) that would make a total of \$544,640,000 available to GSA's Federal Buildings Fund for an FDA consolidation. GSA proposes to receive these funds through four appropriations in the Treasury and General Government Appropriations Act, 2001. GSA would use these funds to award contracts to design and construct an FDA consolidation at the former White Oak Naval Surface Warfare Center in suburban Montgomery County, Maryland.

No legislation authorizes the requested appropriations. GSA has never transmitted a prospectus to Congress that describes this project. Your Committee has never approved any such prospectus.

The Capital Investment Program proposes that, of the above total, \$101,239,000 would be made available to GSA in Fiscal Year 2001. The remainder would become available to GSA in Fiscal Years 2002, 2003, and 2004. The Capital Investment Program does not provide the estimated maximum cost of this costly and unjustified project.

In 1999, Congress appropriated \$35,000,000 to GSA in the Treasury and General Government Appropriations Act, 2000 (Pub. L. 106-58, Sept. 29, 1999) for an FDA consolidation in Montgomery County, Maryland. GSA is now illegally using these funds to construct this wasteful and environmentally unsound project at White Oak.

Pub. L. 106-58 contains a provision that specifically restricts GSA's use of any of the appropriated funds to the "development of a proposed prospectus" for any construction project that had lacked an approved prospectus when Pub. L. 106-58 became law. Despite this provision and the fact that GSA has never even transmitted

a prospectus to Congress, GSA is now using these funds to enter into contracts for the design and construction of the White Oak facility.

White Oak is a very poor location for the FDA consolidation. Your Committee should not permit FDA to consolidate at that site.

The following points summarize the reasons to oppose the White Oak FDA consolidation. They also provide the reasons for your Committee to give immediate and intensive oversight to GSA's activities relating to the FDA's consolidation:

Congress has not approved a prospectus for any part of the FDA consolidation. GSA is using the funds appropriated in Pub. L. 106-58 for construction purposes without ever submitting a prospectus to Congress.

GSA's actions are violating a provision in Pub. L. 106-58 that prohibits the use of these funds for construction purposes in the absence of an approved prospectus. *These actions are illegal and constitute a misuse of Federal funds.*

FDA does not need to consolidate its facilities.

- The FDA consolidated facility at White Oak will be a white elephant that will cost at least \$600,000,000. It will be a country club that will have a golf course adjacent to FDA's offices.

- The FDA consolidation is nothing more than a pork barrel project for Maryland.

- Nearly all current FDA buildings are in good condition. Few are unsatisfactory. GSA often misleads readers by describing these buildings as being unsatisfactory. It does this by selectively quoting parts of sentences in various documents without providing the entire sentence.

- FDA offices that work together are already close to each other. Few FDA employees need to travel long distances between work sites. There is now no clear need to expend Federal funds to consolidate FDA.

- Many FDA employees work at home part of the time. Few travel between work sites. An FDA consolidation will *not* increase FDA's ability to approve new drugs and medical devices in a timely manner.

- The Government does not save money by building a new Federal facility rather than by leasing. The Federal Government gains income tax revenues from owners of leased buildings. It receives nothing from federally owned buildings.

An FDA consolidation at White Oak is environmentally unsound.

- White Oak is outside of the Beltway and is three miles from the nearest Metro-rail station.

- Many FDA buildings, including the largest ones, are now near Metro stations. Metro will lose riders if FDA consolidates at White Oak.

- Public transportation to White Oak is and will be inadequate. Few FDA workers will take buses to White Oak. For economic reasons, buses will be infrequent.

- Roads and highways near White Oak are already heavily congested. They don't need more traffic and air pollution. Nearly all FDA workers would drive to work at White Oak.

- Many FDA workers would drive to White Oak on the congested Capital Beltway during rush hour.

- An FDA consolidation at White Oak would replace over 125 acres of open space with a sprawling campus filled with buildings and large paved parking lots.

- An FDA consolidation at White Oak will accelerate urban sprawl. If FDA consolidates at White Oak, other Federal agencies will follow. This will eventually fill a 750-acre Federal property.

- GSA's White Oak property is heavily forested. An FDA consolidation at White Oak would begin the destruction of this woodland, which could otherwise be a national, regional, or local park.

- There are a number of federally owned sites near Metro stations that are available for the FDA consolidation. These include the Southeast Federal Center and the west campus of St. Elizabeth's Hospital in D.C. and the Suitland Federal Center in Prince George's County, Maryland. GSA has refused to evaluate any of these.

- GSA is planning to construct some of FDA's buildings at White Oak on top of a former Navy dump site. This site is contaminated with PCBs, which cause cancer, and with mercury, which causes birth defects. Navy contractors have stated that the site is too contaminated for residential use. There is no assurance that GSA or the Navy can decontaminate the site sufficiently to protect the health of FDA employees.

An FDA consolidation at White Oak would hurt the District of Columbia.

- The Council of the District of Columbia has approved a resolution that objects to GSA's selection of the White Oak site and that asks GSA to work with D.C. officials to identify a suitable site in D.C., consistent with Federal laws and executive orders.

- The White Oak facility is one of two FDA facilities that would consolidate in Maryland. The two facilities would together remove over 900 Federal jobs from D.C.

- D.C. has lost many Federal jobs in recent years. This project will accelerate such losses. Further, it will encourage other Federal agencies to locate outside of D.C.
- Many FDA workers now live in D.C. and take Metro to work. These will leave D.C. if FDA consolidates at White Oak.
- GSA violated Federal laws and policies when it selected the White Oak site.
- President Carter's Executive Order 12072, which President Clinton has reaffirmed in Executive Order 13006, requires Federal agencies to locate their facilities in cities (with preference to large central cities) when locating their facilities in urban areas, such as the Washington Metropolitan Area. Federal courts have found that Executive Order 12072 has the full force and effect of law. White Oak is not in or near any city.
- GSA refused to evaluate any potential sites in any city.
- GSA has refused to consult with District of Columbia officials regarding the availability of suitable sites within the District. This violated Executive Order 12072 and the Federal Buildings Cooperative Use Act, which require such consultation with local city officials.
- Washington, D.C. has a number of suitable vacant federally owned sites, such as the Southeast Federal Center and the campus of St. Elizabeth's Hospital. Unlike White Oak, these sites are near Metro stations. GSA has refused to evaluate any of these sites.
- GSA informed D.C. officials that the Southeast Federal Center can not accommodate the FDA consolidation. *This is untrue.* GSA's plans for The Southeast Federal Center anticipate the construction of nearly twice the amount of occupiable space than FDA needs.
- GSA incorrectly informed the D.C. officials and the public that Congress had mandated FDA to consolidate in Montgomery County. This was a misrepresentation of fact. There is no such mandate.
- Federal laws promote development in economically distressed areas, such as Southeast D.C. However, White Oak is an affluent residential suburb in one of the richest Counties in the Nation. White Oak does not need or deserve Federal assistance to help its economy.
- The Environmental Protection Agency has formally informed GSA that GSA did not adequately evaluate alternative sites on public and private lands when it prepared its Environmental Impact Statement for FDA consolidation. GSA violated the National Environmental Policy Act (NEPA) when it selected the White Oak site.
- GSA did not attempt to acquire properties in D.C. by donation. The FDA Revitalization Act (Pub. L. 101-635) requires such attempts, since it is more cost-effective for the government to acquire properties by donation than by using existing Federal property.

EXPLANATION OF POINTS

Suburban White Oak is a very poor site for this massive "consolidated" Federal administrative and laboratory facility. Metrorail is three miles away.

White Oak is located a mile outside of the Capital Beltway. Nearby highways and roads, including the Beltway, are already heavily congested.

An FDA facility at White Oak would increase the Washington Metropolitan Area's traffic congestion, air pollution and urban sprawl. Further, the new construction would require Congress to appropriate additional funds to "improve" the highways and roads that serve the White Oak area.

GSA is planning to construct some FDA's buildings on top of a contaminated Navy dump site. Toxic wastes on the FDA site include PCBs, which cause cancer, and mercury, which causes birth defects. GSA and Navy contractors have found the FDA site to be unfit for residential uses.

The FDA Revitalization Act (P.L. 101-635; 21 U.S.C. 379(b)), (see Exhibit 1) which amended Chapter VII of Federal Food, Drug, and Cosmetic Act by adding a new Section 710 (21 U.S.C. 379(b)), only authorizes appropriations that the Secretary of Health and Human Services (HHS) can use to enter into contracts to design, construct, and operate a consolidated FDA laboratory and administrative facility.

P.L. 101-635 does not authorize any appropriations that GSA can use to enter into any contracts of any kind. P.L. 101-635 *clearly and specifically* restricts the role of GSA in the FDA consolidation to "consultation" with the Secretary of HHS.

Specifically, Section 101(d) of P.L. 101-635 authorizes appropriations only to "carry out this section". "This section" (Section 710 of the Federal Food, Drug, and Cosmetic Act) states "(a) Authority.—The Secretary, in consultation with the Administrator of the General Services Administration, shall enter into contracts for the de-

sign, construction, and operation of a consolidated Food and Drug Administration administrative and laboratory facility. "This section" *does not authorize GSA to take any actions.*

Congress cannot presently appropriate *any* funds to GSA under the authorization of appropriations specified in P.L. 101-635.

Further, the FDA Revitalization Act authorizes appropriations for only one FDA consolidated facility. Despite this, GSA has used funds appropriated for an "FDA Consolidation" to design and construct three separate FDA administrative and laboratory facilities in Beltsville, College Park, and White Oak, Maryland.

GSA's actions have contradicted the intent and language of the FDA Revitalization Act. GSA will not use the proposed appropriation to consolidate all FDA headquarters facilities in a single location. Therefore, the FDA Revitalization Act is irrelevant to the proposed appropriation.

GSA has claimed in reports to Congress that the FDA Revitalization Act authorizes appropriations to both the Secretary of HHS and to the Administrator of GSA to design and construct the FDA consolidation. This self-serving claim is incorrect.

I am not aware of any law that authorizes two separate government officials (such as the Secretary of HHS and the Administrator of GSA) to perform the same activities and to receive appropriations for such identical activities. Any such law could produce duplications of efforts and the endless shifting of blame for irresponsible actions. For this reason, when it wrote P.L. 101-635, Congress assured that the FDA Revitalization Act would only authorize appropriations to HHS and would *not* authorize any appropriations to GSA.

According to Section 7(a) of the Public Buildings Act of 1959 (see Exhibit 2), as amended, Congress can *only* legally appropriate funds to GSA to construct any public building whose cost exceeds \$1.5 million if the GSA Administrator transmits a prospectus to Congress and if the Committee on Transportation and Infrastructure of the House of Representatives *and* the Committee on Environment and Public Works of the Senate (GSA's Senate authorizing committee) both pass resolutions that approve this prospectus.

On March 7, 2000, GSA submitted a report on the FDA consolidation to the Committee on Transportation and Infrastructure of the U.S. House of Representatives in response to a resolution that the House Committee had approved more than 3 years ago in accordance with Section 11(b) of the Public Buildings Act of 1959, as amended. GSA's 11(b) report contains a substantial amount of misinformation. Your own Committee may have received a copy of this report.

Rule 7(c)(2) of your Committee's Rules of Procedure prohibits your Committee from considering an 11(b) report as being a prospectus subject to approval by committee resolution in accordance with section 7(a) of the Public Buildings Act. Your Committee should not therefore consider GSA's 11(b) report to be a prospectus.

Your Committee needs to assure that Congress does not appropriate any funds for this or any other GSA construction project until your Committee approves a prospectus that describes the particular project. If GSA repeats its past practices, GSA will misuse the funds from any appropriation for the FDA consolidation that Congress may provide to GSA without an approved prospectus.

GSA has illegally used \$55,000,000 appropriated in the Treasury, Postal Services, and General Government Appropriations Act, 1996 (P.L. 104-52, 109 Stat. 482), to award contracts to construct a so-called FDA "consolidation" in College Park, Prince George's County, Maryland.

GSA is further now illegally using \$35,000,000 appropriated in the Treasury and General Government Appropriations Act, 2000 (P.L. 106-58, 113 Stat. 450) (See Exhibit 3) to award contracts to design and construct another so-called "FDA consolidation" at White Oak in Montgomery County, Maryland.

Provisions in both appropriations acts (P.L. 104-52 and P.L. 106-58) specifically *prohibited* GSA from expending any funds appropriated therein for the design and construction of any project for which a prospectus, if required by the Public Buildings Act, had not been approved. The Public Buildings Act requires the approval of a prospectus because, (1) the FDA "consolidations" will cost more than \$1.5 million, and, (2) the FDA Revitalization Act does not authorize any appropriations that GSA can use to award design or construction contracts.

GSA is therefore clearly misusing appropriated funds. Congress has *never* enacted *any* legislation that has authorized GSA to construct the College Park and White Oak FDA facilities.

President Carter's Executive Order 12072 (see Exhibit 4), *requires* all Federal facilities and Federal use of space in urban areas to "serve to strengthen the Nation's cities and to make them attractive places to live and work", and to "encourage the development and redevelopment of cities". When he issued this Order, President Carter stated that the Order was intended "*to strengthen the backbone of our major*

cities and to buildup jobs and further investments there." (Public Papers of the Presidents: Jimmy Carter, 1978, Book II, p. 1429).

Present Carter promulgated Executive Order 12072 pursuant to the authority granted to the President in the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 486(a)). Federal courts have found that this Executive Order has the full force and effect of law.

White Oak is not in or adjacent to any city. An FDA consolidation at White Oak would draw jobs and investments out of Washington, D.C. The requested appropriation serves to further weaken this economically troubled major city. Any appropriation to support an FDA consolidation at White Oak would violate Executive Order 12072 and 13006.

In Executive Order 13006 (See Exhibit 5), President Clinton reaffirmed Executive Order 12072 and made it a policy of his Administration. His own Administration is now proposing this appropriation in violation of the President's own policies and established law.

Section 12(c) of the Public Buildings Act states: "The (GSA) Administrator in carrying out his duties under this Act shall provide for the construction and acquisition of public buildings equitably throughout the United States with due regard to the comparative urgency of the need for each particular building."

Despite this requirement, GSA is requesting an appropriation to construct a major Federal facility in affluent Montgomery County, Maryland. Unlike Maryland in general and Montgomery County in particular, the District of Columbia is economically depressed.

The National Capital Planning Commission has recommended that Federal agencies increase the percentage of the National Capital Region's Federal employees that work in D.C. from 52 percent to 60 percent, to restore the historic percentage of Federal jobs in the District. It is thus clear that the District of Columbia has a far greater "comparative urgency of need" for the FDA consolidation than does Montgomery County, Maryland.

Thus, GSA is violating Executive Orders 12072 and 13006, as well as Section 12(c) of the Public Buildings Act, by proposing this appropriation. Your Committee should not endorse these violations by appropriating further funds for this project.

It is important for your Committee to recognize that no law directs or requires GSA to consolidate FDA in Montgomery County. In 1992, Congress appropriated funds to begin constructing an FDA consolidation in Montgomery County, Maryland. However, in 1995, P.L. 104-19 rescinded all of these construction funds (See Exhibit 6). *P.L. 104-19 removed any Congressional directive or requirement for FDA to consolidate in Maryland.*

The Treasury and General Government Appropriations Act, 2000 (P.L. 106-58) appropriated \$35 million for an FDA consolidation in Montgomery County. However, as noted above, P.L. 106-58 contains a provision that states (113 Stat. 451): "Provided further, That funds available to the General Services Administration shall not be available for expenses in connection with any construction, repair, alteration, or acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus." (See Exhibit 3).

No prospectus has ever been approved for this project. Since the Public Buildings Act requires prospectus approval for all GSA construction projects costing more than \$1.5 million, GSA cannot legally use the \$35 million to construct anything at White Oak. Therefore, the FDA consolidation can still occur in the District of Columbia rather than in Montgomery County, Maryland.

Rule 7(a) of your Committee's Rules of Procedure State that no project or legislation may be approved or otherwise acted upon unless the committee has received the written comments of the EPA Administrator, in accordance with section 309 of the Clean Air Act. You may therefore wish to consider the following EPA letter as representing the most recent comment from the EPA Administrator on this matter.

In a letter dated January 5, 1999, Mr. William Hoffman, NEPA/404 Program Manager, U.S. Environmental Protection Agency (EPA), Region III, informed GSA that GSA's Environmental Impact Statement (EIS) for the White Oak project did not comply with the regulations of the Council on Environmental Quality (See Exhibit 7). The EPA letter states that GSA had not adequately compared an FDA consolidation at White Oak with a consolidation at alternative locations on public and private lands.

The letter formally encouraged GSA to perform the required comparison in a future proposed EIS. However, GSA has not prepared any new EIS since receiving the EPA letter.

The federally owned Southeast Federal Center and St. Elizabeth Hospital sites in D.C., can accommodate the FDA consolidation. The federally owned Suitland Metro Station in Prince George's County, Maryland, may also be able to accommodate FDA. All of these sites are near Metro stations.

Your Committee needs to assure that Congress does not appropriate any funds for the FDA consolidation until GSA evaluates these alternatives and until both the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works approve a prospectus for the project and certify the project's need.

On December 15, 1998, the Council of the District of Columbia approved a resolution (See Exhibit 8) that asked The President, GSA and Congress to give preference to D.C. sites, consistent with Executive Orders 12072 and 13006. *The Council found that the FDA consolidations would remove 800 FDA employees from the District.*

The President and GSA disregarded the D.C. Council's request. GSA has refused to consult with D.C. officials (as required by Executive Order 12072) regarding this project.

FDA does not need to consolidate at White Oak. The Capital Investment Program violates laws, Executive Orders, and EPA regulations.

LIST OF EXHIBITS

1. The Food And Drug Administration Revitalization Act (P.L. 101-635, Nov. 28, 1990): The authorizing legislation for that authorized the Secretary of Health and Human Services to enter into contracts to design, construct and operate a single consolidated FDA administrative and laboratory facility. The GSA Administrator was only authorized to consult with the Secretary of HHS.

2. Public Buildings Act of 1959 (P.L. 85-249, Sept. 9, 1959): The Public Buildings Act requires the GSA Administrator to transmit a prospectus for large building projects to Congress. Sec. 7 states that approval of the prospectus is required "in order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings."

3. Treasury and General Government Appropriations Act, 2000 (P.L. 106-58, Sept. 29, 1999): The Fiscal Year 2000 Act that appropriated \$35,000,000 to GSA's Federal Buildings Fund for an FDA consolidation in Montgomery County, Maryland. A provision in the Act restricts expenditures of these funds to the development of a proposed prospectus for the project in accordance with Public Buildings Act of 1959.

4. Executive Order 12072: Federal Space Management (President Jimmy Carter, Aug. 16, 1978; 43 F.R. 36869; 40 U.S.C. § 490; 3 CFR, 1979 Comp., p. 213): Executive Order stating that the process for meeting Federal space needs in urban areas shall serve to strengthen the Nation's cities, shall give first consideration to a centralized community business area and adjacent areas of similar character, and that the heads of Executive agencies shall economize on their use of space.

5. Executive Order 13006: Locating Federal Facilities on Historic Properties in Our Nation's Cities (President William J. Clinton, May 21, 1996; Federal Register, Vol. 61, No. 102, May 24, 1996, pp. 26071-26072): Executive Order reaffirming the Administration's commitment to Executive Order 120072 and encouraging the location of Federal facilities in historic buildings in central cities.

6. P.L. 104-19 (Rescissions Act, 1995). The 1995 Act that rescinded \$228,000,000 of the funds previously appropriated for the Montgomery County, Maryland, FDA consolidation. The Act rescinded all construction funds for the facility.

7. Letter from U.S. Environmental Protection Agency to Mr. Jag Bhargava, General Services Administration, January 5, 1999. Letter informs GSA.—Letter from EPA that formally encourages GSA to compare alternative sites on public as well as non-public lands in the proposed Environmental Impact Statement (EIS) for the FDA Consolidation. The letter states that EPA had already informed GSA that a previous FDA consolidation EIS had not adequately compared the White Oak alternative to alternatives on non-public lands, thus making a comparison of environmental impacts difficult with anything other than the no action alternative.

8. Council of the District of Columbia, Resolution No. R12-834, (Location of Federal Facilities in the District of Columbia Sense of the Council Resolution of 1998; December 15, 1998. D.C. Council Resolution that requests the President, the Vice-President, the GSA Administrator, the GSA Regional Administrator, the FDA Commissioner, the OMB Director, the heads of all other Federal executive agencies, other Federal officials, and Members of Congress, to identify and give preference to District of Columbia sites when meeting Federal space needs in the Washington Metropolitan Area, consistent with Executive Orders 12072 and 13006.

EXHIBIT NO. 1.—THE FOOD AND DRUG ADMINISTRATION REVITALIZATION ACT

P.L. 101-635

104 STAT. 4583-4585 (21 U.S.C. 379B)

NOVEMBER 28, 1990

An authorizing statute for the FDA consolidation. P.L. 101-635 authorizes the Secretary of Health and Human Services to enter into contracts to design, construct and operate a single consolidated FDA administrative and laboratory facility. P.L. 101-635 authorizes the Administrator of General Services *to consult* with the Secretary of HHS, but does not authorize the GSA Administrator to enter into any contracts for the facility.

P.L. 101-635 authorizes appropriations "to carry out this section". The Secretary of HHS can thus expend any funds appropriated pursuant to this law to enter into contracts for the consolidated facility. The GSA Administrator does not have this authority. P.L. 101-635 does not authorize any appropriations to GSA.

Other statutes, including the Public Buildings Act of 1959, authorize the Administrator of General Services to enter into contracts to acquire property for and to construct Federal facilities, in accordance with provisions (such as prospectus submission requirements) that such legislation contains. It is important to recognize, however, that *P.L. 101-635 does not provide the GSA Administrator with any such authority*.

P.L. 101-635 authorizes only one consolidated FDA administrative and laboratory facility. GSA is currently planning to "consolidate" FDA's facilities in three separate locations (Beltsville, College Park, and White Oak, Maryland). P.L. 101-635 does not authorize this type of "consolidation".

P.L. 101-635 does not specify any location or political jurisdiction for the consolidated facility.

EXHIBIT NO. 2.—PUBLIC BUILDINGS ACT OF 1959

P.L. 85-249

SEPTEMBER 9, 1959

The Public Buildings Act authorizes the GSA Administrator to construct public buildings in accordance with the provisions of the Act. Sec. 7(a) requires the Administrator to transmit a prospectus for any large building project to Congress. Sec. 7(a) states that approval of the prospectus is required "in order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings."

Sec. 12(c) requires the Administrator to "provide for the construction and acquisition of public buildings equitably throughout the United States with due regard to the comparative urgency of need for each particular building".

Note: In recent years, GSA has transferred thousands of Federal employees from the District of Columbia to Virginia and Maryland. GSA has accomplished this by constructing and leasing buildings for a number of Federal agencies in suburban areas that are outside of the District, without constructing and leasing a comparable number of buildings within the District.

The District's current financial status is currently less favorable than the statuses of suburban Maryland and Virginia. There is thus a greater comparative urgency of need for public buildings in the District than in its Maryland and Virginia suburbs.

Despite the requirement in Sec. 12(c), GSA has not relocated many Federal agencies from Maryland and Virginia into the District. It is continuing to delineate areas for Federal leasing and construction in the National Capital Region to exclude the properties located within the District.

As an example, GSA is planning to construct new facilities for FDA in College Park and White Oak, Maryland. This would move approximately 900 Federal employees from the District. It would further increase the inequitable distribution of Federal facilities that is present in the National Capital Region.

The National Capital Planning Commission currently defines an "equitable distribution" as distributing 60 percent of the Region's Federal employees within the District of Columbia and 40 percent in Virginia and Maryland. The District presently contains only 52 percent of such employees.

EXHIBIT NO. 3.—TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2000

P.L. 106–58 (113 STAT. 430)

SEPTEMBER 29, 1999

The Fiscal Year 2000 Act that appropriated \$35,000,000 to GSA's Federal Buildings Fund for an FDA consolidation in Montgomery County, Maryland. *A provision in the Act restricts expenditures of these funds to the development of a proposed prospectus for the project in accordance with Public Buildings Act of 1959.*

Note: GSA has allocated these funds for the design and construction of FDA's proposed White Oak facility. However, the \$35,000,000 appropriated in P.L. 106–58 can only be used for the "development of a proposed prospectus" because no prospectus for the project had been approved prior to September 29, 1999, when P.L. 106–58 became law.

A provision in the P.L. 106–58 states that the funds available to GSA shall *not* be available for expenses in connection with any construction or acquisition project for which a prospectus, if required by the Public Buildings Act, has not been approved, except that necessary funds may be expended for required expenses in connection with the development of a proposed prospectus. GSA therefore cannot use these funds to award contracts to develop construction plans or to construct any buildings at White Oak or anywhere else.

Any Congressional committee approval of a prospectus for the White Oak facility after September 29, 1999, can only allow future appropriations acts to make new funds available to GSA to construct the facility. Because of the language in the restrictive provision, Congressional committee approval of a project prospectus after September 29, 1999, cannot give GSA the authority to use the funds appropriated in P.L. 106–58 for expenses related to construction and property acquisition.

The National Capital Planning Commission currently defines an "equitable distribution" as distributing 60 percent of the Region's Federal employees within the District of Columbia and 40 percent in Virginia and Maryland. The District presently contains only 52 percent of such employees.

EXHIBIT NO. 4.—EXECUTIVE ORDER 12072: FEDERAL SPACE MANAGEMENT

PRESIDENT JIMMY CARTER, AUG. 16, 1978

43 F.R. 36869; 40 U.S.C. § 490; 3 CFR, 1979 COMP., P. 213

Executive Order stating that the process for meeting Federal space needs in urban areas shall serve to strengthen the Nation's cities, shall give first consideration to a centralized community business area and adjacent areas of similar character, and that the heads of Executive agencies shall economize on their use of space.

EXHIBIT NO. 5.—EXECUTIVE ORDER 13006: LOCATING FEDERAL FACILITIES ON HISTORIC PROPERTIES IN OUR NATION'S CITIES

PRESIDENT WILLIAM J. CLINTON, MAY 21, 1996

FEDERAL REGISTER VOL. 61, NO. 102, MAY 24, 1996, PP. 26071–72

Executive Order reaffirming the Administration's commitment to Executive Order 12072, defining the improvement of "central cities" as the purpose of Executive Order 12072, and encouraging the location of Federal facilities in historic buildings in central cities.

EXHIBIT NO. 6.—RESCISSIONS ACT, 1995

P.L. 104–19 (109 STAT. 194)

JULY 27, 1995

1995 Act that rescinded \$228,000,000 of the funds previously appropriated for the Montgomery County, Maryland, FDA consolidation. The rescission removed all construction funds for any FDA consolidation in Montgomery County.

EXHIBIT NO. 7.—LETTER FROM U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

TO MR. JAG BHARGAVA, GENERAL SERVICES ADMINISTRATION—NATIONAL CAPITAL REGION

January 5, 1999.—Letter from EPA that formally encourages GSA to compare alternative sites on public as well as non-public lands in the proposed Environmental Impact Statement (EIS) for the FDA Consolidation. GSA has not responded to this letter.

The letter states that EPA had already informed GSA that a previous FDA consolidation EIS had not adequately compared the White Oak alternative to alternatives on non-public lands, thus making a comparison of environmental impacts difficult with anything other than the no action alternative.

The letter states that a comparative analysis is the heart of an EIS and that the Council on Environmental Quality (CEQ) regulations require that the details of each alternative be presented in a comparative form. The letter cites CEQ's regulations in § 1502.14(a), which states that agencies shall "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated".

EXHIBIT NO. 8.—COUNCIL OF THE DISTRICT OF COLUMBIA

RESOLUTION No. R12-834

LOCATION OF FEDERAL FACILITIES IN THE DISTRICT OF COLUMBIA SENSE OF THE COUNCIL RESOLUTION OF 1998

DECEMBER 15, 1998

D.C. Council resolution that requests the Mayor, the Financial Recovery and Management Assistance Authority, the District's Delegate to Congress, and the National Capital Planning Commission to take all appropriate actions to assure that the GSA Administrator and the heads of all other Federal executive agencies will comply with Executive Orders 12072 and 13006 and give preference to locations within the District when meeting their needs to house their facilities and to utilize leased and federally owned space in the Washington Metropolitan Area.

The resolution also requests the D.C. Corporation Counsel to investigate immediately any enforceable actions and recognize any causes for action that may be necessary to direct the GSA Administrator, the HHS Secretary, and the FDA Commissioner to consult with appropriate local officials to identify a site within the District of Columbia that is suitable for the proposed FDA consolidated headquarters facility and to prevent the relocation from the District of any Federal employees associated with the FDA.

The resolution further requests the President, the Vice-President, the GSA Administrator, the GSA Regional Administrator, the HHS Secretary, the FDA Commissioner, the OMB Director, the heads of all other Federal executive agencies, other Federal officials, and Members of Congress, to identify and give preference to District of Columbia sites when meeting Federal space needs in the Washington Metropolitan Area, consistent with Executive Orders 12072 and 13006.