



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

Washington, DC 20515

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August 10, 2012

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BRIEFING MEMORANDUM

TO: Members of the Subcommittee on Economic Development, Public Buildings and Emergency Management
FROM: Subcommittee on Economic Development, Public Buildings and Emergency Management Staff
SUBJECT: Oversight Hearing on "LA Courthouse: GSA's Plan to Spend \$400 Million to Create Vacant Space"

PURPOSE

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

BACKGROUND

General Services Administration

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

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

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

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

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

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

Federal Courthouse Construction Program

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

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

Over Estimating the Future Number of Judges

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

¹ GAO-10-417.

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

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

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

Lack of Courtroom Sharing

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

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

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

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

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

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

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

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

Construction Exceeded Authorized Limits

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

More specifically, the GAO found that:

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

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

Los Angeles, CA (LA) Courthouse

Background

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

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

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

Lack of Capacity

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

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

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

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

Security

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

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

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

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

Existing Courtrooms Are Small

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

History of Project Authorizations

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

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

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

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

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

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

Spring Street Courthouse Exchange Proposal

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

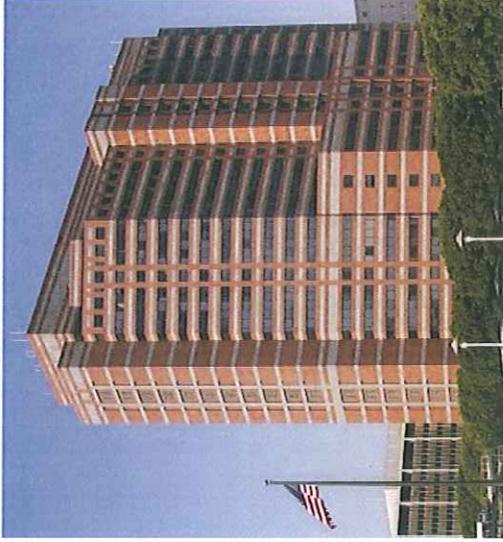
Subsequent to this announcement, Committee staff was briefed by GSA. While the Committee has encouraged GSA to fully use its existing authorities to address space needs, such as its exchange authority, in the case of LA it is unclear whether such an exchange is viable. The Spring Street Courthouse, while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

WITNESSES

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

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

Current Los Angeles Federal Courthouses



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

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

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



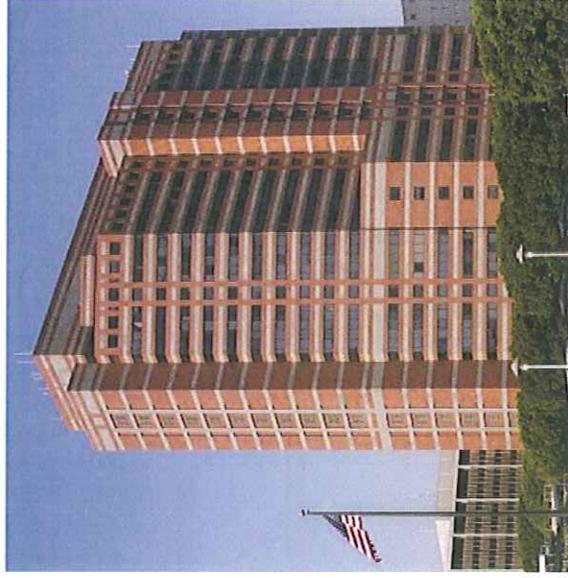
312 N. Spring Street Courthouse

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

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

Total: 59 Judges 61 Courtrooms

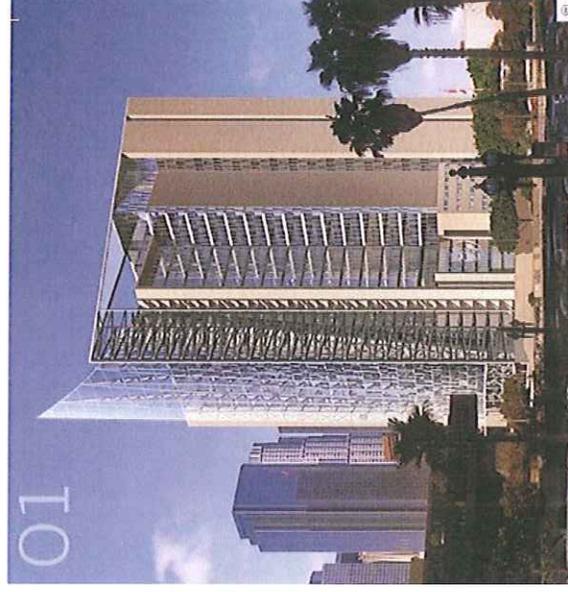
Pending \$400 Million GSA Proposal



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

32 Current Courtrooms

32 Courtrooms



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

0 Current Courtrooms
+24 July 2011 Proposal

24 Courtrooms



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

29 Current Courtrooms

29 Courtrooms

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