

**GSA'S FAILURE TO MEET THE NEEDS OF  
THE JUDICIARY: A CASE STUDY OF  
BUREAUCRATIC NEGLIGENCE AND WASTE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
COURTS, INTELLECTUAL PROPERTY,  
AND THE INTERNET  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

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JUNE 19, 2014  
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**GSA'S FAILURE TO MEET THE NEEDS OF  
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BUREAUCRATIC NEGLIGENCE AND WASTE**

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**THURSDAY, JUNE 19, 2014**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY,  
AND THE INTERNET

COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:02 a.m., in room 2141, Rayburn Office Building, the Honorable Howard Coble, (Chairman of the Subcommittee) presiding.

Present: Representatives Coble, Goodlatte, Marino, Chabot, Poe, Farenthold, Holding, DeSantis, Bachus, Nadler, Conyers, Bass, Richmond, and Jackson Lee.

Staff Present: (Majority), David Whitney, Counsel; Olivia Lee, Clerk; (Minority) Heather Sawyer, Minority Counsel; and Jason Everett, Counsel.

Mr. COBLE. Good morning, ladies and gentlemen. Good to have you with us.

The Subcommittee on Courts, Intellectual Property and the Internet will come to order.

Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

We welcome all of our witnesses today.

I think it is safe to say that most Americans have no idea what the General Services Administration is or what it does. But the agency is vast—it has more than 12,000 employees and is responsible for many of the behind-the-scenes operations that are intended to enable other agencies to better fulfill their constitutional and statutory duties.

Among GSA's responsibilities is the management of the Federal Civilian Real Estate Portfolio. Included in this area is the management of the overwhelming majority of facilities that house Federal courts throughout the United States. This includes most stand-alone courthouses like the Domenici Courthouse, where the GSA spent \$3.4 million to repair a water leak, and multi-tenant facilities like Roanoke's Poff Federal Building, where the GSA has spent \$65 million and is asking for an additional \$17 million without improving the functions or operations of its tenant agencies.

While not knowing what the GSA does, I suspect many Americans, if prompted, would recall the GSA was in the headlines a few years ago. Some of you will remember that. That was when the public first learned that GSA officials conducted an \$823 million training conference in Las Vegas that included a clown, a mind reader, and a reception that cost more than \$30,000, including more than \$7,000 for sushi alone.

Americans were justifiably outraged at the GSA's irresponsible and outlandish behavior not merely because of the spending but also at the detachment associated with the GSA officials who approved and participated in the conference. At a time when many Americans had lost their jobs and were feeling the continuing effects of the recession, the images of GSA officials lounging in hot tubs and partying on the taxpayers' dime struck a chord in many instances.

As a result of that scandal, the GSA Administrator, Martha Johnson, resigned, and she terminated the Commissioner of Public Buildings, Mr. Robert A. Peck, for his failures of leadership and judgment. To her credit, Ms. Johnson spoke plainly and acknowledged that a significant misstep had occurred and admitted that taxpayer dollars were squandered when she stepped down and fired Mr. Peck, who was her top advisor.

Speaking plainly is something the American people deserve and should be able to expect from their public officials. Accountability, responsibility, and credibility are other characteristics that Americans are entitled to. But I am sorry to say there is no plain talk in the scripted statement of our GSA witness today. In fact, there is a massive disconnect between reality and his testimony.

There are two possibilities when a situation like this occurs. Either the witness doesn't know the truth about the relationship between the agency where he works and the Federal courts, or he knows it and is attempting to deceive the Members of the Committee and the public. Neither possibility inspires confidence in GSA.

Since there is no candor in the descriptive statement, let's take a look at what others in a position to know report to the Subcommittee, according to a letter from the Honorable Dean Brooks Smith, the Chair of the Judicial Conference's Committee on Space and Facilities, dated June 18 that I will make a part of the record without objection, to this Committee.

[The information referred to follows:]

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June 18, 2014

Honorable Howard Coble  
Chairman  
Subcommittee on Courts, Intellectual Property  
and the Internet  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Coble:

As Chair of the Judicial Conference Committee on Space and Facilities, I write concerning the hearing the subcommittee plans to hold on June 19, 2014, entitled "GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste." Furthermore, I ask that this letter be made part of that hearing's record.

The Judicial Conference Committee on Space and Facilities (Committee) is responsible for reviewing, monitoring, and proposing to the Judicial Conference of the United States, the policy making body of the Federal Judiciary, policies regarding the Judiciary's space and facilities requirements and making recommendations for changes as appropriate. As such, the Committee has heard from courts and judges about the many frustrations they have experienced as a result of deficiencies in GSA service delivery.

GSA, as the Judiciary's statutory landlord, is solely responsible for the new construction, renovation, and alteration of our facilities as well as other property management services typically associated with a private-sector landlord. As an institution, the Judiciary does not have any preference as to the source of funding for the delivery of these services, only that they are sought and received in a timely and efficient manner and in a way that does not harm the

Honorable Howard Coble  
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functionality or security of our facilities. When supplemental funding became available through the FY 2009 economic stimulus, the Judiciary encouraged policymakers and GSA to include funding for its stated construction priorities. The majority of the projects suggested were shovel-ready and would have provided a significant economic boost to the states in which they were located. Regrettably, only two of the nine suggested projects received American Recovery and Reinvestment Act (ARRA) funding.<sup>1</sup>

Courts have legitimate complaints about GSA policies and services. These concerns include the following:

- significant differences in the responsiveness and quality of the performance of GSA staff from region to region;
- project management issues including communication, scope management, scheduling, and cost estimating;
- rent appraisal methodology and accuracy of rent bills;
- confusion as to how overtime utilities are calculated and billed, and potential excessive charges for these items; and
- overall building management issues.

In an effort to overcome past deficiencies, we recently initiated – in partnership with GSA – an effort aimed at addressing many of our long-standing problems. The Committee, at its December 2013 meeting, endorsed this initiative, which is intended to improve the delivery of all services that the Federal Judiciary receives from GSA, and we have been informed that it is supported at the highest levels of GSA. We appreciate GSA's commitment to working with us to address our concerns. This initiative will work in tandem with the Judiciary's space reduction program,<sup>2</sup> and will focus on the following topics: 1) appraisal methodology/Return on Investment (ROI) pricing practice; 2) overtime utility estimating and energy savings sharing; 3) space assignment, classification, and billing validation; and 4) project management: scope, development, and estimating. These topical areas were created because most complaints about GSA policies and services fall within one of these categories.

Four groups, which will be overseen by an executive steering group, will be comprised of Judiciary and GSA subject matter experts working together to devise solutions in each topical

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<sup>1</sup>The two projects receiving ARRA funding were: new construction for a courthouse in Austin, Texas, and a repair and alteration project at the Thurgood Marshall Federal Courthouse in Manhattan. Since then, the President's budget has not included a request for funding for any new courthouse construction projects on the Judiciary's *Five Year Plan* in four of the last five years. The result of this lack of support is that projects with serious operational and security deficiencies, including many of those the Judiciary had previously suggested for ARRA funding, are still languishing rather than being built.

<sup>2</sup>In September 2013, the Judicial Conference approved, with certain exceptions, a three percent space reduction target through the end of FY 2018 and a "No Net New" policy for the Judiciary's space footprint.



Honorable Howard Coble  
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area. The formation of these groups is already underway. Each group will agree on a clear mission statement, milestones and specific deliverables. To add support to this important initiative, I have appointed a subcommittee to oversee its progress. A judge will be assigned to monitor each group's progress and will report to the Committee at our December 2014 meeting.

The subcommittee will also work with Chief Judge Carol Bagley Amon (Eastern District of New York) to compile specific examples from around the country of space and facilities-related issues, incidents, problems or successes. Collecting this information will enable the Judiciary to improve its awareness regarding the issues that courts across the country experience on an ongoing basis. More importantly, it will allow the Judiciary to assess GSA's strengths as our landlord as well as hold them accountable for deficiencies in service.

The Committee appreciates the time and consideration the members of the subcommittee have given to this matter. If we may be of further assistance to you in this or any other matter, please do not hesitate to contact the Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,



D. Brooks Smith  
Chair

cc: Honorable Bob Goodlatte

Identical letter sent to: Honorable Jerrold Nadler

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Mr. COBLE. “[We have] heard from courts and judges about the many frustrations they have experienced as a result of deficiencies in the GSA.”

“GSA, as the Judiciary’s landlord, is solely responsible for the new construction, renovation, and alteration of our facilities as well as other property management services typically associated with a private-sector landlord.” Judge Smith continues, “Courts have legitimate complaints about GSA policies and services [to] include the following,” and then he lists significant differences in the responsiveness and quality of the performance of GSA staff from region to region, project management issues including communications, scope management, scheduling and cost estimating, appraisal methodology and accuracy of rent bills, confusion as to how overtime utilities are calculated and billed, and potential excessive charges for these items and overall building management issues.

In addition to Judge Smith’s letter that speaks to the chronic and systematic failure of GSA to properly perform its duties with respect to the courts, the Subcommittee has been informed of a long-standing and serious concern regarding GSA’s management and performance with respect to court facilities in North Carolina, Alabama and Puerto Rico over the last few days. With these concerns and those soon to be detailed by Judge Johnson, Chief Judge Conrad, and Ms. Smith, the Members of the Subcommittee and the public will soon be able to determine the truth for themselves.

Far greater than the amount of taxpayer dollars spent by GSA on its Vegas adventure, and far more pernicious are the everyday examples of waste and mismanagement for which GSA is responsible. It is unfortunate that our GSA witness did not take this opportunity to be forthcoming and candid in its scripted statement today. As I stated earlier, the American people are entitled to expect accountability, responsibility and credibility from our public officials.

And with that said, I will recognize the distinguished Ranking Member, the gentleman from New York, for his opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

The purpose of today’s hearing is to consider whether taxpayer dollars are being wasted when it comes to renovation of our Federal courthouses. This is an important issue, and the Committee with jurisdiction, the Transportation and Infrastructure Committee, is already exploring it.

Management of the government’s public buildings is not within this Committee’s jurisdiction, and this hearing does not involve funding issues central to the Judiciary’s ability to fulfill its constitutional obligations or manage its critical operations, considerations that are within our jurisdiction.

The fact that some public buildings house Federal courts does not itself explain or justify injecting this Committee into the oversight of those buildings or of GSA. This is particularly true when we have not yet held a single hearing on the impact that sequestration and short-sighted budget cuts have had on the Judiciary’s ability to fulfill constitutionally required and congressionally imposed duties.

There are undoubtedly legitimate concerns regarding particular renovation projects, and I appreciate the efforts of Judges Conrad

and Johnson and Ms. Smith to explain some of them to us today. Although they are speaking in their individual capacities and none is representative of the Judiciary as a whole, I commend their commitment to ensuring greater accountability and improving GSA service delivery going forward. There is no question that Members on both sides of this Committee take seriously allegations of waste, particularly in times of fiscal constraint. My concern is whether today's hearing represents the best use of this Committee's resources.

The Transportation and Infrastructure Committee already is well aware of the problems with the Poff Courthouse, which is located in Chairman Goodlatte's district, and it is otherwise actively engaged in robust oversight of GSA. That Committee held a hearing in 2011 on the Poff renovation, and Chairman Goodlatte testified about his concerns at that time.

We will hear more today about ongoing concerns with the Poff Courthouse renovation, as well as with concerns regarding the Domenici Courthouse in Albuquerque, New Mexico. While today's hearing highlights these two projects as ostensible GSA failures, it is notable that GSA only learned of complaints about the Domenici Courthouse after being notified of this hearing just last week, on the same day that the Majority issued the public hearing notice.

The failure to alert GSA or to ask for its response before scheduling this hearing does not demonstrate genuine interest in meaningful engagement with the agency. As we hear about problems with particular projects, we should also not lose sight of the fact that GSA owns and operates more than 9,000 properties across the United States. The Judiciary rents space in approximately 779 different GSA-managed buildings. Learning about problems in a handful of locations does not provide the necessary background, expertise, and context to engage in appropriate oversight of these 779 buildings managed by GSA and occupied by the courts, at least partially by the courts. That responsibility lies and should remain with the Transportation and Infrastructure Committee, of which I am also a Member.

GSA is the subject of robust oversight and well-deserved criticism by its Committee of jurisdiction. Some of that oversight has involved particular courthouse projects. I am not aware, however, of any formal complaint ever coming from the Judicial Conference of the United States regarding the GSA's management of courthouse buildings.

The Conference did notify us just yesterday that it recently initiated a partnership with the GSA to identify and address concerns that judges have with deficiencies in GSA service delivery. I understand that Chairman Goodlatte also has requested that the Government Accountability Office examine the GSA selection process with regard to facilities renovated using American Recovery and Reinvestment Act, otherwise known as stimulus, funding.

These reviews may identify system-wide issues that need to be addressed, or may not. To the extent they do, I hope that the Members of this Committee will work with and through our colleagues on the Transportation and Infrastructure Committee. It is that Committee and not this one that needs to continue holding GSA's feet to the fire.

This Committee has plenty of business on its agenda. Moving forward, I hope that our Committee will devote its time and resources to solving the critical funding issues that truly involve the unique interests of the Judiciary and leave oversight and management of public buildings where it belongs.

With that, I yield back the balance of my time.

Mr. COBLE. I thank the gentleman.

The Chair recognizes the distinguished gentleman from Virginia, the Chairman of the full House Judiciary Committee, for his opening statement.

Mr. GOODLATTE. Mr. Chairman, thank you very much, and thank you for holding today's hearing.

This hearing concerns matters of critical importance to American taxpayers and all who rely upon our Federal courts to adjudicate their constitutionally-protected rights and dispense justice. We are joined by a distinguished panel of witnesses that includes two Article III Federal judges, a dedicated and professional employee of the Federal Judiciary, and the Deputy Commissioner of the GSA's Public Buildings Service.

The purpose of today's hearing is to begin a public examination in this Committee of longstanding issues between the GSA, which is charged with managing the Federal Civilian Real Estate Portfolio, and one of its major tenants, the Federal courts. This examination is urgently needed because the Subcommittee is charged with the responsibility of ensuring that our Federal Judiciary has the ability to perform its constitutionally-required and statutorily-directed responsibilities. Essential to the performance of these duties is the ability to operate in safe, secure, and sound physical spaces, whether in a stand-alone U.S. courthouse or in a multi-tenant Federal building. In some instances, including the example of the Poff Federal Building in Roanoke, Virginia, the GSA has abysmally failed in its mission to provide superior workplaces for Federal customer agencies at good economies to the American taxpayer, which is their mission.

This hearing builds on one conducted in April 2011 under the leadership of Chairman Shuster and then-Subcommittee Chairman Jeff Denham of the Committee on Transportation and Infrastructure's Subcommittee with jurisdiction over public buildings. That oversight hearing directly examined whether GSA's management and execution of contracts for the greening and modernization of the Poff Federal Building violated Federal law and led to taxpayers being charged excessive amounts for the work.

At that hearing, which occurred before GSA had broken ground, GSA's own Inspector General testified, and I quote, "GSA has an obligation to spend the taxpayers' money on sound, well-thought-out projects that make the best use of taxpayer dollars. Our reviews show that GSA does not always meet this obligation, and did not do so here at the Poff Federal Building."

The IG found that the GSA had failed to get an independent government estimate for construction as required by the Federal Acquisition Regulations, and violated Federal law in awarding the construction contract by advertising the guaranteed maximum price the government would pay. As a result, each of the ten bids

received were identical and, unsurprisingly, at the maximum amount.

One direct result of GSA's violation of Federal law was that the IG recommended the agency not exercise options in the contract that would have improved the building's security and led to building code and life safety improvements. Startlingly, this is one recommendation that GSA was more than willing to follow.

Also testifying in April 2011 was Ms. Julia Dudley, the Clerk of Court at the Poff Federal Building. Ms. Dudley correctly anticipated a number of impacts on the court, noting the ability of court employees to perform their duties would be negatively affected by repeated moves, losses of space and facilities, shifting of burdens onto court personnel, and even disruptions to court security systems and IT infrastructure.

Notwithstanding the public shaming of GSA and repeated concerns expressed by public officials, including myself, Senators Warner and Webb, and court officials regarding GSA's justifications, decision-making, and management of the Poff renovation, GSA refused to alter its course in a manner that would have improved the value received by Federal taxpayers or the ability of its Federal Judiciary tenants to perform their duties.

Since that hearing, GSA has declared its work at the Poff Federal Building substantially complete. The project, which was originally budgeted at approximately \$51 million, has already cost taxpayers in the neighborhood of \$65 million, and GSA is requesting an additional \$17 million. A large portion of the initial increase is attributed to the GSA's failure to anticipate the need to move the Veterans Affairs Regional Office out of the building for 3 years. That failure to plan cost taxpayers approximately \$11 million while imposing incalculable costs on Roanoke Valley veterans.

In addition, GSA claims to have not foreseen the need to replace two 14-story brick walls that began to collapse in 2012, threatening the safety of court employees and the public and causing the court to shut down for a week. That condition is now estimated to cost \$6 million to repair.

Notwithstanding GSA's lack of foresight, it turns out the agency had repaired the wall once before, but it evidently did so in such a negligent manner that it posed a danger to life and safety, at least while the building was undergoing a major renovation.

Mr. Chairman, I request permission to enter into the record an article entitled "Bricks Try Patience of Court Workers At Poff Building," which was written by Laurence Hammack and published in the December 2, 2012 Roanoke Times. The article describes some of the impact on the court of GSA's mismanagement of this project.

[The information referred to follows:]

**Bricks Try Patience of Court Workers at Poff Federal Building**

By Laurence Hammack

The Roanoke Times (Virginia)

December 2, 2012 Sunday

Metro Edition

To get to the first floor courtroom of Roanoke's federal courthouse last week, visitors had to enter through the back of the building, take an elevator up to the seventh floor, walk a hallway the length of the building, and take a second elevator back to the first floor.

If they heard some banging along the way, it's because they were walking through a construction zone.

The administration of justice in the Poff Federal Building, already disrupted by a \$51 million renovation that began last year, came to a standstill recently when loose **bricks** were discovered on the building's west facade.

After being closed the week of Thanksgiving while most of the **bricks** were removed, the building reopened Monday - but with even more inconveniences than before.

To Chief U.S. District **Court** Judge Glen Conrad, the roundabout route to Courtroom No. 1 was just the latest disruption posed by keeping the **court** system in the building while it undergoes the three-year renovation.

"One questions the wisdom of leaving the tenant in the building while the window work was being done," Conrad said, referring to the replacement of the building's glass walls, a major part of the project.

"Losing the four days last week was a substantial blow to us," Conrad said in an interview last week. "It put people behind on projects; it just created a burden."

But until the **bricks** were removed, there was potentially much more at risk.

**Bricks** posed danger

A Nov. 14 letter to the General Services Administration, the federal agency in charge of the building's upkeep, stated that the west-facing **brick** facade "is in danger of collapse."

Because the **bricks** that made up the exterior of the 14-story wall were tightly bonded with mortar, "there exists the possibility that the collapsing wall could come down in a single sheet which would create a collapse zone equal to the height of the building (216 feet)," wrote Carl Doebly, vice president of TranSystems

Corp., one of the contractors working for GSA. "The **brick** portion of the west elevation should be demolished ? for purposes of life/safety."

Doebly's letter, obtained late Friday through a Virginia Freedom of Information Act request, makes a more stark assessment of the building's condition than had previously been released by the GSA.

However, it appears that the dangers outlined in the letter have passed with the removal of nearly all of the **brick** wall.

Remaining still are hassles for Poff Building tenants. The back-door entrance, which will be just a temporary inconvenience, was established when the courthouse reopened Monday.

The main entrance on the building's Franklin Road side and the surrounding area was closed as a safety precaution. That allowed construction **workers** to use a metal slab suspended from a crane to shear the **brick** veneer off the west-facing facade.

The work began Nov. 19, not long after a portion of the **brick** facade was discovered to be bulging away from the concrete wall behind it, causing a long crack that ran along the building's corner.

According to Doebly's letter, the space between the **bricks** and the underlying concrete wall, which was supposed to be about 1 inch wide, "was seen to have grown to as much as 7.5 inches."

And during a visual inspection, it appeared that the crack on the building's northwest corner "had enlarged over the last six days," the letter stated.

The building itself is structurally sound, according to the GSA. But as a precaution, the agency decided to close the building as the **brick** facade was removed.

#### Work nears completion

At first, GSA said the building would remain closed throughout the **brick** removal. "The safety of visitors, pedestrians and federal employees continues to be GSA's first concern," the agency said in a statement.

But after what was announced as a two-day closure was extended to cover the entire week of Thanksgiving, Conrad got on the phone with a GSA administrator in Philadelphia.

The judge said he explained what a "major inconvenience" it was to have the building closed. **Court** proceedings had to be postponed or moved to other federal courthouses in the district. And while some **court** filings were made electronically

by lawyers and **court** staff, the general public was denied access to the clerk's office.

"For the first three days, it was certainly a reasonable decision to close the building," Conrad said. "But of course I communicated the fact that we wanted to get back in the building as soon as possible."

Following those discussions, the building reopened Monday even as a crane continued to knock **bricks** off the building's side.

The **brick** removal had begun at the top of the 14-story building. "Now that most of the work is being done closer to the ground and most of the exterior **brick** has been removed, the level of risk has been reduced," GSA spokeswoman Gina Gilliam wrote in an email Wednesday.

With each passing day, as more **bricks** were removed, both GSA and **court** officials came to believe that whatever danger there was no longer existed.

"I wouldn't have let the employees come back in the building if I wasn't convinced they could do so safely," Conrad said.

On Saturday, a block-long length of Franklin Road and the road's intersection with Third Street, which had been closed for **brick** removal work, was reopened. And a large area that had been fenced off as a potential fallout zone was reduced substantially

Even when the **brick** work is completed, **court** staffers will still experience inconveniences from the ongoing renovations, which include noise and displaced offices.

With the exception of **courts**, probation service and a few other offices, the building is mostly empty. Its largest tenant, the Veterans Affairs regional office, was moved to temporary locations during the renovations.

By Thursday, 95 percent of the **bricks** on the west facade had been removed, Gilliam said.

Not 1st issue with **bricks**

The agency is continuing to inspect conditions on the other side of the building, where displaced **brick** was also discovered - but to a lesser degree than on the west facade.

"Our structural engineers continue to monitor the whole building in order to ensure safety," Gilliam wrote in an email.

It was unclear last week just when the loose **bricks** were first noticed, and whether it was by chance or part of a routine inspection. In response to emailed



questions - a format the government required - Gilliam said only that the problem was discovered by a GSA contractor.

So far, GSA has not provided an estimate of how much the work will cost.

The agency has said the **brick** removal is not part of the ongoing \$51 million renovation of the building, which includes replacing the north- and south-facing glass walls and installing a new roof and heating and cooling system.

That project, which began in August 2011 and is expected to take three years, is being funded by federal stimulus dollars.

Government officials have said the improvements, aimed at making the building more energy efficient, mark the first major renovation since it was built in the mid-1970s.

However, there have been many repair projects over the years, including one in 1991 that was supposed to fix the problem of loose **bricks** on the building's facade.

After determining that the facade was not properly anchored to the underlying concrete wall, the federal government spent \$400,000 to remove **bricks** in strategic locations and make reinforcements.

But that proved to be just a temporary fix.

Some tenants of the building have wondered just how long the loose **bricks** might have posed a risk. As Conrad put it: "One has to be a little bit concerned about the measure of safety we enjoyed before they decided to take the wall down."

Mr. GOODLATTE. According to the GSA, Federal courthouses comprise nearly one-quarter of GSA's owned portfolio. That percentage contributes an enormous amount to GSA's bottom line—the rent it collects from Federal tenants.

While I am disappointed in the testimony of our GSA witness, I am not at all surprised by its non-responsiveness in refusing to address the particulars of the two cases before the Subcommittee today. The Poff case and the expenditure of \$3.4 million to win a landscaping design award at the Domenici Federal Courthouse in Albuquerque, New Mexico, when all that was needed was a fix to a simple leak are inexcusable. If I were called to defend the actions of my employer in violating Federal contracting law and repeatedly failing to prioritize security and life safety improvements over other projects, then I wouldn't want to defend those choices either.

These cases are symptomatic of a larger problem, though. GSA's arrogance, refusal to consult and engage in meaningful pre-project planning with local court officials, inability to perform projects on time and on budget, and the lack of qualified on-site supervision not only costs taxpayers an enormous amount of money, it also shifts costs to the Judiciary, jeopardizes the safety and security of judges, court employees and the public, and impairs the essential duties of Federal courts to perform their constitutional duties.

Our GSA witness can paint a rosy picture of the relationship between GSA and the courts, describing it as a "close relationship" where projects are "jointly prioritized" and "joint efforts" are made "to improve planning and drive down the overall cost of the Judiciary's space needs," but he and the Members of this Committee know the truth. The Judiciary does not have joint responsibility for determining how its space needs are met, nor do they have control over the rent GSA collects.

The two projects we focus on today are likely the tip of the iceberg. Since announcing this hearing a week ago, we have received reports from several judicial districts around the country that involve similar concerns about GSA's ineptitude, incompetence, and lack of responsiveness.

As an example, Mr. Chairman, I ask permission to enter into the record four documents that were received yesterday from the Honorable Aida M. Delgado-Colo'n, the Chief Judge of the U.S. District Court in the District of Puerto Rico.

[The information referred to follows:]



UNITED STATES DISTRICT COURT  
 DISTRICT OF PUERTO RICO  
 150 CHARDON AVENUE  
 SAN JUAN, PUERTO RICO 00918

AIDA M. DELGADO · COLÓN  
 CHIEF JUDGE

June 18, 2014

TELEPHONE: (787) 772-3195  
 FAX: (787) 772-3160

Honorable Howard Coble  
 Chairman  
 Subcommittee on Courts, Intellectual Property,  
 and the Internet  
 Committee on the Judiciary  
 United House of Representatives  
 Washington, DC 20515

Re: ARRA Project at the Clemente Ruiz Nazario United States Courthouse and  
 Federico Degetau Federal Building, San Juan, Puerto Rico

Dear Mr. Chairman:

As the Chief Judge of the United States District Court District of Puerto Rico (Court), I write concerning the June 19, 2014 hearing being held by the Subcommittee on Courts, Intellectual Property, and the Internet entitled, "GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste." I also want to thank you for your interest in the American Recovery and Reinvestment Act (ARRA)-funded project at the Clemente Ruiz Nazario Courthouse and Federico Degetau Federal Building in San Juan, Puerto Rico.

By way of background, \$99,374,000<sup>1</sup> in ARRA funds were allocated to the Courthouse and Federal Building in 2009 to address the deteriorating and inadequate building systems and mechanical infrastructure, much of which was approaching or had reached the end of its useful life. Construction of an overall five phase project commenced in the spring of 2011.<sup>2</sup> By the winter of 2012, with phase one work still in process, GSA acknowledged that the contractor, Fusco Corporation (Fusco), would not successfully complete the scope of work in the time allowed under ARRA. Based on the September 2015 expiration of ARRA funding, GSA made drastic reductions in scope which would leave four of seven floors of the building as well as at least one courtroom untouched. Also eliminated was the planned and much needed extension to the main facility entrance where complex wide screening is conducted. This caused significant concerns for the Court since the entirety of the facility required the originally proposed upgrades.

<sup>1</sup>The final project value was negotiated to \$84,200,000.

<sup>2</sup>The initial project schedule reflected an approximate 8 month duration for each phase of work.

Honorable Howard Coble, Chairman  
Subcommittee on Courts, Intellectual Property, and the Internet  
Page Two

Indeed the very purpose of ARRA would be severely undermined in this facility by the proposed reductions in scope, which eliminated some of the green attributes and the energy conservation opportunities.

In January of 2013, the Court formally raised the concerns associated with the project with GSA. I have attached three letters for your review: one signed by the Circuit Executive and me and two signed by our appellate judge from Puerto Rico, Juan Torruella, the Circuit Executive and me. The first was sent to Joanna Rosato, the second to GSA Administrator, Daniel Tangherlini, and summarizes the impediments to the project that had occurred up to July 31, 2013. After sending the letter to GSA, we were informed by then Public Building Service Commissioner, Dr. Dorothy Robyn and Deputy Commissioner, Michael Gelber that a copy had been sent to the Office of the Inspector General as well. Although GSA devoted additional attention and resources to the project following receipt of the letter, to date, progress continues to lag. The third is a draft letter, addressed to Robert C. Erickson, Acting Inspector General at GSA, which updates the status of the project since July 31, 2013.

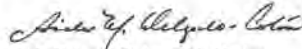
Despite commitments and participation from GSA senior leadership, the project continues to languish. GSA has promised full completion, however, what this means and how this will be achieved remains unclear. In January 2014, GSA identified a method to terminate its relationship with Fusco and re-obligate the remaining funds to complete the de-scoped work, however, GSA acknowledges that the value of the anticipated credits resulting from this termination will not be sufficient to complete the balance of de-scoped work. In addition, despite its inadequate performance to date Fusco continues to be responsible for significant work on the campus and is expected to be on site through the original ARRA deadline of the Fall of 2015, further depleting the value of credits owed to GSA.

At this time, over 54% of the project's \$84,200,000 have been expended, however, less than 40% completion has been achieved, phase two work is still in process. For more than three years, court operations have been negatively impacted by these delays. Several judges have been relocated to alternate court facilities, placing additional operational and financial burdens on the Court. This situation will persist for the foreseeable future. I remain gravely concerned that the complex will be indefinitely left in a state of disrepair, that sufficient funding to complete the work will not be available and that the project will never be completed in an appropriate fashion.

I hope that the attached information will aid you in your evaluation of the situation. I greatly appreciate your time and interest and am happy to provide any additional detail you feel necessary.

Honorable Howard Coble, Chairman  
Subcommittee on Courts, Intellectual Property, and the Internet  
Page Three

Sincerely,



Aida Delgado Colon, Chief Judge  
U.S. District Court, District of Puerto Rico

Attachments

cc: Honorable Bob Goodlatte, Chairman, Judiciary Committee  
Honorable Sandra L. Lynch, Chief Judge, U.S. Court of Appeals, First Circuit  
Melanie F. Gilbert, Chief, Facilities and Security Office, Administrative Office of the  
U.S. Courts

Identical letter sent to: Representative Jerrold Nadler

**DRAFT**

June [ ], 2014

Mr. Robert C. Erickson  
Acting Inspector General  
General Services Administration  
Office of Inspector General (J)  
1800 F Street, NW  
Washington, D.C. 20405

Re: Clemente Ruiz Nazario United States Courthouse and Federico Degetau Federal Building in San Juan, Puerto Rico

Dear Mr. Erickson:

As the First Circuit Judge holding the seat from Puerto Rico, Chief Judge of the District of Puerto Rico and Circuit Executive of the United States Courts for the First Circuit, we write on behalf of the United States District Court for the District of Puerto Rico (the "Court") to update you on the continued delays and deficiencies in a project funded by the American Recovery and Reinvestment Act of 2009 ("ARRA") to renovate and repair the Clemente Ruiz Nazario Courthouse (the "Courthouse") and Federico Degetau Federal Building (the "Federal Building") in San Juan, Puerto Rico (the "ARRA project" or the "project").

By letter, dated July 31, 2013, we informed Daniel M. Tangherlini, Administrator of GSA, of the lack of progress and mismanagement of the ARRA project. See Attachment A. On September 11, 2013, Denise L. Pease, Regional Administrator for the Northeast and Caribbean Region 2, reported in response to our letter, that she had informed the Office of the Inspector General ("OIG") of these issues and that GSA had set an aggressive goal to complete "as much of the project as possible," by September 30, 2015, the date on which the ARRA funds are set to expire. See Attachment B. We are not aware of any follow up action by the OIG in response to this information. Below, we provide for the OIGs' review the details of the project's continued slow progress since July 31, 2013, and respectfully request that you inform us of any action you are taking in response.

GSA has taken certain remedial steps since the Court expressed its concerns in July 2013. GSA has committed additional human capital and resources to the project. Through frequent meetings and telephone conferences, GSA has kept the Court informed of its plans and the status of the ARRA project. GSA has explored several potential plans to complete the project, and has

Mr. Robert C. Erickson  
Acting Inspector General  
General Services Administration  
Page 2

developed a milestone schedule. Most important, GSA has identified a means through which the current ARRA funds can be deobligated and used to reprocur tasks not completed by the September 2015 deadline. In conjunction with this reprocurment plan, GSA has agreed to dismiss Fusco after the completion of certain pending projects - far fewer than those for which Fusco was initially engaged - and hire a new contractor. Further, GSA suggested that a full-time, on-site project manager would increase the project's efficiency and has affirmed that it has chosen one. GSA has also pressured Fusco to complete tasks in a timely manner and, in response to Fusco's lack of progress, has held in excess of \$370,000 in retainage.

Despite this renewed commitment to accomplishing the ARRA project, it continues to languish. Little progress has been made in the more than nine months since our July 31, 2013 letter, while over 54% (\$45,521,659.00) of the project's \$84,200,000.00 in ARRA obligated funds has been spent. GSA has failed to follow through on its commitments and representations to the Court regarding both project deadlines and negotiations with Fusco. The following list highlights only the most egregious of the deficiencies in GSA's recent performance:

- GSA committed to a deadline of May 2014 for the completion of Phase 2.<sup>1</sup> GSA has since indicated that Fusco will not complete the phase until September 1, 2014. Most recently, however, GSA said that it plans for an August 1, 2014 completion date for Phase 2 of the Courthouse project, despite that fact that its construction manager, Jacobs Technology Inc. ("Jacobs"), retains the September 1, 2014 occupancy date. GSA fails to provide adequate explanation both for the delay and this inconsistent information. (In July 2013, Fusco had completed Phase 1 of 5 of the Courthouse project and had started Phase 2.)
- Jacobs has continued to provide inadequate on-site supervision and management of Fusco. See Attachment A at 2. With Jacobs remaining as GSA's construction manager, no appreciable progress has been made.
- GSA committed to the full-time presence of an on-site project manager, and in December 2013 affirmed that it had chosen a project manager who would start in February 2014. No project manager is present, reportedly due to a pending OPM clearance.

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<sup>1</sup>Phase 2 of the Courthouse project primarily involves the renovation and repair of courtrooms 5 and 6 and associated chambers.

Mr. Robert C. Erickson  
 Acting Inspector General  
 General Services Administration  
 Page 3

- In January 2014, GSA suggested a plan to terminate Fusco. The Court understood that GSA agreed to terminate Fusco (for convenience) and to arrange an expedited departure, the specific terms of which would be defined by the end of March. GSA has since amended this plan, and updated schedules reflect Fusco on site through June of 2015 (far longer than previously anticipated and allowing only 4 months for close out activities before the ARRA deadline). However, the modification to the contract remains under discussion.
- Based on discussions at a February 26, 2014 on-site meeting between GSA and the Court, it was agreed that Fusco would complete a limited set of tasks, primarily to include: (1) Phase 2 of the Courthouse project;<sup>2</sup> (2) Design Package 1 of the Federal Building project,<sup>3</sup> and (3) installation of basement mechanics. Less than a week later, on March 4, 2014, GSA informed the Court that Fusco would retain responsibility for projects far beyond this limited list, including roof replacement and installation of photovoltaics, installation of spray on insulation in areas not yet updated, installation of basement fan coil units, installation of a basement substation, and installation of a cistern. In total, according to GSA, twenty-one separate items remain Fusco's responsibility, despite GSA's representation in February that only the three items noted above would remain within its purview.

Moreover, while the Court awaits the termination of Fusco and the retention of a new contractor, it continues to lose confidence in Fusco's ability to complete the work for which it remains responsible in a timely and competent manner. Since the summer of 2013, Fusco has made some progress. It has progressed with the basement mechanical installation, cleaned duct work associated with design package 1 and tied all new systems to a building automation system, allowing GSA access to monitor the system. Nonetheless, in totality, Fusco has accomplished little and what it has accomplished often has been inadequate. The following list features some of the most glaring of Fusco's recent deficiencies.

- Fusco has failed to correct temperature regulation issues in Courtroom 2 since the summer of 2013. The problem has continued for so long that an independent contractor has been hired to investigate. No solution has been offered.
- As specifically outlined in the July 31, 2013 letter, the chiller plant was frequently failing. See Appendix A at 2. Although such shut downs have decreased in frequency, they remain an ongoing concern.

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<sup>2</sup>Design Package 1 of the Federal Building project involves the installation of thermafusers and cleaning of associated duct work in the clerk's office space.



Mr. Robert C. Erickson  
Acting Inspector General  
General Services Administration  
Page 4

- The cooling system servicing Phase 1 chambers does not appropriately and consistently regulate temperature.
- Courtroom 3's millwork is buckling, which may be caused by leaks and condensation issues (informed Fusco in July 2013).
- Antimicrobial coating on newly installed duct work in the Federal Building is delaminating.
- The cooling tower servicing the buildings' cooling system was found to be full of algae in of March 2014.

As this non-exhaustive list illustrates, we believe continuing to retain and compensate Fusco is a major financial risk to GSA. Its deficient performance demonstrates that it is not an appropriate candidate to complete the project even with the descoping of its obligations, much less the project for which it was originally hired. In our opinion, allowing Fusco to work any longer will be a continued waste of time and resources.

Further, the ARRA project was originally set to end on September 30, 2015. The current estimate is that construction will continue into 2018. Since the spring of 2011, the Court has been forced to function under nearly impossible conditions, with courtrooms under construction and in a fraction of the space needed. Further, Fusco's inadequate work frequently causes additional court space to be unusable.<sup>3</sup> Any budgetary shortfalls will surely result in more delay, which the Court simply cannot afford.

Finally, although the Court recognizes that GSA's determination that the deobligation and reallocation of ARRA funds for use beyond the original September 2015 will help the project, we do not believe that the remaining funds will be sufficient to complete it. In March 2014, GSA notified the Court that projected credits resulting from Fusco's termination will be deficient by \$10 million to cover the completion of just the courthouse portion of the ARRA project. The magnitude of the deficiency to complete the entire project has not yet been estimated, as far as we know, but will obviously be far greater. While GSA has asserted that it will make sufficient funds available to accomplish all goals, the source of this purported funding is unclear.

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<sup>3</sup> For example, the chiller's persistent failure causes the courtrooms to be too hot to continue business in Puerto Rico's tropical climate.

Mr. Robert C. Erickson  
Acting Inspector General  
General Services Administration  
Page 5

We are available to provide any information or documentation that may be helpful to you. We remain open to working collaboratively with GSA on a final and viable solution, but further delay is unacceptable. Please contact Susan Goldberg, Deputy Circuit Executive for the United States Courts for the First Circuit, at 617-748-9614, should you require additional information. We appreciate your prompt attention to this matter.

Sincerely,

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Juan R. Torruella, Circuit Judge  
U.S. Court of Appeals, First Circuit

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Aida Delgado Colón, Chief Judge  
U.S. District Court, District of Puerto Rico

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Gary H. Wentz, Circuit Executive  
U.S. Courts for the First Circuit

cc: Honorable Sandra L. Lynch, Chief Judge, U.S. Court of Appeals, First Circuit  
Pedro Pierluisi, Puerto Rico Resident Commissioner, U.S. House of Representatives  
Norman Dong, Commissioner, GSA Public Buildings Service  
Frances Morán, Clerk, U.S. District Court, District of Puerto Rico  
Melanie F. Gilbert, Chief, Facilities and Security Office, Administrative Office of the  
U.S. Courts

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UNITED STATES COURTS FOR THE FIRST CIRCUIT  
 OFFICE OF THE CIRCUIT EXECUTIVE  
 JOHN JOSEPH MOAKLEY UNITED STATES COURTHOUSE  
 1 COURTHOUSE WAY-SUITE 3700  
 BOSTON, MA 02210

GARY H. WHITE  
 CIRCUIT EXECUTIVE  
 617-748-9613

SUSAN J. GOLDBERG  
 DEPUTY CIRCUIT EXECUTIVE  
 617-748-9614

July 31, 2013

Mr. Daniel M. Tangherlini  
 Administrator  
 U.S. General Services Administration  
 One Constitution Square  
 1275 First Street, NE  
 Washington, DC 20417

Re: Clemente Ruiz Nazario United States Courthouse and Frederico Degetau Federal Building in San Juan, Puerto Rico

Dear Mr. Tangherlini:

As the First Circuit Judge holding the seat from Puerto Rico, Chief Judge of the District of Puerto Rico and Circuit Executive of the United States Courts for the First Circuit, we write to request the prompt investigation and remediation of a project funded by the American Recovery and Reinvestment Act of 2009 (ARRA) to renovate and repair the Degetau Federal Building and Nazario Courthouse in San Juan, Puerto Rico. In 2009, the General Services Administration (GSA) allocated over \$99,000,000 of the \$4.5 billion in ARRA funds dedicated to the conversion of federal buildings to High-Performance Green Buildings to the renovation of the Courthouse and Federal Building. As described in detail below, from its inception, this project has been plagued by waste and mismanagement by both GSA and its primary contractor, Fusco Corporation of New Haven, CT, precipitating significant and recurrent delays, cost overruns, and the failure to meet specific program goals. Prompt remedial action is needed in order to salvage the project and prevent the squandering of millions of taxpayer dollars.

By way of background, since the mid-1970s, the judiciary has leased the Courthouse and portions of the Federal Building from GSA for the use of the U.S. District Court for the District of Puerto Rico and the First Circuit Court of Appeals satellite library. Currently, the Court, the largest single tenant, occupies forty-eight percent (48%) of the total space and pays over \$5.4 million annually in rent to GSA. GSA identified this complex for ARRA funding because it was desperately in need of upgrades. The majority of the existing building systems and mechanical/electrical infrastructure had either reached their life expectancy or were deteriorating, were inefficient or were inadequate to protect the health of the tenants. The project was intended to provide a healthier environment for its occupants by upgrading temperature controls and consistency, air quality, lighting and finishes (i.e., paint, flooring and ceilings). This newer, more effective and efficient system was intended to achieve LEED silver status.

Unfortunately, three years into this five-year project, only one of the five phases (under 30%) of the project has been completed. Of the \$99,374,000 allocation, GSA has, to date, obligated over \$84,200,000 to the project, of which \$43,250,000 has been dispersed. As you

Mr. Daniel M. Tangherlini, Administrator  
U.S. General Services Administration  
Page 2

know, ARRA requires the reversion of obligated funds to the Treasury five years after their appropriation -- September 30, 2015 in this case.<sup>1</sup> Fusco is nearly two years behind schedule and has acknowledged that it cannot complete the project by the 2015 deadline without making significant cuts to its original scope. GSA has accepted responsibility for delays, as well, in part because of the aggressive scope of work, inefficiencies in obtaining contract modifications, and ineffective project oversight and management.

Many errors in management and judgment by GSA and Fusco have brought the project to this point. These include, but are not limited to, a failure by GSA to perform adequate due diligence. Although GSA foresaw the risks inherent with the use of alternative project delivery methodologies, it neglected to effectively adapt its methodology to a project of this scope. See Oversight of the American Recovery and Reinvestment Act of 2009, GSA's Implementation Challenges, August 6, 2009, at 4, in which GSA details the potential for costly change orders and cost overruns to occur with the improper utilization of "Design-Build" and "Construction Manager as Constructor" methodologies. GSA failed to "identify and finalize early in the process the requirements and specifications for the construction to be provided to the contractor." *Id.* As a result, unforeseen circumstances have continually interrupted the contractor's progress.

Work completed by Fusco and turned back to the Court has also proven to be inadequate. Court operations have been repeatedly hindered by the inability of the new systems to appropriately regulate temperatures and humidity levels. Building-wide temperature issues also persist due to frequent failure of the new chiller plant.

In addition, there has been a persistent lack of on-site supervision by both GSA and the primary contractor. GSA contracted with Jacobs Technology Inc. to provide construction management services. However, Jacobs' oversight also has been insufficient.

GSA and Fusco have acknowledged that there is no hope of substantial completion by the expiration of the 2015 deadline. GSA proposes to substantively narrow the scope of the project, as detailed below. This response not only disavows GSA's legal and ethical responsibilities but it will fail to fully address either the intent of Congress in enacting the ARRA legislation or the needs of the building population. If even completed according to GSA's current projections, it is clear that the project will not have warranted the significant expenditure of public funds that have been allocated to it. GSA management itself has acknowledged a role in the failure to meet the original goals of the project.

GSA has proposed to eliminate the following components from the scope of the project:

- replacement of the majority of the air distribution systems in the building, thus leaving old and potentially inadequate duct work in place;

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<sup>1</sup>Pursuant to 31 U.S.C. § 1552, five years "after the period of availability for obligation of a fixed appropriation account ends," the account closes and the funds revert to the Treasury.

Mr. Daniel M. Tangherlini, Administrator  
U.S. General Services Administration  
Page 3

- lighting upgrades in the Federal Building and lighting upgrades in phases 3 and 4 in the Courthouse;
- photovoltaics on the roof;
- flooring and ceiling upgrades; and
- building entry enhancements.

Substantial descoping of this project is not a viable alternative. By its own admission, GSA has a legal and ethical duty to adequately complete ARRA projects by holding contingency funds and/or by using "future funds to supplement its Recovery Act projects . . ." Oversight of the American Recovery and Reinvestment Act of 2009, *supra*, at 5. We ask only that GSA honor this commitment and fulfill its obligation to provide for unprecedented accountability in the distribution and utilization of Recovery funds to minimize waste, abuse, delays and cost overruns. The alternative — expending \$99 million of ARRA funds to have severely disrupted the operations of a U.S. District Court for five years, resulting in an incomplete project potentially resulting in inadequate working conditions — is an untenable result and one that would be clearly inconsistent with the intent of the President and Congress, let alone the public.

The legislative mandate of GSA under ARRA requires the completion of this project, as it is currently defined. This will necessitate an extension of time for this project's funding, currently due to expire on September 30, 2015. We are hopeful that there are avenues available, through contingency funding, executive order, congressional action or other means, to extend the availability of this appropriation beyond the statutory sunset date.


Because the project was so poorly planned by both GSA and Fusco, its completion will also necessitate the use of "future funds" by GSA. *See id.* Regardless of the FY 2015 deadline, the current allocation is unlikely to be sufficient to complete the project consistent with the contractual, legal and ethical obligations of GSA, Fusco and the other ARRA award recipients.

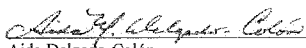
We fully intend to bring this matter to the attention of GSA's Inspector General, as we believe it is reflective of more pervasive issues relating to GSA's failure to properly perform its property management function nationally. However, as a matter of professional courtesy, we will hold our correspondence with the Inspector General for ten days — to August 10, 2013 — in order to afford you an opportunity to respond to the issues raised herein. We request that, in that time, you prepare and provide to us a detailed plan, with firm commitments in writing to additional time, funding, and resources, and including a comprehensive schedule for completion of the project as originally scoped; without such a guarantee, we will be forced to address this with the Inspector General.

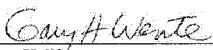
We remain available to provide additional documentation, information and any other assistance as needed. We are hopeful that you will act promptly to address this egregious mismanagement of ARRA funds, as well as the significant harm and inconvenience endured by the judges and staff of the Ruiz Nazario Courthouse and the Degetau Federal Building. Please contact Susan Goldberg, Deputy Circuit Executive for the United States Courts for the First Circuit, at 617-748-9614, to obtain additional information or to arrange a conference call with us and other interested parties. We greatly appreciate your prompt attention to this matter.

Mr. Daniel M. Tangherlini, Administrator  
U.S. General Services Administration  
Page 4

Sincerely,

  
\_\_\_\_\_  
Juan R. Torruella  
Circuit Judge  
U.S. Court of Appeals, First Circuit

  
\_\_\_\_\_  
Aida Delgado-Colón  
Chief District Judge  
U.S. District Court, District of Puerto Rico

  
\_\_\_\_\_  
Gary H. Wente  
Circuit Executive  
U.S. Courts, First Circuit

cc: Honorable Sandra L. Lynch, Chief Judge, U.S. Court of Appeals, First Circuit  
Honorable Pedro Pierluisi, Puerto Rico Resident Commissioner, U.S. Senate  
Dr. Dorothy Robyn, Commissioner, GSA Public Buildings Service  
Frances Moran, Clerk, U.S. District Court, District of Puerto Rico



UNITED STATES COURTS FOR THE FIRST CIRCUIT  
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GARY H. WENTE  
CIRCUIT EXECUTIVE  
617-748-9613

SUSAN J. GOLDBERG  
DEPUTY CIRCUIT EXECUTIVE  
617-748-9614

January 14, 2013

Ms. Joanna Rosato  
Regional Commissioner, Public Buildings Service  
General Services Administration  
26 Federal Plaza, Room 1605  
New York, NY 10278

Dear Joanna,

As you know, the Courts have continually expressed concern regarding the slow progress of the ARRA project at the Nazario Courthouse & Degetau Federal Building in Hato Rey, Puerto Rico. On January 7, our Assistant Circuit Executive for Space and Facilities, Kelly McQuillan, and U.S. District Court Project Architect, Barbara Manford, participated in a discussion with several members of your staff during which GSA acknowledged that under the current conditions, the project will not be completed in time to meet the legislative deadline for ARRA projects. As such, your team indicated they were evaluating options, such as reducing the scope, in order to meet the December 2014 substantial completion date.

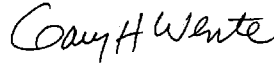
While we appreciate the willingness of you and your team to work collaboratively with the Courts, the initial recommendation to reduce the scope of the project, potentially eliminating badly needed upgrades to HVAC systems on floors 5, 6 & 7 of the Federal building, is not acceptable. It would seem every possible interim measure should be exhausted before resorting to this drastic last resort. We would like GSA to commit that any and all reasonable efforts be employed in order to successfully complete the project.

Some initial considerations should include requiring Fusco Corporation, the primary contractor, to create a realistic recovery schedule in order to meet their contractual requirements. This may require increasing staffing and supervisory levels. Additionally, as repeatedly requested, thorough and comprehensive mechanical reviews should be completed prior to the start of each construction phase to ensure every possible known challenge can be planned for. This should be completed by both Fusco's engineering and architectural team as well as an independent reviewer, possibly by GSA's Engineers. Finally, GSA's Project Managers need to be on site with regularity in order to maintain the necessary oversight and integrity of the project.

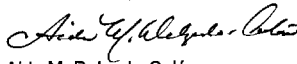
In order for us to appropriately assist in creating a mutually agreeable solution, it is important that we fully understand the details of the current situation. We request that a discussion be scheduled to review several key components of the project. This meeting should include a review of current manpower levels assigned to the project, a review of any outstanding change orders and contract modifications - including the list, value and reasonable schedule impact of each, as well as a current milestone schedule. In addition, understanding the financial obligations already committed, pending and what balance remains for the project along with a status of contingency funds and expectations will be critical.

We look forward to ongoing discussions regarding how best to complete this project. GSA appropriately identified the dire need of HVAC upgrades to the Hato Rey complex. This need remains, to leave the project unfinished would be tragic. We remain committed to working together toward the successful completion of the work. As always, we appreciate your support and assistance.

Sincerely,



Gary H. Wente  
Circuit Executive



Aida M. Delgado-Colón  
Chief Judge

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Mr. GOODLATTE. Judge Colo'n describes a situation where GSA has taken 2 years to determine a method to terminate an allegedly incompetent contractor and jeopardized the completion of a project that cost more than \$99 million. According to Judge Colo'n, our GSA witness today, Deputy Commissioner Michael Gelber, has known about this situation for some time. And yet, to date, progress continues to lag.

And 2 days ago, the Director of the Administrative Office of the United States Courts sent a memo to the chief judges of all United States Courts. The memo states, in part, that the Administrative Office "and the Judicial Conference's Space and Facilities Committee have long been searching for a way to hold GSA more accountable for the services it provides to the courts for the more than \$1 billion in rent the Judiciary pays to the GSA each year. Disagreements on the rent GSA charges the Judiciary, on project delivery and estimates, on overtime utilities, and on space assignments and billing validation have been longstanding issues."

Judges and local court officials are clearly thankful that this Subcommittee is seeking to hold GSA accountable, and many are approaching us, anxious to tell their stories of waste, arrogance, and indifference at the hands of the GSA.

In addition, I want to inform the Members of the Subcommittee that the Government Accountability Office is conducting a systematic review of all courthouse projects undertaken by GSA under the authority of the stimulus bill.

I am pleased to report that Chairman Shuster, the Chairman of the Committee on Transportation and Infrastructure, which has direct oversight over GSA's operations and management of the Federal Civilian Real Estate Portfolio, has joined me in the effort to study GSA's mismanagement of the billions expended pursuant to this authority.

In a very real sense, GSA's mismanagement of court facilities imposes a hidden tax on the operations of our Federal courts and impedes American justice.

I thank the Chairman for conducting this hearing. Notwithstanding the GSA's continuing efforts to obfuscate and evade responsibility, I welcome today's hearing as a step forward in holding GSA and its officials accountable publicly for their conduct.

Thank you, and I yield back.

Mr. COBLE. I thank the gentleman.

The Chair recognizes the distinguished gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Mr. Chairman and Members of the Committee. And I welcome the distinguished witnesses that are here.

I sometimes think I am in a Transportation Committee hearing. We don't have jurisdiction over many of the issues that have already been raised. They are not squarely within our Committee's jurisdiction. What we are concerned about here on this Committee is the Judiciary's constitutional obligations and fundamental operations. The Federal courthouse renovation projects are not funded from Federal Judiciary appropriations for which our Committee is responsible for authorizing in the ordinary course of events. Rather, funds for these projects are derived from appropriations allo-

cated to the General Services Administration, GSA, which is charged with addressing the building facility needs of the Federal Judiciary and which is subject to the Transportation and Infrastructure Committee's jurisdiction.

So we seem to be searching for some answers to questions that more appropriately belong in yet another distinguished and important Committee of the House of Representatives. In fact, the other Committee has already held a hearing examining many of the same issues that we expect to explore today, at least with respect to the Poff Courthouse. Thus, it is unclear why our Committee is insinuating itself into an area that is not properly in our jurisdiction.

Now, today's hearing focuses on just two court facilities out of approximately 779 GSA-managed buildings for which the Federal Judiciary pays rent. These Federal Judiciary facilities account for more than 42 million square feet of space and include 446 Federal courthouses. Unfortunately, GSA has received sometimes well-deserved criticism with respect to how it manages these properties and otherwise operates. But the Deputy Commissioner was only notified last week about this hearing, and a lot of it, as we can tell, already turns around the GSA.

I am wondering if we would have even had a GSA witness present had it not been for the determination of our staff to make sure that we hear all sides of this issue.

Nevertheless, I am unaware of any formal complaint from the Judicial Conference of the United States regarding GSA's management of Federal courthouse facilities. In fact, the Conference notified us just yesterday that it intends to study this very issue on a comprehensive survey and working group collaborative format with GSA, and I think that is a copy of the letter I have from the distinguished Ranking Member of this Subcommittee, Jerry Nadler, and I ask unanimous consent to put it in the record. Thank you.\*

Mr. COBLE. Without objection.

Mr. CONYERS. In fact, the Conference notified us just yesterday that it intends to study this very issue based on a comprehensive survey and working group collaborative format with the General Services Administration. It has further been told to me that the Chairman of the full Committee, Mr. Goodlatte, has requested the GSA to examine how it went about selecting court facilities for renovation under the American Recovery and Reinvestment Act.

So it strikes me as a bit premature to conduct a hearing on just two facilities when there are ongoing efforts to undertake a system-wide review of the GSA management and renovation of all Federal court buildings.

Now, I am pleased that our distinguished Members of the Judiciary, Judges Conrad and Johnson, as well as Ms. Smith, have significant concerns about various aspects of GSA handling of the renovation projects at their respective courts. Although these witnesses speak in their individual capacities and not on behalf of the Federal Judiciary as a whole, I commend their commitment to en-

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\*See submission, page 3.

sureing transparency and accountability with respect to the expenditure of Federal money for these purposes.

It is my hope that GSA will carefully consider their serious concerns and seek to improve how it can better prepare court personnel about the scope and anticipated disruptive effects that such renovation projects can or usually entail.

Finally, if our goal is meaningful engagement with the GSA on its work in our Federal court buildings, then we should endeavor to do so in an ongoing and bipartisan fashion, and unfortunately that does not seem to have happened here. My understanding is that GSA was only made aware of and invited to testify at this hearing on the same day that the Majority issued its public hearing notice. So, in fact, GSA was unaware of any complaints from my colleagues on the other side of the aisle about the Domenici Courthouse in Albuquerque, New Mexico.

Although today's oversight hearing apparently focuses on just two case studies, I hope Mr. Gelber on behalf of GSA will provide some perspective on some of the other renovation projects that are underway or under consideration. For example, I know that GSA is preparing a renovation activity in the Detroit Federal Courthouse, the Levin Courthouse in Detroit, a long overdue project that will modernize and preserve an historic courthouse that has served the hub of the Federal justice system in our area for over 80 years.

Chief U.S. District Judge Gerald Rosen very much welcomes this renovation, as do I, because it not only will preserve a major historic landmark for the City of Detroit but contribute to the revitalization of the city through the creation of new jobs and opportunities for development.

So I commend Subcommittee Chairman Coble and the full Committee Chairman Goodlatte for their concern in ensuring taxpayer dollars are properly accounted for and that Federal courthouse renovation projects entail no wasteful expenditures.

Equally deserving of the Committee's consideration, however, is whether the Federal Judiciary is adequately funded to meet all of its constitutionally mandated responsibilities, as well as those imposed by Congress. As you may recall, the sequestration cuts that went into effect last year forced the Federal Judiciary to delay trials, to recess trials, to reduce or furlough staff, and cut electronic and GPS monitoring of some offenders. In fact, the Federal Defender Program instituted lengthy furloughs and cut its staff by more than 10 percent, thereby threatening the Judiciary's ability to meet its obligation to provide counsel to indigent defendants, as constitutionally required.

And so, along with some of my colleagues in the House, we wrote the Chief Justice of the United States, John Roberts, expressing serious concerns about how these budget cuts were impacting that program, and we are trying to restore some of the lost funding for the Judiciary, which was partially achieved through the Congress' passage of a continuing resolution and the bipartisan Budget Act of 2013.

So I encourage my colleagues to be sensitive to the discussions that go on this morning with our distinguished witnesses and that we work as cooperatively as possible to best effectuate the Federal Judiciary's imperative mandate to serve all who seek justice.

I thank you for the time allotted and I yield back.

Mr. COBLE. I thank the gentleman.

Without objection, statements from other Members will be made part of the record.

We have a very distinguished panel today. I will begin by swearing in our witnesses prior to introducing them.

If you all would please stand?

[Witnesses sworn.]

Mr. COBLE. Let the record reflect that all responded in the affirmative.

Our first witness this morning is the Honorable William P. Johnson, United States District Court for the District of New Mexico. In August of 2001, President George W. Bush nominated Judge Johnson to the Federal bench, and in December of 2001 the United States Senate confirmed Judge Johnson.

From 2006 until 2013, Judge Johnson served as the 10th Circuit's Representative to the Judicial Conference Committee on Space and Facilities. During this time, Judge Johnson dealt with space and facilities issues at the national and circuit level, including new courthouse projects, courthouse renovation projects, and the closure of non-resident courthouses to reduce the Judiciary's footprint.

Judge Johnson received his J.D. from the Washington and Lee University School of Law and his B.A. from the Virginia Military Institute.

You went a long way from your roots Judge, but good to have you here.

Our second witness is the Honorable Glen E. Conrad, the United States Chief Judge for the Western District of Virginia. In April of 2003, President George W. Bush nominated Judge Conrad as a U.S. District Judge for the Western District of Virginia, and the United States Senate confirmed his nomination in a unanimous 89-0 vote in September of 2003.

Prior to his current position, from 1976 to 2003, Judge Conrad served as a magistrate judge in the Western District of Virginia's Abingdon, Charlottesville, and Roanoke divisions. Judge Conrad is a member of the Civil Justice Reform Act Advisory Committee and the Western District of Virginia Court Security Committee. He received both his J.D. and B.A. in Government from the College of William and Mary.

Good to have you with us, Judge, as well.

Our third witness is Ms. Jennifer Smith, Architect and Project Manager for the Western District of Virginia. In her position, Ms. Smith managed both the Poff Federal Building renovation and Abingdon Courthouse renovation on behalf of the Federal courts. Ms. Smith has 16 years of experience in the design and construction industry, and 11 years' experience as project manager and design lead. She received her M.A. in Architecture from Yale University and her B.S. in Architecture from the University of Virginia. Ms. Smith is a registered architect in the Commonwealth of Virginia.

Good to have you with us, Ms. Smith.

And our final witness this morning is the Honorable Michael Gelber, who is Deputy Commissioner of GSA's Public Buildings

Service. In his position, Mr. Gelber serves as the Service's Chief Operating Officer. The Public Building Service designs, develops, renovates and manages a real estate portfolio for approximately 378 million square feet of space in more than 9,000 owned and leased properties in the United States, as well as six territories.

Prior to his current position, Mr. Gelber was the agency's Federal Acquisition Service Regional Commissioner in the Pacific Rim Region. He is a graduate of Columbia University and possesses a Bachelor's degree in history. He also attended the University of Chicago.

Mr. Gelber, good to have you with us as well.

Good to have all of you with us.

Folks, you will note there are two light panels on your table. That is the warning of the timeframe. When the green light illuminates to orange, that is your warning that you have 1 minute remaining. You will not be severely punished if you don't wrap it up immediately, but if you keep in mind that it is on or about a minute to go when that amber light appears.

Good to have all of you with us.

Judge Johnson, we will start with you.

Judge, if you would pull that mic a little closer to you.

**TESTIMONY OF THE HONORABLE WILLIAM P. JOHNSON, DISTRICT JUDGE, UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO**

Judge JOHNSON. Mr. Chairman, Members of the Subcommittee, it is a distinguished honor for me to have the opportunity to be here this morning. I thank you for the Subcommittee's invitation to testify.

I prepared a written statement concerning the sustainable landscape project that the GSA did on the Albuquerque courthouse. It is the Domenici Courthouse. It was named by Congress in honor of Senator Pete Domenici. He was New Mexico's longest serving United States Senator. My statement is in the record, so I see no purpose in reading that statement again. I would be happy to answer any questions.

One thing I would say is that obviously the statement focused on the landscape project. But one thing, and I tried to incorporate this in my statement, that the Domenici Courthouse was completed in 1998, and it was done on time and under budget at a cost of \$41 million. This is 16 years ago. It is an impressive public building. I attached some photos to the back. But again, I think it should be noted that at the time it was built, 16 years ago, it was on time and under budget, which I think is a significant achievement of the General Services Administration.

With that, I will yield back the rest of my time, and I stand for any questions.

[The prepared statement of Judge Johnson follows:]

**STATEMENT OF HONORABLE WILLIAM P. JOHNSON  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW MEXICO**

**BEFORE THE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND  
THE INTERNET OF THE  
COMMITTEE ON THE JUDICIARY OF THE  
UNITED STATES HOUSE OF REPRESENTATIVES**

**“GSA’S FAILURE TO MEET THE NEEDS OF THE JUDICIARY: A CASE STUDY OF  
BUREAUCRATIC NEGLIGENCE AND WASTE”**

**JUNE 19, 2014**

**Introduction**

Chairman Coble, Ranking Member Nadler, and members of the subcommittee, my name is William P. Johnson, and since December of 2001, I have served and continue to serve as a United States District Judge for the District of New Mexico. I appreciate your invitation to appear today to discuss GSA's delivery of service to the federal judiciary.

For the seven year time period beginning October 1, 2006 and extending through September 30, 2013, I served as the Tenth Circuit's representative to the Judicial Conference Committee on Space and Facilities, and for this same time period I chaired the Tenth Circuit's Committee on Space and Facilities. Currently, I do not serve on any Judicial Conference or Circuit Committee so I am appearing today before this subcommittee by invitation, but I am doing so in my own capacity as a district judge in the District of New Mexico. My testimony concerns the "sustainable" landscape project initiated by the General Services Administration ("GSA") for the United States District Courthouse in Albuquerque, New Mexico. My involvement and interaction with GSA occurred during my time on the Judicial Conference and Circuit Space and Facilities Committees.

**Background**

During the 1980s and 1990s, the District of New Mexico, like the other federal district courts along the United States' border with Mexico, experienced an ever increasing criminal caseload such that the District Court in Albuquerque had outgrown the space it was occupying in the GSA federal building. Consequently, with strong bipartisan support from the members of the New Mexico congressional delegation, Congress authorized, and the President approved, funding for GSA to construct a new federal courthouse in downtown Albuquerque. This courthouse project was completed in the fall of 1998.

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The Albuquerque Federal Courthouse was one of the first modern federal courthouses to utilize both the shared courtroom concept and the collegial floor concept, which created significant efficiencies for both courtroom usage and judicial interaction and thereby reduced construction costs. The top two floors (sixth and seventh) house a total of 15 judicial chamber suites (nine district and six magistrate) and the third, fourth and fifth floors house a total of 10 courtrooms. The remaining floors house the clerk's office and other court related agencies. The main block of holding cells for in-custody defendants and a secure parking area are located on the ground floor.

Significantly, the Albuquerque Courthouse was budgeted at \$43 million and was completed on time and under budget at a final cost right at \$41 million (approximately \$132/sq. ft.). Attached as Exhibit 1 is the architectural brochure outlining in more detail design specifics for the Albuquerque Courthouse. Exhibit 2A is a photograph of the courthouse taken at the opening ceremony, and Exhibit 2B is a 2007 photograph of the courthouse prior to the GSA landscape project.

The Albuquerque Courthouse facility includes 80 below grade parking spaces located under the front lawn of the courthouse. The landscaping of the courthouse during construction included a large front lawn sodded with Kentucky blue grass which, with taking into consideration the local climate, was not the best choice of grass for the courthouse lawn.

Albuquerque's elevation ranges from 4900 feet above sea level at the Rio Grande River to 6700 feet above sea level in the foothill areas at the base of the Sandia Mountains. Albuquerque is on the northern tip of the Chihuan Desert, and its climate is usually sunny, dry and hot with little rainfall. While Albuquerque has four distinct seasons, the winters are



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relatively mild compared to other parts of the country. "High desert" is perhaps the best way to describe Albuquerque's climate.

As a result of Albuquerque's "high desert" climate, the Kentucky blue grass lawn has required a huge quantity of water. I was informed that during the hot summer months as much as 300,000 gallons per month of water was used to water the courthouse lawn.

#### **Water Leakage in the Garage**

At some point after the courthouse opened, water from the sprinkler system used to water the front lawn started leaking into the underground parking garage. I cannot state with certainty when the water leakage and puddling started, but this leakage issue was certainly a matter of concern from my first summer as a member of the court which would have been in 2002. During summer months when temperatures were hot in Albuquerque and the Kentucky blue grass lawn was being watered extensively, there were occasions when excessive amounts of water would leak into the below ground parking garage resulting in water puddling in the lower portion of the garage. Since there was no drainage from the garage, GSA would have to bring in commercial work crews with industrial strength vacuums to remove the water in the garage.

The Albuquerque Courthouse had a water feature as part of the front landscape plan which included a fountain and a passageway for the water to flow down part of the front lawn area into a storage reservoir to be pumped back to the fountain. I believe some of the water that seeped into the garage came from this water feature because once the Court stopped running the fountain the amount of water coming into the garage decreased, although water seepage into the garage continued until GSA completed its landscape plan.

Aside from the immediate concern of water puddling and stagnating in the lower level of the parking garage, there was concern over possible structural damage to the walls and ceiling of

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the parking garage if nothing was done to fix the problem. During this same overall time period, New Mexico, like other western states, was experiencing (and still is experiencing) a historic period of long term drought. The City of Albuquerque had implemented water conservation measures, and there was a general feeling among the judges that the Albuquerque Courthouse should not become, or be perceived as, one of the biggest water users in downtown Albuquerque. As stated earlier, watering the Kentucky blue grass lawn was not cheap.

At various times before GSA embarked on its landscape plan, requests were made to GSA to fix the water leakage problems in the garage. Additionally, court officials suggested to local GSA representatives that portions of the front lawn be xeriscaped with drought tolerant plants and shrubs native to New Mexico that would result in a significant decrease in water usage. Another suggestion that was conveyed to GSA was to replace the Kentucky blue grass with Buffalo grass, a grass native to the great plains of the western states and one that needs far less water to survive than Kentucky blue grass. I am not aware of any response from GSA to the Court's suggestions until GSA gave notice of its intent to embark on its "sustainable" landscape plan.

#### **Judicial Concerns Over GSA's Landscape Plan**

To the best of my recollection, GSA disclosed to Court officials in June or July of 2010 that there would be landscape renovations on the Albuquerque Courthouse. There were discussions between GSA and Court employees but I do not recall seeing the proposed landscape plan until the beginning of 2012. I discussed the landscape plan with my colleagues and then in March of 2012, I participated in a conference call with GSA officials and communicated the Court's concerns over the proposed landscape plan. The areas of concern I conveyed to GSA were as follows:

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1. The judges wanted GSA to understand, in no uncertain terms, that all that the judiciary had requested from GSA was to fix the water leakage problem in the parking garage and to come up with a way to reduce water usage for the front lawn.
2. Considering that the judiciary was not consulted on the scope, magnitude and cost of the landscape plan, and considering that the landscape project was to be constructed at a time when the District Court was confronting budget cuts and potential employee furloughs, the judges could not and would not support a landscape plan so large in scope.
3. Considering the timing of the landscape project came at a time when Executive Branch agencies (including GSA) and the Judiciary had come under criticism for extravagant and wasteful spending of taxpayer funds, the judges questioned the wisdom of embarking on such an ambitious and costly landscape renovation project.
4. The front lawn had become the location of choice for various groups to assemble and exercise their First Amendment right of free speech on a variety of issues, and the concern was raised over how the landscape plan would affect the use of the front lawn for free speech assemblies.
5. Considering the budgetary issues confronting the Judiciary, GSA was told that the judges would aggressively fight any attempt to increase rent on the Albuquerque Courthouse to pay for maintenance and upkeep on the landscape project.
6. The location and size of the proposed planters near the front door of the Courthouse would preclude any future outdoor ceremonies on the front plaza such as the ceremony GSA hosted when the Courthouse was named after former New Mexico Senator Pete Domenici. Exhibit 3A and 3B are photos of the naming ceremony and the tents that GSA

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rented and installed for that ceremony would not fit anywhere on the front plaza under the proposed landscape plan.

It was my distinct impression that GSA gave little consideration to the concerns raised by the Judiciary with one major exception: GSA agreed to move and reduce the size of the planters on the front plaza so future outdoor ceremonies could still be held in the area on the plaza in front of the courthouse. Additionally, GSA agreed that some of the trees could be repositioned so that people standing on the sidewalk at the bus stop on Lomas Boulevard could still see the name of the courthouse.

GSA proceeded with the landscape project beginning around August of 2012, and it was completed around May of 2013. Exhibit 4A is a photo of the courthouse taken before the landscape project was started, and Exhibit 4B is a photo of the courthouse after completion of the landscape project. Exhibit 5A and 5B are photos during landscape construction, and 5C is a wide angle view from the sixth floor of the courthouse looking down on the front lawn.

Exhibit 6A is a copy of the front page article written by Albuquerque Journal investigative reporter Mike Gallagher that appeared in the February 10, 2013 edition of the Albuquerque Journal. I consider the article to be factually accurate. On February 13, 2013, the Albuquerque Journal wrote an editorial on the landscape project and a copy of the editorial is attached as Exhibit 6B.

#### **Conclusion**

As the Albuquerque Journal reported, the landscape project cost 3.4 million in stimulus funds. To my knowledge, since the landscape project has been completed, there has not been any water leakage into the underground parking garage and the plants, shrubs and trees installed

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as part of the plan consume far less quantities of water than the old Kentucky blue grass lawn. Additionally, GSA is set to receive some kind of an award this summer for the landscape plan.

When I was interviewed by the Albuquerque Journal reporter I expressed the view that the landscape project could very well enhance the beauty of the courthouse but, considering the budget climate confronting the judiciary, I could not help but wonder if the project was excessive in terms of cost. I concluded by stating “whether this GSA landscape project is a wise and efficient use of taxpayer dollars is an important public issue and one certainly subject to debate.” That was my view then and my view now.

Again, thank you for the opportunity to appear today and discuss these issues. I would be happy to answer any questions the Subcommittee may have.



U.S. DISTRICT COURTHOUSE, ALBUQUERQUE, NM

This new facility, consisting of 311,000 gross square feet including 80 below grade parking spaces, is intended to accommodate the U.S. District Courts, the United States Clerk's Office, the United States Marshals Service, U.S. Probation Office, U.S. Pre-Trial Service, Circuit Librarian and GSA Building support on-site requirements through the year 2005. Additionally, the building site identifies a means by which the initial nine District Judges, six Magistrate Judges and direct support elements will expand to meet 30-year future requirements of 21 judges and related agencies.

This is one of the first major Federal Courthouses utilizing both the *shared courtroom concept* and the *collegial floor concept*, maximizing efficiency for both courtroom usage and judicial interaction, as well as reducing overall costs. Judicial chambers on the sixth and seventh floors share a common lobby and conference area in the fashion of traditional law offices, overlooking a full-height atrium and rotunda complete with skylight, with daylit courtrooms on the third, fourth, and fifth floors.

Security issues for this complex are extremely critical given the increasing threats to the Judiciary. In-custody prisoners enter by van through a secure marshals parking area and prisoner sallyport which leads directly to holding cells on the first level. Secure elevators access all courtroom floors

via dual holding cells for each pair of courts. A secure Judges' elevator provides complete security from Judges' parking to Judges' chambers and courts on all floors. This facility incorporates state-of-the-art security systems and is one of the most secure courthouses in the Southwest.

This is one of the most cost effective courthouses in the country. Budgeted at \$43,000,000, this building was awarded to the low bidder at \$40,998,000 (\$132/SF) a savings to the taxpayers of \$2,002,000.



#### ARCHITECTURAL INTENT

Flatow Moore Shaffer McCabe's design approach respects and reinforces important traditions through the architecture, conceived to promote the appropriate and essential characteristics of this building type.

The use of "three", as a general ordering principal, symbolically depicts the multi-cultural aspects of New Mexico, and depicts the significance of the Courts as one of the three branches of government. The symmetrical composition is intended to represent "equal justice for all" and provides a three dimensional armature for the elements of the design.

The building uses native, natural materials relating to the earth and natural light as a way to complement our regional architecture. Changes in texture, materials and color distinguish major areas of the building, such as the courtrooms.



OPENING CEREMONY, EARLY 1999

EXHIBIT 2A



ALBUQUERQUE COURTHOUSE 2007

EXHIBIT 2B



COURTHOUSE NAMING CEREMONY, AUGUST 2004 EXHIBIT 3A



COURTHOUSE NAMING CEREMONY, AUGUST 2004 EXHIBIT 3B





EXHIBIT 4A



COMPLETED LANDSCAPE PROJECT, JULY 4, 2013

EXHIBIT 4B



LANDSCAPE CONSTRUCTION

EXHIBIT 5A



LANDSCAPE CONSTRUCTION EXHIBIT 5B



COMPLETED LANDSCAPE PROJECT, TOP VIEW, 2014

EXHIBIT 5C

# Courthouse leak turns into \$3.4M project

Federal judges question whether it's a wise use of taxpayer money



DEAN HANSON/JOURNAL

An overview of the re-landscaping of the Pete V. Domenici U.S. District Courthouse on Lomas NW earlier this month that has judges concerned about the cost of the makeover.

Copyright © 2013 Albuquerque Journal

Story by **By MIKE GALLAGHER** ■ Journal Investigative Reporter

All the federal judges wanted to do was to stop water from leaking into the underground parking garage at the courthouse in Downtown Albuquerque. They had no inkling they were tapping into a multimillion-dollar bureaucratic trifecta.

Their request was relatively modest: Turn off the fountain and consider replacing the Kentucky blue grass with Buffalo grass that would require far less than 300,000 gallons of water during the summer — some of which was leaking into the garage.

The response from the General Services Administration: a \$3.4 million plan for redoing the courthouse landscape, putting up solar panels and installing giant underground

cisterns. GSA owns federal buildings, and the judges are, in effect, captive tenants with no control over projects like this. Nevertheless, they cringed at the expense — which is nearly 10 percent of the \$41 million it cost to build and landscape the seven-story high Pete V. Domenici Courthouse in 1998.



COURTESY OF RIOS CLEMENTI HALE STUDIOS OF LOS ANGELES

An artist's rendering of what the makeover will look like.

See **COURTHOUSE** on PAGE A7

# Courthouse leak turns into \$

From PAGE A1

Judge William "Chip" Johnson said the work looks first rate and the project may well end up enhancing the beauty of the courthouse.

But he said judges wonder whether, during a time of threatened government budget cuts and potential furloughs for court employees, the entire project hasn't gone more than a bit over the top.

"Whether this GSA landscape project is a wise and efficient use of taxpayer dollars is an important public issue and one certainly subject to debate," Johnson said.

The GSA sees it differently. "It is a wonderful project," GSA spokeswoman Tina Jesbergerman said. "This is one of those projects that they're already talking about awards for design."

Jesbergerman, who is based in Fort Worth, said GSA's plan was to make the project a "showcase for innovation in sustainability and to further GSA's goal for a zero environmental footprint."

### Trifecta

So how did the cash-strapped federal government find millions for an award-winning landscape project to fix a leak? That's where the trifecta comes in.

- The 2009 federal stimulus package meant there was money available.

- The Energy Independence and Security Act of 2007 approved by Congress ordered that federal buildings be made environmentally sustainable.

- An executive order signed by President Obama in 2009 increased the pace of the 2007 law.

So in fixing one leaky underground garage, the GSA could show it was following the president's orders and Congress' orders and didn't have to ask for extra money.

"The project presented a unique situation at a unique time," Jesbergerman said.

### Big leak

Before the leak repairs began, the front of the courthouse consisted of wide concrete sidewalks, stairs and courtyards, Kentucky bluegrass lawn and a fountain, all sitting on top of an underground parking garage.

When the lawn got watered, the fountain was turned on, water leaked into the underground garage.

Over time, it wasn't just a drip.

Commercial crews had to be brought in on a regular basis to vacuum out the standing water in the garage.

Judges were concerned the water would damage the integrity of the underground garage structure and require expensive repairs.



DEAN HANSON/JOURNAL

The landscaping makeover at the Pete V. Domenici U.S. District Courthouse has judges concerned about the project's price.

Since the federal judges don't own the courthouse at 333 Lomas NW, the site of the old McClellan Park, they asked the landlord to fix the leak.

Federal court buildings throughout the country are owned by the GSA, and the Judiciary branch pays rent from its budget. So modest or not, any fix was up to the GSA.

It began simply enough. The fountain was shut off and the judges asked about some

native grass needing little water to replace the water-guzzling Kentucky bluegrass. But when they got a look at the GSA-approved plan, they were concerned.

Johnson is the representative for the judges in the 10th Circuit on the Judicial Conference Committee on Space and Facilities, which means he gets to deal with the GSA on a regular basis.

So, his colleagues asked him to relay their concerns, objec-

tions and questions.

The judges asked GSA only to fix the leakage into the garage and look at reducing water use on the lawn. They were not consulted and were not in favor of a project of this magnitude and cost.

The judges were concerned about how the landscape changes would drastically alter the front of what they consider one of the most beau-

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ABOVE: The landscaping makeover at the court building includes large underground cisterns to capture rain water from the roof and grounds to irrigate new plants and trees.



LEFT: A trench on the east side of the court building is the future home of the twin 8,000-gallon water cisterns.

tiful buildings in the state.

■ How would the landscape affect the public use of the front lawn for free speech assemblies?

■ Would the rent bill increase to cover maintenance costs for the project once it is completed?

So much for judicial input. "Notwithstanding the concerns raised by judges of this district, GSA went full steam ahead with the landscape project," Johnson said.

**'Reduce waste'**

Jaegerman said that one of GSA's major goals "is to reduce resource waste in federal buildings."

The design calls for tearing out the Kentucky blue grass lawn and planting "native and adaptive plant species to reduce watering requirements." Large underground cisterns will collect and allow reuse of all site and building storm water runoff for irrigation.

Solar panels will be installed on the roof of the courthouse to provide most of the site's exterior energy needs.

The project was designed by Rios Clementi Hale Studios of

Los Angeles, and AIC General Contractors of Albuquerque won the \$2.8 million bid for construction.

Of the three Downtown courthouses, the federal courthouse has been involved in the least amount of controversy.

It was completed Nov. 23, 1998, and was built on time and on budget.

Of the three courthouses at the Lomas and Fourth NW intersection, it also cost the least. The Metropolitan Court project, including public garage, cost \$83 million, and the State District Court House cost \$45 million.

Both of the local court projects became mired in the kickback scandal involving former Senate Pro Tem Manny Aragon, D-Bernalillo, who is scheduled to conclude his federal prison term next summer for his part in siphoning money out of the Metropolitan Court construction project.

The biggest controversy surrounding the federal courthouse was where to put the "Madonna of the Trail" statue and the planting of the Kentucky blue grass during a city water conservation campaign.

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A6 **Wednesday, February 13, 2013**

## EDITORIALS

### Feds go over the top in fixing courthouse leak

A persistent leak in the underground parking garage at the U.S. Courthouse in Albuquerque has turned into a spending tsunami.

Judges at the Pete V. Domenici Courthouse just wanted to stop water used on the Kentucky blue grass on the roof of the garage from leaking down into it, replace high water use grass with low water buffalo grass and turn off the fountain in the entry. It seemed like a modest fix.

But to the U.S. General Services Department the leak presented an *opportunity* to come up with an over the top sustainable — and hopefully award-winning — landscape design to work toward the department's goal of a zero environmental footprint as set out in the Energy Independence and Security Act of 2007 approved by Congress and fast-tracked by President Obama in a 2009 executive order. Plus, no one had to beg for money to do it. Cash was available from the '09 federal stimulus.

Just one catch. The cost for what began as a repair: \$3.4 million — nearly 10 percent of the \$41 million it took to build the courthouse — for landscaping, solar panels and giant underground cisterns to recycle runoff.

The judges could holler "whoa," but the GSA is the landlord and as tenants the judiciary has no say. GSA officials, undaunted by a government drowning in debt and potential cuts and layoffs, seemed delighted with the chance to show it's following the orders of Congress and the president to spend money on pet projects.

The GSA is notorious for its over-the-top largess with taxpayer money, and this is another example of it on steroids. This is the same agency that in November 2010 spent more than \$250,000 for a one-day employee reward and motivation event in Crystal City, Va., for around 200 people. Don't forget that lavish convention in Las Vegas, Nev., that cost taxpayers more than \$800,000.

After these abuses came to light, the Inspector General launched an investigation and the agency's new leadership started making changes. Meanwhile, judges and court staff can enjoy parking in a dry courthouse garage thanks to a \$3.4 million fix.

The landscaping will be pleasing to the eye. For that price, it should be.

## WILLIAM P. JOHNSON BIOGRAPHY

U. S. District Judge William P. Johnson was born and raised in Roanoke, Virginia. He attended college at the Virginia Military Institute where he earned his B.A. degree in 1981. He accepted a reserve commission in the United States Army Reserve and after completing the Field Artillery Officer's Basic Course at Ft. Sill, Oklahoma, he returned to Lexington, Virginia to attend law school at Washington & Lee University where he earned his J.D. degree in 1985.

Judge Johnson started practicing law in Houston, Texas with the firm of Bracewell & Patterson and then moved to Roswell, New Mexico in 1986 and joined the firm of Hinkle, Cox, Eaton, Coffield & Hensley. Judge Johnson practiced law as a civil litigation attorney in New Mexico and Texas for ten years and then in January of 1995, he was appointed by New Mexico Governor Gary Johnson as a state district judge for the 5<sup>th</sup> Judicial District, which encompasses the southeastern New Mexico Counties of Chaves, Eddy and Lea.

As a New Mexico state district judge for almost seven years, Judge Johnson presided over a general jurisdiction docket consisting of criminal, civil, juvenile and domestic relations cases. Additionally, he devoted a significant amount of time and effort on matters and issues relating to delinquent and abused or neglected children by serving six years on the Governor's Juvenile Justice Advisory Committee and working with AMI-Kids, a nationally acclaimed non-profit organization that operates highly successful rehabilitative programs for delinquent youth in numerous states.

In August of 2001, President George W. Bush nominated Judge Johnson to a vacancy on the U.S. District Court for the District of New Mexico and in December of 2001, the United States Senate confirmed his nomination to the federal bench. As a federal district judge in a southwest border district, Judge Johnson carries a heavy criminal docket consisting of a large number of border related cases. While his duty station is in Albuquerque, since becoming a federal judge, Judge Johnson has spent significant time presiding over criminal cases including Indian Country cases. Additionally, he has sat by designation on the U.S. Court of Appeals for the Tenth Circuit in Denver, Colorado and has sat by designation in the U.S. District Courts for the Districts of Utah, Wyoming, Kansas and the Western District of Oklahoma.

From the fall of 2006 until the fall of 2013, Judge Johnson served as the Tenth Circuit's representative to the Judicial Conference Committee on Space and Facilities. During this same period, Judge Johnson chaired the Space and Facilities Committee for the Tenth Circuit. During the seven years he served on these two committees, he and the other committee members dealt with space and facilities issues at the national and circuit level including new courthouse projects, courthouse renovation projects, courtroom sharing issues, closure of non-resident judge courthouses, space consolidation and efforts to reduce the Judiciary's rent bill with the General Service Administration plus a variety of other issues arising between the Judiciary and GSA at the local, circuit and national level.

EXHIBIT 7

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Mr. COBLE. Well, you beat the amber light considerably, Judge. You are well timed this morning.

Judge Conrad, good to have you with us, sir.

**TESTIMONY OF THE HONORABLE GLEN E. CONRAD, CHIEF JUDGE, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF VIRGINIA**

Judge CONRAD. Thank you, Mr. Chairman. Good morning, Mr. Chairman, Ranking Member—

Mr. COBLE. Judge, if you would pull that mic a little closer to you?

Judge CONRAD. Thank you. Good morning, and good morning to Ranking Member Nadler and esteemed Members of the Subcommittee. My name is Glen Conrad, and I am currently the Chief Judge of the United States District Court for the Western District of Virginia. I have been Chief Judge since July of 2010 at a time shortly after the designation of the Richard H. Poff Federal Building in Roanoke for a stimulus project under the authority of the American Recovery and Reinvestment Act. Thank you for the opportunity to share our court's experiences as the ARRA project unfolded, with emphasis on our interaction with GSA.

The theme of my testimony this morning is that the quality of the final product achieved through the expenditure of the Poff stimulus funds was greatly diminished because Third Branch officials did not have the opportunity to offer input during the project's design phase and planning stages. I also suggest that the compromise in the court's performance of its constitutional function during the construction phase could have been better managed had there been more precise communication between the GSA and the courts.

Following the announcement of the Poff stimulus project, the chief judges of our district participated in only three documented meetings regarding the proposed work. These meetings dealt with how the work would proceed, including the temporary relocation of all the other tenants in our building, the dislocation of the court personnel as the window removal and replacement proceeded, and security precautions. To my knowledge, at no point were any of the court's representatives consulted as to how this remarkable infusion of money could be utilized to produce a more serviceable and functional facility. Except for those few limited contacts, it was as if a wall of silence had been established with the court on one side and the project contractor and GSA on the other.

All of this begs the question as to what the court would have communicated and what measures we would have implemented if we had been consulted and advised. As supplemented by my written statement of testimony, allow me to highlight a few critical considerations.

First, the Poff Building is a multi-tenant facility in which the United States District Court and the Veterans Administration are the major tenants. I have heard no one suggest that multi-tenant Federal courthouses are not obsolete. Because the Third Branch was not given the opportunity to participate in the discussion about the Poff Building during the design and planning stages, the

court's views as to the building's replacement alternative simply were not considered.

Two, because of the lack of involvement in the planning stage of the project, I believe that the impact caused by the construction work was unduly disruptive and that the court's function and role and the importance of its image were not adequately considered by those who oversaw the project.

Three, regrettably, despite the expenditure of substantial sums, I submit that security at the Poff Building was not enhanced as a result of the stimulus project and that in one critical respect our security has been diminished.

Four, for me, the most bothersome and disturbing reality is that 5 years from the announcement of the Poff stimulus project and after the expenditure of millions of taxpayer dollars, the user functionality in the court portion of the building has not been enhanced in any way, shape or form. The Poff Building was constructed in the 1970's. The building has multiple design flaws which impede efficiency and safety for the court, for those who work in the court, and for employees of other agencies who must traverse court areas in order to reach their own places of work. If GSA had collaborated with the court in the design and planning stages, it is reasonable to believe that most of the design flaws could have been easily remedied, in most cases at minimal expense.

In conclusion, during my 39 years in the Western District of Virginia, it has been my experience that court officers and GSA officials work reasonably well together when they engage in open discussion and free exchange of ideas and information. On this occasion, however, I must conclude that we did not enjoy positive collaboration with GSA on the Poff stimulus project and that, as a result, the final project suffered. I hope that my comments will prove useful in helping to ensure that other courts will have better experiences with GSA in the future.

Mr. Chairman, I would be happy to entertain questions as the Committee may have for me.

[The prepared statement of Judge Conrad follows:]

**COMMITTEE ON THE JUDICIARY  
BEFORE THE SUBCOMMITTEE ON COURTS,  
INTELLECTUAL PROPERTY, AND THE INTERNET**

**STATEMENT OF HON. GLEN E. CONRAD, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

**HEARING ON: GSA's Failure to Meet the Needs of the Judiciary:  
A Case Study of Bureaucratic Negligence and Waste**

**June 19, 2014**

Good morning, Chairman Coble, Ranking Member Nadler, and esteemed Members of the Subcommittee.

My name is Glen Conrad, and I am currently the Chief Judge of the United States District Court for the Western District of Virginia. I have been Chief Judge since July of 2010, at a time shortly after the designation of the Richard H. Poff Federal Building in Roanoke for a stimulus project under the authority of the American Recovery and Reinvestment Act. As many of you may know, the Poff Federal Building is a multi-tenant building in which the United States District Court and the Veterans Administration are the two major tenants. Thank you for the opportunity to share our court's experiences as the ARRA project unfolded, with emphasis on our interaction with GSA.

The theme of my testimony this morning is that the quality of the final product achieved through the expenditure of the Poff stimulus funds was greatly diminished because Third Branch officials did not have the opportunity to offer input during the project's design phase and the planning stages. I also suggest that the compromise in the court's performance of its constitutional function during the construction phase could have been better managed had there been more precise communication between the GSA and the court.

As indicated, I was not Chief Judge of our court when the Poff Federal Building was designated for stimulus funds. Judge James P. Jones, who sits in the Abingdon Division of the court, was Chief Judge in 2009, when we were first advised that the Roanoke Federal Building had been selected.

During this period of time, among other efforts, Judge Jones attempted to convince various officials in several branches of government that construction of a new courthouse would be greatly preferable to renovation of the court's space at the Poff Federal Building. However, by the time I became Chief, it had been determined to move forward with the Roanoke project. I attended two meetings with GSA officials, representatives from the project contractor, and our court's unit executives in the summer of 2010 and the spring of 2011. The second meeting

focused on security issues. At the first meeting, GSA representatives and contractor representatives explained how the work would proceed, including the temporary relocation of all tenants other than the court, the dislocation of the court personnel as the window removal and replacement proceeded, and the precautions that had been undertaken to promote security given the influx of so many construction workers into areas of the building occupied by the court.

In short, to my knowledge, at no point were any of the court's representatives accessed, consulted, or questioned by GSA as to how this remarkable infusion of money could be utilized so as to produce a more serviceable and functional courthouse facility. Moreover, while the GSA and the contractor issued schedules, timetables, and marching orders for the construction phase, the court simply was not provided with information as to the extent of the dislocation and construction impact that we were to experience over the next several years. Except for those limited contacts, it was as if a wall of silence had been established between the court on one side, and the project contractor and GSA on the other.

All of this begs the question as to what the court would have communicated, or what measures the court would have implemented, if we had been consulted and advised. Allow me to highlight a few critical considerations.

**MULTI-TENANT FACILITY**

As indicated, when he was first advised of the proposal for the Poff Building, then Chief Judge Jones' reaction was that the project was not well conceived and that the court, as a major stakeholder, should have the opportunity to participate in a discussion as to whether a stand-alone courthouse would have been a better option. Instead, GSA determined to attempt to extend the life of the already antiquated, multi-tenant Poff Federal Building.

I have heard no one suggest that multi-tenant federal courthouses are not obsolete. Without going into great detail, the simple and regrettable facts are that in today's world, security needs of courts differ greatly from those of other agencies in multi-tenant situations, and that everyone's security interests are substantially compromised when other agencies are thrown together with the court.

Of course, the federal coffers are not unlimited, and it is simply not possible to replace all multi-tenant courthouses. I think Judge Jones' point was that the availability of millions in stimulus funds presented an excellent opportunity to eliminate the problem for at least one small courthouse facility in Roanoke, Virginia.

**IMPACT ON THE COURT DURING CONSTRUCTION PHASE**

During the construction phase, all of the other tenants in the building were relocated to other locations, with what I understand to have been considerable expense. As for the court, the actual project work necessitated physical dislocation of most of our personnel, and subjected all of us to extreme noise, dust, and inconvenience. Ms. Jennifer Smith, our court architect and project manager, has accompanied me here today to explain some of these problems and to relate how she has interacted with the contractor during the life of the project. For the most part, except for Ms. Smith, the GSA officials responsible for the project avoided contact with me and other court officials, maintaining the wall of silence.

There was one major exception to the general lack of communication. The Poff building is essentially a construct of glass and steel, supported by two concrete walls with brick facades. During the course of the project, it was determined that the west brick facade was unstable and required immediate demolition. It was determined to be necessary to close the building, send the employees home, and stop traffic on a major street within the drop zone of the brick. When the decision to demolish was made, several ranking GSA officials, whose names escape me, made contact, discussed the problem, and considered my input on how the work could be scheduled so as to minimize lost time for the court.

Throughout the demolition process, the GSA officials were in contact with me every day, including weekends to advise as to the status of the work. I commend those officials for their diligence in this respect. However, during that period, I was told that it was unclear as to whether the instability of the wall had been present for some time, or had been caused by the recent construction work. I am now advised that the instability had been present for many years, and was well known. Given that the GSA had found it necessary to close the building on an emergency basis during the project, I can't help but question the measure of safety enjoyed by the employees, the public, and the motorists on the adjoining road during the years prior to the demolition. More to the point for today's purposes, it is difficult to understand how the instability could have gone unaddressed as the engineers examined the building and decided what work to put out for bid. To me, it is inconceivable that the demolition and replacement of the facade could not have been projected as part of the stimulus project. It will now be necessary for GSA to undertake another project for the demolition of the east facade and the replacement of both facades. Again, one cannot help but question the pre-project planning. Nevertheless, I appreciate the willingness of GSA officials on this occasion to discuss the remediation with me.



From my perspective, the biggest detriment caused by the construction work was its impact on the court's conduct of its business and the orderly administration of justice. In order to discharge its responsibilities, the court's employees and the court's facilities must operate in such a fashion as to maintain the court's dignity and to inspire respect and confidence among those who must appear before the court. During those days in which the building was essentially boarded up from the outside, with ingress and egress being greatly restricted, the courthouse facility in Roanoke simply did not fulfill this purpose. At the outset of the project, if we had been aware of the extent of the dislocation, inconvenience, and extreme construction zone conditions that we were to experience, the court could have arranged to move many of our court proceedings to other divisions, and we could have arranged for construction-free days during which to bring in litigants, criminal defendants, and their families, without impediment. Once again, in this additional respect, I believe that in the pre-project planning, the court's function and role, and the importance of its image, were simply not considered by those who oversaw the project.

**SECURITY**

Regrettably, despite the expenditure of substantial sums, security in the Poff Federal Building has not been enhanced. In one critical respect, our security is diminished as a result of the renovations. When the federal courts were first advised of the stimulus projects throughout the country, one of the heralded purposes was to address “unmet security” needs. At one of the two initial meetings I attended, numerous enhancements were discussed, including security fencing, additional security cameras, and fortified security gates. However, no security enhancements were ultimately included in the Poff Building stimulus work. Instead, in the waning days of the project, the court and other tenants were advised that if the tenants want security enhancements, each tenant must pay a pro rata share, separate and apart from the stimulus project. Of course, the court is currently without funds to pay its share for these enhancements. However, if, at the beginning of the project, GSA knew that it would not be funding the security enhancements, I simply cannot understand why GSA did not share this information with the court and other tenants so that some effort could have been made to try to arrange for necessary appropriations. Once again, security at the Poff Building has not yet been improved, and is probably compromised as a result of the renovation.

**FUNCTIONALITY**

For me, the most bothersome and disturbing reality is that five years from announcement of the Poff Stimulus Project, and after expenditure of millions of dollars, the user functionality in the court portion of the building has not been enhanced whatsoever, in any way, shape, or form. Despite suffering years of inconvenience and hardship, our employees find that their working environment is the same. The HVAC system still heats in the winter and cools in the summer, just as before. As far as I know, all of the renovated restrooms in the building serve the same purpose as before.

The Poff Federal Building was constructed in the 1970s. The existing building has multiple design flaws that impede efficiency and safety, and cause difficulty for the court, its employees, jurors, attorneys, visitors, and employees of other agencies as they traverse areas designated for court use in order to reach their places of work. Most of these design flaws could have easily been remedied, in most cases at minimal expense. For example, the jury room serving the second floor courtroom has no point of entry other than through the courtroom. This means that, at the conclusion of a criminal trial, the jurors are compelled to exit through the courtroom, past the defendant and his family, in order to leave. This potentially volatile situation could easily have been avoided by adding another exit

to the jury room. As another problem, the employee entrance to the building for all the tenants is through the lobby area for that same second floor courtroom. This means that on many days, employees for all of the tenants are compelled to reach their elevators by walking through groups of people assembled outside the courtroom in preparation for trial. The Court Security Officers find it extremely difficult to police these situations. It could easily have been remedied by adding another entrance to the building on the first floor on the west side.

Perhaps the most striking design flaw is that associated with the grand jury room. The only public point of entry for this critical area is through a private lobby on the east side of the second floor. This means that on grand jury days, other court employees, as well as the Assistant United States Attorneys, must enter the grand jury room by walking through the groups of people who are present as targets, witnesses, or friends. The judges on the second floor, including myself, are included among those employees who must walk through the groups of people with grand jury business on those days. This problem could have been easily remedied by relocating the grand jury room to another floor. I can assure you that I would be more than happy to exchange the new windows in my chambers for a reconfigured grand jury room.

If GSA had collaborated with the court in the design and planning stages, it is reasonable to believe that these and many other design flaws could have been corrected. However, despite the multi-million dollar renovation, these design shortcomings were not identified by GSA and continue to impede the operation of the court to this day. In short, while I understand that it was necessary to commit and utilize the stimulus funds as quickly as possible, and even given that the Roanoke money would not be used for construction of a new facility, I do believe that GSA officials could have effectively consulted with the court executives to improve the existing facility in a meaningful fashion.

#### **CONCLUSION**

During my 39 years in the Western District of Virginia, it has been my experience that court officers and GSA officials work reasonably well together when they engage in open discussion and free exchange of ideas and information. On this occasion, however, I must conclude that we did not enjoy positive collaboration with GSA on the Poff stimulus project, and that, as a result, the final product suffered. I hope that my comments will prove useful in helping to ensure that other courts will have better experiences in the future.

Mr. COBLE. Thank you, Judge.  
Ms. Smith?

**TESTIMONY OF JENNIFER L. SMITH, ARCHITECT AND PROJECT MANAGER, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF VIRGINIA**

Ms. SMITH. Good morning, Chairman Coble, Chairman Goodlatte, Ranking Members Nadler and Conyers, and esteemed Members of the Subcommittee. Thank you for inviting me to present testimony on the impacts of the ARRA modernization project at the Richard H. Poff Federal Building.

My name is Jennifer Smith, and I am the Project Manager and Architect for the U.S. District Court in the Western District of Virginia. Since March of 2011, my primary job responsibility has been representing the courts in daily interaction with GSA and the general contractor responsible for construction.

Chief Judge Conrad has given testimony about the hardships encountered by the courts during construction. I will offer a few examples.

A certain amount of disruption was expected with construction, but the magnitude of disruption at the Poff Building was at times overwhelming. For example, we had five floods in occupied space during a 17-month period. These were major deluges of gallons and gallons of water which collapsed ceilings, saturated walls and carpets. Occupants had to be relocated and finishes had to be replaced.

We also had frequent loss of power which, although very disruptive to staff, usually caused no damage. One notable exception occurred when an electrician cut the circuit which feeds our server room. Two servers were destroyed, public Internet and phones were disrupted, and IT staff worked hours of overtime to restore systems.

Installation of the new 12-story curtain wall created an intolerable amount of noise. Workers hammer-drilled locations for new steel anchors in hundreds of locations on the face of the building. The work took place immediately adjacent to occupied space at the exterior walls of staff offices. Noise and vibration traveled through the concrete slab and disrupted court proceedings as well. This work activity should have only been planned for off hours. It was conducted almost exclusively during work hours.

Most disturbing of all the problems we saw was GSA's lack of enforcement of life safety codes during construction. Fire exits were frequently blocked by scaffolding, debris and fencing; smoke detectors were left covered; flammable material was used as wall and floor protection in exit access corridors; construction doors leading to work areas open to five-story drops were left open, unlocked and accessible to the public. These are just a few examples of what court staff struggled with every day for 3 years.

Almost without exception, I worked directly with the general contractor to resolve these problems. GSA had no on-site staff to fulfill this vital function. GSA project management staff in Philadelphia visited monthly, except during a travel restriction period when they didn't visit at all. The GSA field office representative, originally tasked with filling many of the functions I assumed, left on medical

leave and was never replaced. In the end, it was the general contractor's willingness to cooperate on scheduling issues, which allowed the courts to continue to function at all.

In conclusion, it is my hope that future projects planned to repair our retaining walls, brick veneer and parking garage will benefit from GSA's full consideration of our problems during the ARRA project.

Thank you, Mr. Chairman, Ranking Members Nadler and Conyers, and Members, for your time today. I will be pleased to answer any questions you may have.

[The prepared statement of Ms. Smith follows:]

**STATEMENT OF JENNIFER L. SMITH,  
ARCHITECT AND PROJECT MANAGER,  
UNITED STATES DISTRICT COURT,  
WESTERN DISTRICT OF VIRGINIA**

**BEFORE THE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET**

**HEARING ON:**

**“GSA’s Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste”**

**June 19, 2014**

Good morning, Chairman Coble, Chairman Goodlatte, Ranking Members Nadler and Conyers, and esteemed Members of the Subcommittee. My name is Jennifer Smith and I am the Architect and Project Manager for the United States District Court for the Western District of Virginia. Thank you for inviting me and giving me the opportunity to present testimony before this subcommittee today concerning the impacts of the ARRA Modernization Project at the Richard H. Poff Federal Building.

Since March of 2011, my primary job responsibility has been representing the Court in daily interactions with the GSA Management Team and General Contractor responsible for construction activities at the Poff Building. My position was funded by the Courts specifically to provide assistance in Roanoke during the ARRA project. In consideration of the problems encountered by the Courts during this project, and in anticipation of imminent future projects at the Poff Building, I offer the following observations and recommendations:

**Improve Planning and Design Efforts**

Below are some of the problems that I observed which, in my professional opinion, should have been addressed during Planning and Design:

- **Failure of West Brick Façade and Deterioration of Parking Garage** – Although GSA had knowledge of these major structural problems, the planning team selected lower priority items for inclusion in the project such as replacement of bathroom fixtures and finishes. A comprehensive needs assessment of the building should have put these items at the top of the list, considering the severity of the deterioration evidenced by the emergency closure of the building for one week in November of 2012 to allow safe removal of the failing brick façade. These repairs are currently under consideration for funding in 2015.
- **Imminent Retaining Wall Project Will Demolish Recently Completed Work** -- Although a study and preliminary designs for new retaining walls, security bollards, and secure gates and fencing was underway prior to the beginning of the ARRA project, this scope was not included in the project. Work on the retaining walls will require demolition of new paving, landscaping, and irrigation systems installed in the last few months.



- **Unsafe Electrical Conditions** – An existing conditions survey by the Architectural/Engineering Team should have identified the dangerous conditions discovered by electrical subcontractors during construction. A separate contract was created while the ARRA project construction was underway to address the concerns. Work is still underway.
- **Excessive Noise** – Plans called for new steel anchors to be attached to the concrete frame of the building in hundreds of locations. This work activity lasted for months. The hammer-drill required for this job created noise levels which made normal conversation impossible in office and Chambers areas, and frequently disrupted court. This work should have been planned for night shift only.
- **Uninformed Design Decisions** – Because the Courts were not adequately involved in planning and design decision making, several problems arose. A few examples of these are listed below:
  - Motion Sensor lights were installed in secure corridors, rendering the USMS security cameras ineffective.
  - A bullet-resistant door was slated for replacement by a standard glass door at the Judge's Entry Corridor.
  - Pendant lights specified for one Courtroom dropped below eye level for the Judge when he stood at the bench, and low enough to obstruct audio visual system cameras.
- **Phasing Plan Errors** – Phasing Plans drawn by the Architect contained several errors, including the planned demolition of all public restrooms at the same time, no provision for contractor access to phased construction areas, and no provision for work in secure vaults, storage rooms, and Judicial Chambers.
- **Elevator Replacement Not Included** – Elevators malfunction frequently, stranding staff and the public until repairmen arrive. A comprehensive needs assessment would have identified elevator replacement as a priority for the renovation.
- **Demolition of Recently Renovated Space** – Plans called for protection or removal and re-installation of existing finishes along curtain walls. In reality, the extent of work made this strategy impossible and new finishes were required. In some cases, these new spaces had been occupied for less than a year prior to demolition.

#### **Improve Project Management**

The following problems interfered with GSA's ability to prevent or respond to frequent emergencies and disruptions experienced by the Court:

- **Lack of Consistent Staffing** – GSA changed the project manager 3 times during the 3 year project.

- **Lack of Onsite Presence** – GSA’s Philadelphia based project management team was onsite once a month, except during the middle of the project when travel funding was frozen and they were unable to visit the site at all. Frequently the Courts brought problems and concerns to GSA of which they were completely unaware. The construction management contractor for GSA was frequently slow to respond and unknowledgeable about the daily construction schedule. The GSA field office representative to the project was terminated and no replacement was made.
- **Standard Project Management Processes Not in Place** – Industry standard processes established by the Project Management Body of Knowledge were not put into practice. Of these processes, the lack of a risk management plan most affected the Courts. A risk management plan would have compiled a list of potential risks for each work activity, modified the activities to reduce risks, and planned responses in case the risks occurred.

#### **Improve Contractor Oversight**

Failure to manage contractor work and behavior created the following problems for the Courts:

- **Violations of Life Safety Code** – Numerous code violations brought to GSA’s attention by the Courts included blocked fire exits and stairs, construction of fencing which obstructed egress from the building, use of highly flammable protection board in fire exit corridors, disabling of smoke detectors by workers, and removal of fire-proofing of structural steel without immediate replacement. Additionally, temporary construction doors leading to open air work areas where windows had been removed were frequently found unlocked and readily accessible to the public. These areas had no barriers to prevent falls from several stories.
- **Frequent Floods** – On multiple occasions, flooding caused by sub-contractor errors caused significant damage to occupied Court Office space and required replacement of walls, carpet and ceilings.
- **Dangerous Work Conditions** – Contractor work posed serious risk to building occupants on several occasions. A large sheet of glass was dropped from several stories up to an area adjacent the main entry, narrowly missing a Court staff person. Crane operations were allowed with open hoppers of demolition debris over staff walkways. Loose floor protection, screws, and other debris created hazards on a daily basis.
- **Security Breaches** – Inadequate planning left sub-contractors without access to work areas blocked by occupied secure space. On several occasions, the workers were discovered to have spied on staff to obtain security codes. It was common to find secure doors propped open by workers for access.

- **Unexpected Loss of Power** – Loss of lighting and power was routinely caused by sub-contractors flipping off breakers without notification to the Courts. The most damaging incident involved an emergency circuit supplying the server room. This power loss destroyed 2 servers, shut down phone and internet services for the public, and caused IT staff to work hours of overtime to restore systems.
- **Disruption of Court Proceedings** – Despite repeated requests by the Court to schedule noisy work around court proceedings, GSA was unable to prevent sub-contractors from performing this work as they found convenient for their own schedules.
- **Noxious Fumes** – Although the specifications required the Contractor to maintain negative air pressure in construction areas to prevent dust and odors from migrating to occupied areas, GSA was unable to enforce this. Odors from solvents and glues caused staff to relocate or telecommute on several occasions.
- **Frequent Fire Alarms** – Construction activities such as soldering and sawing were conducted without temporary disabling of smoke detectors. The dust and smoke set off fire alarms frequently. Court Proceedings and staff work were disrupted as the building was evacuated in each instance.

**Conclusion**

It is my hope that the projects planned for the Poff Building in the near future will benefit from a close analysis by GSA of the problems I've outlined in this testimony. To more fully detail the extent and nature of the day to day impacts this project had on the Courts, I have appended my chronological incident report covering all three years of construction. Thank you, Mr. Chairman, Ranking Members Nadler and Conyers, and Members for your time today. I will be pleased to answer any questions you may have for me about the impact to the court staff.

Mr. COBLE. Thank you, Ms. Smith.  
Mr. Gelber? Mr. Gelber, pull that mic closer to you.

**TESTIMONY OF THE HONORABLE MICHAEL GELBER, DEPUTY  
COMMISSIONER, PUBLIC BUILDINGS SERVICE, U.S. GEN-  
ERAL SERVICES ADMINISTRATION**

Mr. GELBER. Good morning, Chairman Coble, Chairman Goodlatte, Ranking Member Conyers, Ranking Member Nadler, and Members of the Committee. My name is Michael Gelber, and I am the Deputy Commissioner of GSA's Public Buildings Service.

GSA's mission is to deliver the best value in real estate, acquisition, and technology services to government and the American people. As part of this mission, GSA maintains a close partnership with the Administrative Office of the United States Courts to meet the nationwide space needs of the Judiciary in as cost-effective a manner as possible.

I look forward to outlining our partnership with the courts, how investments for the Judiciary's space needs are jointly prioritized, challenges facing these investments, and joint efforts to improve planning and drive down the overall cost of the Judiciary's space needs.

GSA works with the courts to create and maintain facilities that expedite the efficient and secure administration of justice. A significant representation of this partnership is GSA's work to make needed investments both in new courthouses prioritized by the courts, as well as existing facilities where the Judiciary retains long-term space needs.

In selecting courthouse construction projects, the courts identify their most pressing space, security, and other operational needs. Since 1996, the Judiciary has prioritized proposed new construction in a 5-year plan that incorporates a number of best practices for capital planning, and GSA works to include projects from that plan into GSA's annual appropriations requests. For the projects that Congress approves and appropriates, such as Mobile, Alabama in Fiscal Year 2014, GSA pursues design solutions that maximize the positive civic impact of budgeted resources.

Since 1991, GSA has completed the construction of 80 courthouses for the Judiciary. In that time, Congress has funded \$8 billion for site design and construction of these, as well as 13 other courthouses that are currently in design or construction phases.

GSA also executes critical major repair and alteration projects at existing courthouses within the Federal inventory. Unfortunately, between Fiscal Years 2011 and 2013, GSA's capital budget requests were cut by roughly 80 percent, severely curtailing investment for the courts and the Federal agencies that GSA serves.

The Fiscal Year 2014 appropriations represented a meaningful step forward in beginning to address the backlog of critical capital projects government-wide. In the Fiscal Year 2014 program, GSA is making more than \$180 million in specific, significant investments in Federal courts through major repair and alteration projects in Mobile, Alabama; Los Angeles, California; and Detroit, Michigan. In the Fiscal Year 2015 budget, GSA is requesting more than \$90 million for investments in support of the courts.

In Detroit, Michigan, GSA is executing a multi-phase renovation of the historic Theodore Levin U.S. Courthouse to replace building systems that have reached the end of their useful lives. The Fiscal Year 2015 budget request also includes \$20 million to improve physical security in buildings occupied by the Judiciary and the U.S. Department of Justice Marshals Service. This program, established by the courts, allows GSA to address serious security deficiencies in a timely and less costly manner than new courthouse construction.

If consistency in funding can be restored, GSA will be better able to invest in its Federal inventory. Having access to all the receipts of the Federal Buildings Fund will allow GSA to better address the needs of the courts and the Federal agencies that pay rent to GSA.

While GSA is pursuing strategic investments in partnership with the courts, GSA and the courts also are working together to improve the utilization, efficiency, and delivery of courthouses.

The Judiciary recently implemented policy requiring judges to share courtrooms and has revised its estimates of future judge-ships. These changes have allowed GSA to pursue smaller and less costly new courthouse construction projects. In some cases, these improvements have eliminated the need for a new courthouse altogether, allowing for modest renovations to existing space.

Over the past several years, GSA worked with the courts to revise and reduce the requirements for almost every courthouse on the courts' 5-year plan, as well as enhance the level of oversight on all projects that move forward. While working with the Judiciary to reduce its space needs, GSA also strengthened controls to ensure these courthouse projects are constructed within budget. GSA will continue collaborating with the courts to reduce courthouse costs while maximizing their functionality and civic benefit.

Thank you for the opportunity to speak with you today about our ongoing partnership with the courts. I am happy to answer any questions you may have.

[The prepared statement of Mr. Gelber follows:]



U.S. General Services  
Administration

Michael Gelber  
Deputy Commissioner  
Public Buildings Service

GSA's Investment in the Federal Courts

Committee on the Judiciary  
Subcommittee on Courts, Intellectual Property, and the Internet  
June 19, 2014

**Introduction**

Good morning Chairman Goodlatte, Chairman Coble, Ranking Member Nadler, and members of the Committee. My name is Michael Gelber, and I am the Deputy Commissioner of GSA's Public Buildings Service.

GSA's mission is to deliver the best value in real estate, acquisition, and technology services to government and the American people. As part of this mission, GSA maintains a close partnership with the Administrative Office of the U.S. Courts to meet the nationwide space needs of the Judiciary in as cost-effective a manner as possible.

I look forward to outlining our partnership with the Courts, how investments for the Judiciary's space needs are jointly prioritized, challenges facing these investments, and joint efforts to improve planning and drive down the overall cost of the Judiciary's space needs.

**GSA's Ongoing Partnership with the Courts**

U.S. courthouses often are prominent historic landmarks. They represent the stability and dignity of the Federal Government, and the Judiciary's important and distinct role in Federal operations. GSA works with the U.S. Courts to create and maintain facilities that expedite the efficient and secure administration of justice. GSA is keenly aware of these buildings' importance as symbols and community anchors, and our partnership with the Courts takes these civic values into consideration.

A significant representation of this partnership is GSA's work to make needed investments both in new Courthouses prioritized by the Courts, as well as existing facilities where the Judiciary retains long-term space needs.

**Construction of New Federal Courthouses**

In selecting courthouse construction projects, the Courts identify their most pressing space, security, and other operational needs. Since 1996, the Judiciary has used long-range facilities planning to prioritize proposed new construction. The Courts' 5-year plan incorporates a number of best practices for capital planning, and GSA works to include projects from the finalized 5-year plan into GSA's annual appropriations requests. For the projects that Congress approves and appropriates, such as Mobile, Alabama, in Fiscal Year 2014, GSA pursues design solutions that maximize the positive civic impact of budgeted resources.

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

**Investments in the Existing Federal Courthouse Inventory**

At the same time GSA works to pursue new Courthouse construction based on the Courts' identified needs, GSA also executes critical major repair and alteration projects at existing Courthouses within the Federal inventory. Unfortunately, between Fiscal Years 2011 – 2013, GSA's capital budget requests were cut more than \$2 billion, severely curtailing investment not just for the Courts, but for all partner Federal agencies that GSA serves.

The Fiscal Year 2014 Appropriations Act was the first year in four fiscal years that GSA received a significant portion of its capital request. The Fiscal Year 2014 Act represented a meaningful step forward in beginning to address the backlog of critical capital projects government-wide. In the Fiscal Year 2014 program, GSA is making more than \$180 million in specific, significant investments in Federal Courts through major repair and alteration projects in Mobile, Alabama; Los Angeles, California; and Detroit, Michigan. In the Fiscal Year 2015 budget, GSA is requesting more than \$90 million for investments in support of the Courts.

For example, GSA is executing a multi-phase renovation of the historic Theodore Levin U.S. Courthouse in Detroit, Michigan, to replace building systems that have reached the end of their useful lives. The project will correct serious building deficiencies and ensure that the Judiciary, as well as the Executive Branch agencies located in the facility, have a long-term housing solution in a safe and modern work environment.

The FY 2015 Budget Request also includes \$20 million to improve physical security in buildings occupied by the Judiciary and the U.S. Department of Justice - Marshals Service. This program, established by the Courts, allows GSA to address serious security deficiencies in a timely and less costly manner than new Courthouse construction. GSA's judicial security projects address circulation deficiencies and other security concerns in a range of existing Federal courthouses minimizing the need for the construction of a new courthouse.

If consistency in funding can be restored, GSA will be better able to invest in its Federal inventory. Having access to all the receipts of the Federal Buildings Fund will allow GSA to better address the needs of the Courts and Executive Branch partner agencies that pay rent to GSA.

**Improvements to Planning and Execution of the Courthouse Program**

While GSA is pursuing strategic investments in partnership with the Courts, GSA and the Courts also are working together to improve the utilization, efficiency, and delivery of Courthouses.

For example, the Judiciary recently implemented policy requiring Judges to share courtrooms, and has revised its estimates of future judgeships. These changes have allowed GSA to pursue smaller and less costly new Courthouse construction projects. In some cases, these



improvements have eliminated the need for a new Courthouse altogether, allowing for modest renovations to existing space.

For example, in San Jose, California, GSA worked with the Judiciary to reassess a new construction project given new courtroom-sharing requirements. As a result, the Judiciary removed San Jose from the Court's 5-year plan. Rather than moving forward with a costly new construction project, GSA will pursue select upgrades to the existing Robert F. Peckham Federal Building and U.S. Courthouse.

Likewise, GSA worked with the Courts to revise a proposed annex at the U.S. Courthouse in Greenbelt, Maryland. Congress originally approved and appropriated \$10 million to design a 263,000-square-foot expansion with a total estimated project cost of \$128 million. GSA, in partnership with the Judiciary and with approval from Congress, instead used the existing funding to pursue a renovation of the existing Courthouse to meet the Courts' needs.

While working with the Judiciary to reduce its space needs, GSA also strengthened controls that ensure these courthouse projects are constructed within budget. By incorporating Building Information Modeling or BIM, GSA can detail the physical and functional characteristics of a facility so it can continually monitor the building's size and functional efficiency from the inception of design to the opening of the facility.

Over the past several years, GSA worked with the Courts to revise and reduce the requirements for almost every courthouse on the Courts' 5-year plan, as well as enhance the level of oversight on all projects that move forward. GSA will continue collaborating with the Courts to reduce courthouses' costs while maximizing their functionality and civic benefit. At the same time, GSA always welcomes suggestions and opportunities for improvement from this Committee and other Congressional stakeholders.

#### **Conclusion**

Thank you for the opportunity to speak with you today about our ongoing partnership with the Courts to effectively and efficiently address the Judiciary's space needs. On behalf of GSA and the Public Buildings Service, I welcome the opportunity to discuss GSA's commitment to smart, strategic investment in the Federal Courthouse program. I am happy to answer any questions you may have.

Mr. COBLE. I thank you, lady and gentlemen. This is the first time in my memory that all witnesses have prevailed over the red light, so I commend you for that.

We try to comply with the 5-minute rule as well, so I will start with Judge Johnson.

You said, Judge Johnson, that your impression was that the GSA gave little consideration to the concerns raised by judges, with one exception. Is the lack of consideration typical or atypical of your experience and the experiences you heard about from other judges across the country?

Judge JOHNSON. It has been my experience, Mr. Chairman, that on many of the projects that are done, whether it is new courthouse construction or a renovation project, like what Judge Conrad articulated, that oftentimes there is a lack of communication and these projects go forward notwithstanding concerns raised by the courts.

Certainly at the national level, Mr. Gelber has a close working relationship with the individuals in the Administrative Office of the Courts that head the space and Facilities Committee nationally. There is, I think, a close working relationship. But just, for example, in the Tenth Circuit alone, I believe there are three different GSA regions. New Mexico is in the Fort Worth region, but Colorado, for example, I believe there is a regional headquarters in Denver. So oftentimes I would say the regional offices and people outside of the main office maybe don't get the memo about the need to communicate and do collaborative-type efforts.

So there are times when you have issues where it can be disruptive in terms of these various types of projects where there is not that communication.

Mr. COBLE. Do you think, Judge, there is a difference in the level of respect GSA shows to court officials when they are dealing with the local level rather than working through the Administrative Office of the Courts?

Judge JOHNSON. In some instances, yes. But again, it is hard to make a blanket rule because, for example, it was my experience when I was chairman of the Tenth Circuit Space and Facilities Committee, the District of Wyoming, for example, the Cheyenne Courthouse, there was a major renovation project there, and there was a very good working relationship. Actually, the judges and the court officials in the District of Wyoming were very complimentary of the GSA people there in Wyoming that handled that project. So I think it depends on what part of the country you are talking about.

Mr. COBLE. I got you.

Judge JOHNSON. But I will say that, for example, when I came on board, I wondered why my district employed an architect. I come from the state court, and like Ms. Smith is working for the Western District of Virginia, at the time we were experiencing a lot of growth. We had a border courthouse in Las Cruces that was in the design phase, and we had to employ an architect to interface with GSA on numerous issues, whether it was the new courthouse or just simply doing some simple tenant alterations on an existing courthouse to accommodate the addition of new magistrate judges, for example.

Mr. COBLE. What say you to that, Judge Conrad, the difference in the level of the AOC as opposed to the local?

Judge CONRAD. I can't speak from the same perspective as Judge Johnson because I haven't served on the Space and Facilities Committee, and I don't know what interactions GSA has with our administrative arm. But on the local level, I think it depends on the project. Sometimes we get good response. Sometimes we get good collaboration. But in the case I have described, we did not, and I think it caused the final product to be inadequate and not responsive to our needs. So I would say that it varies on a case-by-case basis.

Mr. COBLE. I thank you.

My time has about expired.

I recognize the distinguished gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you very much, Mr. Chairman.

Mr. Gelber, our colleague from Puerto Rico, Representative Pierluisi, has some significant concerns about the GSA's management of renovations to the Degetau—I hope I pronounced it properly—Degetau Courthouse in his district. We will be submitting a question for the record on his behalf asking GSA to explain what specific actions it will take to ensure that the project is completed within the remaining budgetary and time constraints. Will you agree to respond in a timely and complete fashion?

Mr. GELBER. Yes, sir.

Mr. NADLER. Thank you. Can you get us a response within 45 days?

Mr. GELBER. Yes, sir.

Mr. NADLER. Thank you.

Ms. Smith, I understand you are currently assisting on a GSA renovation to the Federal courthouse in Greenbelt, Maryland. How is that project going?

Ms. SMITH. Thank you for your question. My work with the Greenbelt courthouse, I would say the most marked difference between the Greenbelt project and the Poff Building project is that GSA has a significant onsite presence. They have a GSA inspector who works alongside the night crew, so there is constant supervision, and their project manager is on site at least once a week.

I think that the project in Greenbelt at this point is going very well. We are beginning design on Phases 2 through 5.

Mr. NADLER. So you think the GSA is doing that well?

Ms. SMITH. I think there is—

Mr. NADLER. Among other reasons because they have an on-site manager.

Ms. SMITH. Exactly.

Mr. NADLER. Have you talked to the GSA about perhaps having an on-site manager at the Poff Courthouse?

Ms. SMITH. When we lost our field office representative, I was told it would take a number of months to find a replacement. His replacement actually just came on about a month ago.

Mr. NADLER. And his replacement is an on-site manager?

Ms. SMITH. Yes. He would have been the on-site construction contact for the courts. So I believe that GSA responded, but the response took so long that we were without that supervisor.

Mr. NADLER. And he came on about a month ago.

Ms. SMITH. Yes.

Mr. NADLER. So it may be, hopefully, that starting now or reasonably now and he or she gets acclimated to that position, that many of these problems will no longer be there on an ongoing basis?

Ms. SMITH. I hope so. We have many projects scheduled to begin soon, so that would be wonderful.

Mr. NADLER. Okay. So we may have solved this problem, or may not have. It remains to be seen. Is that accurate?

Ms. SMITH. I would hope so. I would hope that he would take over a lot of the things that I did.

Mr. NADLER. So we should take a look at this again in a few months, maybe.

Mr. Gelber, the projects that we have been discussing today involve GSA renovations to existing buildings, not new construction. What funding has GSA received for such projects over the past few years, and what has been the funding trend over time?

Mr. GELBER. For the last 4 years, GSA has only received funding for one Federal courthouse.

Mr. NADLER. One new Federal courthouse.

Mr. GELBER. One new Federal courthouse in Mobile, Alabama. For Fiscal Years 2011, 2012, and 2013, we received minimal funding for our entire capital budget. In Fiscal Year 2014, we received funding for the Mobile facility.

Mr. NADLER. Now, you said you received funding for one new Federal courthouse.

Mr. GELBER. In the last 4 years.

Mr. NADLER. How many requests from the Judiciary do you have for new Federal courthouses?

Mr. GELBER. My recollection of what is called the 5-year plan produced by the courts, there are at least 10 projects on that list.

Mr. NADLER. So you have 10 projects on the 5-year list, and you have gotten funding for one.

Mr. GELBER. That is correct.

Mr. NADLER. What about renovation money?

Mr. GELBER. We have received in the Fiscal Year 2014 budget some renovation money for facilities at courthouses.

Mr. NADLER. Some renovation.

Mr. GELBER. Again, in the previous three fiscal years, we had not received a substantial amount of money for our entire capital program.

Mr. NADLER. Would you call the amount you got in this fiscal year a substantial amount of money?

Mr. GELBER. Yes, yes. It is the first true infusion of capital that we have had available in the last 4 years.

Mr. NADLER. And what percentage of need for that going forward do you think that what you got is?

Mr. GELBER. We have a substantial backlog of capital investment projects across the country that need to be met. We are hoping to be able to receive what we refer to as the full proceeds from the Federal Building Fund, which is approximately about \$2 billion.

Mr. NADLER. When you say full proceeds, full compared to what?

Mr. GELBER. In the Fiscal Year 2014 budget, I believe we received around \$1.5 billion.

Mr. NADLER. When you said full, you mean full compared to what you have requested, or full compared to what Congress appropriated? I mean, full compared to what?

Mr. GELBER. Full compared to the proceeds or the receipts of the Federal Building Fund. It is a revolving fund account, and the intent is, in order for us to better serve the Federal agencies and the Judiciary that occupy these buildings, having full access to those receipts.

Mr. NADLER. And you haven't had full access.

Mr. GELBER. That is correct.

Mr. NADLER. Because of the appropriations restrictions by Congress?

Mr. GELBER. My understanding is it is based on the general constraints on the Federal budget.

Mr. NADLER. Which would be appropriations constraints by Congress. Okay.

Can you give us a sense of how the inability to maintain buildings—that is, deferred maintenance—impacts long-term costs? For example, does it impact ongoing costs of operating facilities or risk having conditions deteriorate even further so that later repairs are more costly?

Mr. GELBER. The short answer is yes.

Mr. NADLER. And are you in a position, have you been in a position where you have to defer necessary maintenance?

Mr. GELBER. Yes.

Mr. NADLER. And that is because of limitations on funding provided by Congress, limitations on your ability to use that revolving fund?

Mr. GELBER. That is correct, sir.

Mr. NADLER. Now, let me just ask you one other question about the revolving fund. How does money get into the fund?

Mr. GELBER. I'm sorry?

Mr. NADLER. How—

Mr. GELBER. Yes. Money entering the fund are the rent receipts—

Mr. NADLER. Okay. So rent receipts go into the fund, and it is a revolving fund. The restrictions that we place on your ability to use that fund, which has a dedicated revenue source, rent, does that have any impact aside from a negative—does that have any budgetary impact aside from enabling us to say the deficit is a little smaller? Does it have any real budget impact? I don't mean the impact of your having to do the deferred maintenance. That is obvious. But does it really save money to the Federal Government?

Mr. GELBER. I believe—I am not an expert on that particular issue, but my understanding is that, yes, it does allow the Federal Government to say that they are deferring or reducing the deficit by a fraction—

Mr. NADLER. To say it, I understand. Does it really save money in any real way? You don't know.

Mr. GELBER. At the end of the day, these expenses and these costs will need to be addressed, and these buildings will need to be maintained properly. We are deferring—

Mr. NADLER. Okay.

Mr. Chairman, may I have one additional minute? I have one more question.

Mr. COBLE. Without objection.

Mr. NADLER. Thank you.

For Judges Conrad and Johnson, first of all, thank you for being with us today and sharing your concerns about the renovation projects in your buildings.

A critical issue that some of us, I and some of my colleagues, have been urging the Committee to address is the impact that sequestration and budget cuts have had on the function of the courts. Can you just tell us briefly what has been the impact on your courts, the courts that you deal with, of sequestration and other budget cuts in recent years?

Judge CONRAD. Thank you, Mr. Congressman. As probably most of the Members here know, I joined a number of other chief judges during the days of sequestration and wrote Congress expressing our concern as to the impediments, the effects sequestration had on the administration of justice in our respective districts, and I stand by all the things that were said in that letter.

Mr. NADLER. Is that just sequestration or other budget cuts, too?

Judge CONRAD. Sequestration and budget cuts, but I don't want to be heard to compare apples and oranges.

Mr. NADLER. Okay.

Judge CONRAD. Because in those situations, we understood months in advance what was going to be required by way of cuts.

Mr. NADLER. But with sequestration, you didn't have that advance warning.

Judge CONRAD. We did. We knew what we were going to have to do to cut our budgets to conform to the money, the appropriations that were going to be made available to our districts. So we had a chance to prepare. Furthermore—

Mr. NADLER. So I don't understand what the apples and the oranges are that we are not supposed to compare.

Judge CONRAD. I am going to explain. Furthermore, with sequestration, Congress was kind to invite representatives from the Third Branch to be here. Judge Bates, Judge Hogan, Judge Gibbons have all been called to testify, and they were very knowledgeable and expressed the position of the court very well, and I think Congress heard what they were saying. With my project, though, I was never given the opportunity to be heard—

Mr. NADLER. I see.

Judge CONRAD [continuing]. And I was never given the opportunity to have advance notice so I could plan properly for what was going to happen.

Mr. NADLER. Thank you.

Judge Johnson?

Judge JOHNSON. Congressman Nadler, these are some rough numbers, but in Fiscal Year 2011 the District of New Mexico's budget was \$9.7 million. For Fiscal Year 2014, the current fiscal year, we are at approximately \$8.9 million. So it is an 8 percent reduction. In terms of staffing the 2011 court operations, there were 112 people on board; 2014, 92 on board. So it is approximately a 14 percent reduction in personnel. That was accomplished

through either retirements, early outs, or buyouts. And for that same time period, we have had approximately a 20 percent increase in caseload. That is virtually all in the criminal area because we are a Southwest border district.

So in terms of the Clerk's Office, we have handled that, and again we have handled it through increases in automation. Probably the biggest area of concern would be in the United States Probation Office. In addition to being a Southwest border district, there are 30 different Indian tribes and pueblos within the states, ranging from smaller pueblos to I think about a third of the Navajo Nation is in New Mexico, two-thirds in Arizona. For probation officers to supervise, there are a lot of logistical issues there. So the impact on the United States Probation Office was the primary area of concern.

Mr. NADLER. Thank you very much.

My time has expired. I yield back.

Mr. COBLE. I thank the gentleman.

Mr. Gelber, the 10 projects to which you referred, is that new construction or renovation, or both?

Mr. GELBER. Those are strictly for new construction, sir.

Mr. COBLE. All new construction?

Mr. GELBER. That is right.

Mr. COBLE. Thank you, sir.

The Chair recognizes the distinguished gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you very much, Mr. Chairman.

Mr. Chairman, following on to the letter I think introduced by the gentleman from Michigan or the gentleman from New York dated June 16—actually, it was the letter of June 18, I believe, that was made a part of the record—I would like to ask unanimous consent to make a part of the record as well a letter from Judge Carol Bagley Amon, the Chief Judge of the Eastern District of New York, to all of the chief judges of the district courts throughout the country, and a letter from Judge John D. Bates, who is the Director of the Administrative Office of the United States Courts, dated June 17, pointing out the need for the gathering of information and pointing out, for example, in Judge Bates' letter, "In addition and in order to prepare a comprehensive and geographically complete report of GSA deficiencies from around the country for this initiative, Judge Amon sent to you by letter yesterday to describe specific examples. These examples will be provided to GSA." So I just want to make it clear that this is not something that is unique to the situation in New Mexico or the situation in Virginia, and I would ask that those two letters be made a part of the record, along with the one already introduced.

[The information referred to follows:]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
225 CADMAN PLAZA EAST  
BROOKLYN, NY 11201

CHAMBERS OF  
HONORABLE CAROL BAGLEY AMON  
CHIEF JUDGE

June 16, 2014

Re: General Services Administration (GSA) Service Validation Initiative

Dear Chief Judges:

I write to all Chief Judges with the knowledge and support of Judge D. Brooks Smith, Chair of the Committee on Space and Facilities. At our meeting of Chief District Judges in Washington, D.C. in March, Judge Smith described the nationwide effort to reduce the Judiciary's space footprint in order to reduce our \$1 billion annual rent bill. As I expressed during the meeting, I am concerned that after we undertake this project, GSA will simply raise the rents and extinguish any savings we hoped to achieve.

At that meeting, Judge Smith described the Committee's "GSA Service Validation" initiative which was created to evaluate and achieve improvements in the services that the Judiciary receives from GSA. This initiative was created to work in tandem with the space reduction program to achieve reductions in both the Judiciary's space footprint and annual rent. Four groups are being formed with Judiciary and GSA subject matter experts to work together to devise solutions in the following topical areas: 1) appraisal methodology/return on investment pricing practice; 2) overtime utility estimating and energy savings sharing; 3) space assignment, classification and billing validation; and 4) project management: scope, development, and estimating. Judge Smith has appointed a subcommittee, chaired by Judge Susan R. Bolton to oversee this effort.

It is important that we be prepared: 1) to contest any rent increases occasioned by our space reduction efforts; and 2) to mount a cost-containment strategy directed at challenging existing GSA practices which result in our being over-charged. We need to assemble information to achieve these goals. It bears noting that GSA is doing a better job on behalf of the Judiciary in some circuits and districts than in others. To that end, I have offered to solicit from you specific examples of space and facilities-related issues, problems or successes from around the country to include:

1. Rent overcharges resulting from improper accounting for joint use space, inaccurate appraisals, and/or failure to advise what appraisal method is being used;
2. Charges for services not received;
3. Excessive charges for operating costs and overtime utilities;

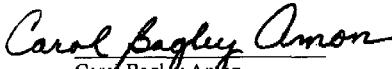


4. Project management issues, including cost estimation and management fees for projects that result in the need to request additional funds, for which GSA charges additional management fees;
5. Successful or inadequate building managers, responsiveness to issues, project management, or services provided; and
6. Holding the Judiciary responsible for the expense of damage to property caused by building systems maintained by GSA (for example, burst pipes, sprinklers, HVAC system issues).

In order to prepare a comprehensive and geographically complete report, it is necessary to compile information from around the country and I seek your cooperation in this endeavor. Specifically, I ask that by August 1, 2014, you or your clerk of court or other designee describe specific examples of these or any other space and facilities-related issues, incidents, problems or successes in an e-mail to the following mailbox: [AODB\\_Service\\_Validation@ao.uscourts.gov](mailto:AODB_Service_Validation@ao.uscourts.gov). The examples will be provided to GSA as part of the joint service validation initiative to document in a systematic manner the issues that the Judiciary encounters on a widespread basis and to hold GSA accountable for these deficiencies in service. If you or your staff have any questions, please do not hesitate to contact Diann Burns, Acting Chief, Space and Facilities Division, Administrative Office of the U.S. Courts (AOUSC) at (202) 502-1340 or via email at [Diann\\_Burns@ao.uscourts.gov](mailto:Diann_Burns@ao.uscourts.gov).

Thank you very much for your assistance with this effort.

Sincerely,

  
 Carol Bagley Anton  
 Chief United States District Judge  
 Eastern District of New York

cc: Members, Judicial Conference Committee on Space and Facilities  
 Circuit Executives  
 Clerks, United States Courts  
 District Court Executives  
 Melanie F. Gilbert, Chief, Facilities and Security Office, AOUSC  
 Diann Burns, Acting Chief, Space and Facilities Division, Facilities and Security Office, AOUSC



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

HONORABLE JOHN D. BATES  
Director

WASHINGTON, D.C. 20544

June 17, 2014

MEMORANDUM

To: Chief Judges, United States Courts

From: Judge John D. Bates, Director *John D. Bates*  
Administrative Office of the United States Courts  
Judge D. Brooks Smith, Chair *D. Brooks Smith*  
Judicial Conference Committee on Space and Facilities

RE: THE GENERAL SERVICES ADMINISTRATION (GSA) AND THE COURTS  
**(IMPORTANT INFORMATION)**

We want to advise you of two recent developments regarding the Judiciary's relationship with GSA. First, the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Internet will hold a hearing on Thursday June 19, 2014, entitled "GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste." We had understood from discussions with Congressional staff that the scope of the hearing would be limited to several American Recovery and Reinvestment Act - i.e., stimulus - projects involving the Judiciary. We have recently been informed, however, that the focus has been expanded as reflected in the hearing title.

Second, the Administrative Office (AO) and the Space and Facilities Committee (Committee) have long been searching for a way to hold GSA more accountable for the services it provides to the courts for the more than \$1 billion in rent the Judiciary pays to GSA each year. Disagreements on the rent GSA charges the Judiciary, on project delivery and estimates, on overtime utilities, and on space assignment and billing validation have been long-standing issues. For that reason, in addition to the space reduction initiative approved by the Judicial Conference in September 2013, the Committee also commenced the GSA Service Validation Initiative.

We are pleased to report that the Committee, the AO and GSA have agreed on a path to address service issues through the joint Judiciary-GSA Service Validation Initiative. An ad hoc subcommittee of the Committee has been appointed to oversee this task. The Commissioner of GSA's Public Buildings Service, the Chair of the Committee, and the head of the Facilities and Security Office at the AO have formed four groups that will develop concrete protocols on these topics with subject matter experts from the Judiciary and GSA. In addition, in order to prepare a

comprehensive and geographically-complete report of GSA deficiencies from around the country for this initiative, Chief Judge Carol Bagley Amon, Eastern District of New York, sent you a letter late yesterday asking you, your clerk of court, or other designee to describe specific examples of space and facilities-related issues, incidents, problems or successes in an e-mail to the Committee staff. These examples will be provided to GSA as part of the service validation initiative to document in a systematic manner the issues that the Judiciary encounters and to hold GSA accountable for any deficiencies in service.

If you provided, or are planning to provide, information relevant to the House Subcommittee hearing, please ensure that the information is also provided in response to Chief Judge Amon's letter.

Thank you for your continued support of this important work.

cc: Members, Judicial Conference Committee on Space and Facilities  
Circuit Executives  
District Court Executives  
Clerks, United States Courts  
Melanie F. Gilbert, Chief, Facilities and Security Office  
Diann Burns, Acting Chief, Space and Facilities Division, Facilities and Security Office

Mr. GOODLATTE. Mr. Gelber, the point has been made that funds are tight. This year, for example, we are about 8 months into the current fiscal year. So far, the Federal Government has spent more than \$600 billion, more than it has taken in. Would you agree that under circumstances like that, funds need to be used wisely by government agencies to stretch dollars as far as they can be stretched?

Mr. GELBER. Yes, sir.

Mr. GOODLATTE. So would you say that spending \$3.4 million to patch a leak in a garage at the Federal building in Albuquerque, New Mexico was a wise use of Federal funds when a number of suggestions were put forward that are listed in Judge Johnson's testimony about how the problem could have been solved without a complete re-landscaping of the exterior of the courthouse?

Mr. GELBER. We felt the key issue regarding that project was the preservation of the roof. The landscaping would affect the parking deck that is below that landscaping. In order to protect that structure, the GSA believed we should proceed with a rethinking of how we approached the landscaping at that facility. But most importantly, stabilizing the roof and sealing the roof so that no further water leaks would occur.

Mr. GOODLATTE. One of the suggestions was that you simply go to desert landscaping. Was that not considered as a good alternative?

Mr. GELBER. To the best of my understanding, that is what we did at that facility.

Mr. GOODLATTE. And it cost \$3.4 million to—

Mr. GELBER. The majority of the work associated with that project was associated with, in effect, rebuilding and resealing the roof for the parking deck. A proportion of that project was also spent on the new landscaping for that facility, replacing the grass that was there previously with what you and I would refer to as desert landscaping.

Mr. GOODLATTE. Now, with regard to the Poff Federal Building in Roanoke, you are aware now that a total of \$82 million has been expended or requested by the GSA on this project for a building that cost \$14 million to construct in the mid-1970's, and the purpose of that was to replace the windows, the roof, the HVAC system, and the bathrooms in that building. The ostensible purpose was to green the building, to create a more energy efficient situation. It is my understanding that the life expectancy of the materials put into the building is somewhere between 30 and 40 years, and yet the payback on the energy savings would take, by the calculation of some, 218 years to recoup the so-called energy savings in that building.

Would you say that the going-on \$82 million—and I would suggest there are going to be more expenditures beyond that—was a good use of the taxpayer dollars in that building?

Mr. GELBER. GSA has an obligation to maintain the various assets that we have in our inventory.

Mr. GOODLATTE. But don't you have an obligation to consider all of the alternatives in terms of providing facilities when you do that? And don't you have an obligation to consider what the impact is on your tenants when you do that? I mean, the Veterans Administration, which is in a crisis over the processing of claims and pro-

viding services and benefits and was required to relocate out of the building for 3 years at four separate locations while the files were remaining in the building and had to be shuttled back and forth, you don't think that had a serious impact on veterans? The court found itself having to work around this with serious security issues with regard to disruptions, a danger to the safety of the employees. Don't you think that the GSA could have done a better job of consulting with the tenants and considering how this would best work to find better facilities for them and in a more cost-efficient manner than spending \$82 million, nearly seven times or six times what was spent on the original construction of the building?

Mr. GELBER. Based on the testimony of the Chief Judge and Ms. Smith, I fully agree that GSA has space to improve in how it interacted and communicated with the tenants of that building.

Mr. GOODLATTE. Well, let me ask you this. I agree with you on that. Why hasn't anyone at GSA been held accountable with regard to the mismanagement of this project? Has anybody been fired or disciplined as a result of the decision-making process that was undertaken and the results that are now painfully evident?

Mr. GELBER. I am not aware of any personnel actions, and I would also not agree with the notion that there was any mismanagement that would require such personnel actions be taken.

Mr. GOODLATTE. Mr. Chairman, if I might have one additional minute, I would like to ask another question.

Mr. COBLE. Without objection.

Mr. GOODLATTE. Why hasn't anyone at GSA been held accountable for violating Federal law in publishing the guaranteed maximum price that the government would pay for the renovation of the Poff building? In other words, it is required under the law that you not reveal the maximum amount. Not the amount you would like to pay but the maximum amount you would pay was disclosed to the people who bid on the contract. And, lo and behold, every single one of them, what did they bid? The maximum amount.

Was anybody held accountable for what had to be millions of dollars in loss to the taxpayers, millions of dollars that could have been diverted to address some of the other needs that we have talked about here today in maintaining facilities around the country? Was anybody held accountable for that violation of the law?

Mr. GELBER. The GSA Inspector General reviewed that part of the process, and no recommendation for any such prosecution or action was made.

Mr. GOODLATTE. The Inspector General is charged with pointing out these errors, but he is not charged with managing the operation of the GSA. The GSA is perfectly capable of making decisions themselves with regard to how they hold people accountable for these failures to help ensure that these things don't occur in the future. Has anybody been disciplined for any of this?

Mr. GELBER. I am not aware of any disciplinary actions associated with that.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. COBLE. The Chair recognizes the distinguished gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Following on the questions of Chairman Goodlatte, are you, Mr. Gelber, aware that there was a Transportation Committee hearing on the issue that keeps coming up and that the Inspector General issued a report on it, and that came out during a hearing on April 14, 2011 in the Committee of jurisdiction, the Transportation and Infrastructure Committee?

Mr. GELBER. I am aware of that, sir.

Mr. CONYERS. And can you comment on what happened during that? Because this is not the general subject matter that we engage in, of overseeing how these courthouses are maintained or create new ones or restoration, et cetera. We are working off of a hearing of April 14, 2011 from the Transportation Committee in which an Inspector General's report was issued, and unless we had been at that hearing, it is hard to go back and determine what has been accomplished since then. Would you agree?

Mr. GELBER. I would agree with that statement, sir.

Mr. CONYERS. How do we cover this? Because Mr. Chief Judge and our other Federal Judicial member and witness, the most important thing that can come out of this hearing is how do we increase and improve the cooperation between GSA and the Judiciary, and what I am trying to get from any of you that will help me is how can we improve these relations.

Let me start off with the GSA representative.

Mr. GELBER. GSA is actively engaged in regular discussions with representatives from the court at the senior level regarding our space issues with the Space and Facilities Committee. We meet on a regular basis. Just as recently as last week we attended the Space and Facilities Committee, where we discussed the court's interaction with GSA. GSA also has regular meetings with certain circuit courts around the country to better understand their needs and how we can better serve them, as well as, as often as possible from GSA's perspective, we engage with district court judges on specific issues that may be of concern to those particular judges.

Clearly, based on the testimony I heard today, we have room for improvement on particular projects, and GSA will take that and work with the Administrative Office of the Courts, the Space and Facilities Committee, the various circuits around the country, and the district courts to better engage and ensure that the courts are active participants in GSA projects and GSA facilities around the country.

In many cases, I believe my colleagues around the country do a good job in this matter; clearly not in all cases. We have challenges that we need to fix, and I think one of the key challenges that the court has presented to GSA is we need to have a more consistent level of excellent engagement with the court, and that is our commitment to both the court and to this Committee.

Mr. CONYERS. I am glad to hear that. I didn't know about this tension either until this hearing, and I apologize for you not getting notice, giving you more than a week to come before this Committee.

Could I ask the same of Ms. Smith, please?

Ms. SMITH. Yes, thank you. I would agree that greater involvement from people on the court side very early in the process of planning these projects is going to benefit everyone—the court, cer-

tainly GSA, and the ease of pulling off a project, and the taxpayer of spending less money.

Not only do the courts understand their own function, but we also understand our facilities very well. For example, I believe that GSA has requested funding for partial demolition and reconstruction of our parking garage in Roanoke. When I talked to the project executive about this in detail, he was unaware that the parking garage actually houses the U.S. Marshals Service sally port for bringing prisoners into the building. It will also affect our judges' entry. So at this point, GSA has requested funding for design and construction of a project that these two major parts are going to have to have some temporary construction, and I think that is not fully understood.

So I think we are heading into a project again where I have yet to be involved in any of the planning. So I would say right now, the next meeting, I would really like to be at the meeting for the parking garage.

Mr. CONYERS. Well, I hope so, because we are doing major modernization at the Levin Courthouse Building in Detroit, and so far—and I see the judges pretty regularly—no one has brought any complaints or criticisms to my attention. But we have taken two courthouses out of hundreds, and that doesn't give us a clear picture of what is going on.

Chief Judge Conrad, maybe, do you have any impressions on this? I know you don't work in this area as a chief judge, but is it your view that we can improve our relationships between GSA and the Judiciary? And if there are any specific recommendations you would want us to know about or consider, I would appreciate it from you, sir.

Judge CONRAD. There certainly is.

Ms. Smith, this is the first I have heard that the judges' entry into the building is going to be affected by this parking garage demolition. [Laughter.]

Judge CONRAD. That is the reason that Ms. Smith and I are here today. And I agree, Congressman, with the theme of your question. I think that looking forward, we have to be able to determine some better ways to effect communication between the GSA, which has a very difficult job to do, and the courts, which have our own difficulties in performing our work.

So I would agree, using this Poff stimulus project as an example, if there could have been more planning up front, if we could have met with the design official months before the project was let for bid, I think that we could have addressed some of the needs that now have been left unaddressed at the conclusion of the project. So I underline everything that you say. I agree with it 100 percent.

Mr. CONYERS. Well, thank you. Maybe, even though this may not be in our jurisdiction, we can turn this into a positive coming together, because this discussion may not have taken place any other way.

Judge Johnson, what are your feelings?

Judge JOHNSON. Congressman Conyers, I will draw some on my experience serving on the national committee, although I am no longer on that committee. But I know your chief judge, Judge Rosen.

Mr. CONYERS. Yes.

Judge JOHNSON. And I know the issues. The courthouse in Detroit is a magnificent historic structure. For example, the roof has been leaking for years. There have been serious problems at that courthouse, as well as I am also aware of another one. I don't think it is in Chairman Coble's district, but it is the Charlotte Courthouse, which has the same kind of issues that Detroit has been facing, and I am glad to hear that resources are being put into renovating what is no doubt a magnificent building.

But when you look at, for example, what has gone into the Poff Building, \$82 million by the time everything is done and said, part of that \$82 million would go a long way to putting a roof on the Detroit Courthouse, or the Charlotte Courthouse.

Mr. CONYERS. It sure would.

Judge JOHNSON. So those are some of the issues that I experienced. The Judiciary, we are captive tenants in these courthouses, and the rent implications, even though the landscape project in Albuquerque, the \$3.4 million pales in comparison to the Poff. But one of the concerns we had is we didn't request this, but are we going to end up paying more for rent for all this? It did reduce the water. The water is not going into the garage. I think it is conserving water. But how is this going to affect our rent bill?

It all comes down to GSA holds all the cards. We are captive tenants. The rent has to get paid. It is automatically, I guess—we don't have any—Judge Rosen didn't have a common law remedy of a tenant where if the roof is not being fixed, he just doesn't pay rent. We don't have that option.

Mr. CONYERS. Of course not.

Judge JOHNSON. So communication is an issue. But if we had a little more, I guess, control, or the playing field was leveled a little bit to where we could get involved a little more, because we obviously have a vested interest since we are the tenants in these courthouses.

Mr. CONYERS. Well, we will be following this because the courts have sustained a 20 percent increase in caseload, at the same time sustaining an 8 percent reduction in funding.

Judge JOHNSON. That was for my district, Congressman.

Mr. CONYERS. Yes.

Judge JOHNSON. And I am not sure what the numbers are for other districts.

Mr. CONYERS. Oh, I see. Could it be similar, or do you have any idea, Chief Judge Conrad?

Judge CONRAD. Not as dramatic as Judge Johnson.

Mr. CONYERS. I see. Well, I want you to know that we will be following this as we move along into this area. I am certainly glad that all of you are here today, and especially Mr. Gelber, who has been taking all of this in and writing notes furiously. I want to see a coming together and a reduction of the differences between an important Federal agency and the Federal Judiciary itself. To me, that is my primary concern.

So I thank all of you as witnesses for being here, and I yield back, Mr. Chairman.

Mr. COBLE. I thank the gentleman from Michigan.

The distinguished gentleman from Texas is recognized.



I stand corrected. The distinguished gentleman from Pennsylvania is recognized next.

Mr. MARINO. Are you in a hurry? Go ahead.

Mr. POE. Mr. Chairman, am I recognized?

Mr. COBLE. Pardon?

Mr. POE. Am I recognized?

Mr. COBLE. Oh, you are indeed recognized.

Mr. POE. Thank you, thank you.

Thank all you all for being here. I was a former judge in Texas state court, felony court, tried those outlaws down in Texas, which we apparently have a lot of, for 22 years, been through the courthouse building business. We actually have a courthouse that was built in the 1800's that now has been refurbished and is useful and looks like what I think a courthouse traditionally used to look like. So I thank the judges for being here.

Let me ask the GSA expert, do you see the absolute necessity of having judges involved in the building of courthouses in the country? Do you see how important that is?

Mr. GELBER. I do. If the court wishes to participate in that process, yes, sir, they should.

Mr. POE. There are factors that only judges and people who work in the captive environment understand have to be done. No offense, but government bureaucrats just don't get that information, whether it is moving juries around the courthouse, keeping defendants from juries, from the public, all of those things, keeping lawyers where they can talk to their clients, lawyers talk to their clients who are in custody, meeting with witnesses. All of those things judges understand because they work in the environment where all of that takes place. No offense, but people in the government, they don't do that. They work other places.

I just want to stress on you the importance of that because, obviously, it is not working out too well. From the public's point of view, they see that these judges are getting these big courthouses refurbished, and it is costing the taxpayer a lot of money, and they don't blame you. They blame the judges for that, and the judges really aren't the ones to blame for the expense of these new courthouses.

As the gentleman from Michigan has mentioned, judges are working harder, more cases, more people come and go, whether it is a trial court or whether it is an appellate court, from all of these government buildings.

How many courthouses are there in the United States controlled by the GSA?

Mr. GELBER. I would say, depending on how one defines it, approximately 200.

Mr. POE. Are they all occupied?

Mr. GELBER. Those are all Federally owned, occupied courthouses. Yes, sir.

Mr. POE. Are there any courthouse buildings, annexes, that are unoccupied that are owned by the GSA?

Mr. GELBER. Yes, sir, there are some of those facilities as well.

Mr. POE. What are you doing with them?

Mr. GELBER. We are in the process of seeking a better use for them, whether in partnership with the private sector or with other Federal agencies.

Mr. POE. Do you ever sell buildings?

Mr. GELBER. We do, sir.

Mr. POE. How many buildings in America does the GSA have control over or own?

Mr. GELBER. I believe that number is around 1,900, sir.

Mr. POE. Almost 2,000 total buildings in the country? That is all?

Mr. GELBER. We control—sorry, I am just checking a note here. I apologize. We have approximately 1,500 owned assets and 9,000 leased assets around the country.

Mr. POE. So you own some buildings and you lease other buildings from the private sector I suspect.

Mr. GELBER. That is correct, sir.

Mr. POE. Is there a bid process involved in whether you build a building or you lease a building?

Mr. GELBER. Yes, there is a financial review and analysis done to seek the best possible solution to the space challenge we have.

Mr. POE. Of those 1,500 buildings, how many of them are unoccupied?

Mr. GELBER. All those 1,500 buildings are occupied.

Mr. POE. So GSA has no buildings in the country that are unoccupied?

Mr. GELBER. I am sorry, sir. We do have unoccupied buildings. They are not part of that 1,500.

Mr. POE. Okay. How many buildings are unoccupied that GSA owns? That is my question.

Mr. GELBER. I believe that number is around 20, sir, but I would like the opportunity to correct that for the record.

Mr. POE. Okay, whatever the number is. Do you ever sell buildings?

Mr. GELBER. We do, sir.

Mr. POE. All right. And you go through a competitive process to do that?

Mr. GELBER. Yes, sir. One of the features—we, in effect, have an online auction for the facility.

Mr. POE. Why is the cost so much more when you try to refurbish, the examples that are being used here, the Federal courthouses? How come this cost is—it is really kind of out of control. Can you explain the general reason why the cost is so much?

Mr. GELBER. Sir, unfortunately, the expenses associated with these buildings are there is a substantial amount of work that needs to occur, and that work is expensive.

Mr. POE. That is not the answer. I am not looking for why you are saying it is expensive. Why is it expensive? I know what goes into a courthouse. I have been in one for 22 years. But why does GSA spend so much money on a project that ought to cost a whole lot less? That is really my question.

Mr. GELBER. We go through a competitive bid process, sir, and the responses we get to those bids represents the cost of the project.

Mr. POE. But based on what we have heard here today, after the results, after the building is built or whatever is fixed, the parking

lot is fixed without the Marshals' input, it is more expensive than it ought to be.

Mr. GELBER. Sir, the project that was referenced hasn't started yet. Our intent is to work with the Marshals Service and the court to ensure that they understand and are part of the project planning process.

Mr. POE. My question really is do you agree or not that when the GSA is building courthouses or refurbishing them, or remodeling those courthouses, they seem to be out of line with what it ought to cost if the private sector handled it?

Mr. GELBER. I would disagree with that, sir. We are going through a competitive bid process and the private sector is, in effect, bidding on the work that accomplishes the changes in the courthouses that we are requesting.

Mr. POE. And the buildings that you are refurbishing in the future or building courthouses, are you telling me that you do and will continue to get the input from the occupants of the buildings, like the judges?

Mr. GELBER. Yes, sir.

Mr. POE. All right. I am going to ask the judges a question. One more question, please, Mr. Chairman.

Do you believe the system works well enough where you give input at the right time?

Judge CONRAD. Congressman, it didn't for us on the Poff stimulus project. It did not work for us in the Poff stimulus work. We did not have the opportunity to be heard. We did not have the opportunity to suggest minor design improvements that could be made at the same time that would help us do a better job. Instead, we have a building that is full of invisible improvements. The employees don't know what has been done. They don't find it easier to do their jobs.

So for us, the answer is no, it did not seemingly work the way it should have worked.

Mr. POE. And so do you see that GSA now has to come back in and fix those problems?

Judge CONRAD. Well, they need to be fixed. Whether they are going to be fixed or not is another question.

Mr. POE. All right. So you are saying that they need to be fixed.

Judge CONRAD. Ms. Smith can better answer this question than I, but now if they are going to be fixed, it is going to be at our expense, not GSA.

Mr. POE. I will ask the other judge.

Judge JOHNSON. Do you want me to answer?

Mr. POE. Yes, sir.

Judge JOHNSON. Oh, yes. I would agree with what Judge Conrad said. You know, on projects, there is a 7 percent management fee if it is a small project that my district will get charged for GSA's management and expertise. But typically we also have to have representatives from the Clerk's Office, someone similar—it might not be someone at Ms. Smith's level of expertise, but somebody has to oversee it on our end to make sure the contractor is doing what they are supposed to even though we are paying the 7 percent.

If you have a minute, I will give you a real simple example of a recent situation where there was a judge, one of my colleagues.

Because of the budget issues, there is a dishwasher in her workroom. She decided to go out and she found one on sale at Lowe's or Home Depot, someplace like that, paid \$400. She was going to furnish it. But because GSA has to install it, instead of being able to pay a \$50 or \$100 installation fee, we were going to be charged—it was close to \$1,000 to install the dishwasher, and that is because we have to go through GSA.

Those are the types of—whether it is a small project or a big project, we get hit with those.

We had to replace the judge elevator, the judge and staff elevator in the Albuquerque courthouse. I assumed since GSA owned the building, they pay for the elevator. I learned we had to pay for the elevator. They will pay for the public elevators, but even though all courthouses now have separate inmate elevators, public elevators and staff elevators, GSA considers that a special need for the Judiciary and we had to pay for it even though, again, we were down 8 percent. The Circuit helped us pay for that.

But again, if we are paying rent on these buildings, to me that is something that GSA should be paying for, not us. It does impact, particularly if you are looking at budget cuts and potentially furloughing employees. These types of expenses have a huge impact on not only my district but other courts.

Mr. POE. There ought to be a law.

Thank you very much. I yield back.

Mr. MARINO [presiding]. Thank you, Judge.  
Congresswoman Lee?

Ms. JACKSON LEE. Thank you very much. I want to thank both the Chairman and Ranking Member of our Subcommittee on Courts, but I am also going to thank the Chairman of the full Committee, Mr. Goodlatte, and the Ranking Member, Mr. Conyers, for cooperating on this hearing, which might be considered a rather unique and interesting hearing.

First of all, let me say that I was one that was gratified and voted for the ARRA dollars, and I do not step away from that. Some of the dollars were used, as I understand, in some of these projects. But I believe the structure that Judge Johnson and Chief Judge Conrad, and Ms. Smith, I believe—I was delayed and so I did not hear all of your testimony—is a crucial one, and I am grateful for you bringing this to our attention.

Let me cite you, Judge Johnson, because I am in a Federal building that is run by GSA that has a number of law enforcement entities in it, so I consider it a nexus to the Judiciary, and it is accurate. I do not have the option not to pay rent, with all of the dissatisfaction.

Now, I am as much a person that believes in the conservation. I am in my office with a full working staff and constituency meeting, and the lights go out without my permission because they say they have it on a timer. I am in a constituency business. My constituents may come at 6 or 7 o'clock, and I am there with 20 or 30 people in the office, and the lights go out because GSA, unknowingly to the payer of the rent, is not kind enough to give a waiver or a notice.

Fortunately, a late-night building operator came up and said "It's not my fault, this is what they have done."

So I think this hearing is worthy, and I want to just pose this question as I raise some questions to Mr. Gelber, who I do want to make it very clear that I appreciate the General Services Administration and the staff. I always want to separate my appreciation for anybody in public service, but I think we can do better.

This letter has just come in June 18th, 2014 from the Committee on Space and Facilities. Judge Johnson, I want to make sure that this is enough, that there has now been developed a partnership with GSA aimed at addressing many of our longstanding problems, and that is intended to improve the delivery of all services that the Federal Judiciary receives from GSA.

I really am shocked that you are charged for the elevator that is part of the building that is in—you are in the building. They know you are in the building. You are a Judiciary that has special needs. The Federal Courthouse in my district, it is across the street from a Federal detention center. In order to provide protection, there are a number of—I won't go into it—discreet entrances that we must have, bringing the detention cartel persons that are in the detention center over, some of which are there, over to this building. So we would need special dispensation.

So it is obvious that you need special dispensation. I am shocked that you are paying for repair of elevators in a building that you are paying rent for owned by GSA.

Judge JOHNSON. We were shocked.

Ms. JACKSON LEE. Let me just ask you, does this letter help that we just received? I assume that you have this letter. This is a letter coming from the Committee on Space and Facilities that says they worked out a deal that would work with GSA for you to have more input. Is that what you are saying that you need, and is this a good start?

Judge JOHNSON. Congresswoman Lee, I had earlier mentioned I am aware of the letter, and Mr. Gelber I know has a very close working relationship with the members of the Administrative Office of the Court who handle space and facilities on a national basis. But what I had mentioned earlier is that there are a number of GSA regions that have regional commissioners who are—I think I am correct in this—who are presidential appointees, and at least it has been my experience, and I say this from serving on the national committee, that at the national level for GSA there is a sincere effort to try to work with the Judiciary. They understand our problems. They understand the issues. If the rent keeps going up, it is a choice of either having our people on the payroll or paying rent. That is why we are trying to—

Ms. JACKSON LEE. But—

Judge JOHNSON. But at the lower levels, the regional levels, it is not always the same commitment.

Ms. JACKSON LEE. I see. Well, this has been at the level of the Judicial Conference. What would be helpful for you being in the local level and dealing with the GSA leadership?

Judge JOHNSON. More local accountability. Again, I gave the example of little projects that shouldn't cost—I mean, if you go and if you were going to do something in your office but you have to go through GSA, if you are like the Judiciary, you are paying for any type of tenant alteration. You are paying, for example, a per-

centage of management fee. So if we had more, I guess, negotiating—if GSA didn't hold all the cards and we had the ability to get these projects done on more of a competitive bid basis without paying the fees, it would help us out a lot.

Ms. JACKSON LEE. I ask for your indulgence here for a moment, please, if you would just yield me just a moment to finish. I appreciate it, and I thank you for your courtesies to a fellow Texan, for my colleague who is here.

I have served as a municipal court judge, so I know buildings. I think these are two important points, Judge, and I thank you.

I want to go to Mr. Gelber and indicate some of this you may have to get back to me directly. Let me thank you for your service and say that your regional office has certainly been courteous. But I have two major issues that I would like to address.

Our courthouse, 515 Rusk, has to be as old as Texas. Unfortunately, it came through an era of unattractiveness. You are able to propose places of rehab, not new construction. I would ask you to meet with me. I would ask you to assess why you have not come to recommend this building for a massive facelift. It is a place of service of our Judiciary, and it is untoward. That is number one.

Then let me go to a project that is existing right now that I have had meetings upon meetings. As I indicated to Judge Johnson, this is not a partisan issue on this Committee. This is an issue of trying to remedy an unfortunate set of circumstances. You hired a contractor that is tone deaf, and there is no accounting for—we had agreements on reaching out, getting diversity among the employee base, the construction base, to ensure that those in the neighborhoods would have the opportunity if it was to use a broom.

So I want numbers of diversity on that project. We had had a commitment on the diversity of contractors, subcontractors. I believe it has been totally violated. The main contractor was particularly insensitive and rude to establish minority contractors who they wanted to give a broom, not do the work but they wanted to just get a broom.

So this is the Mickey Leland Federal Building in Houston on Smith Street that has basically run off every congressional person except myself. So I want a full briefing. I am making a complaint about the contractor, about the lack of responsibility and the horrific constraints that you put in the building for those of us who pay compensation.

So I would ask and I would just have you say on the record that you will be in touch with me on the 515 Rusk and the Mickey Leland Federal Building.

Mr. GELBER. Yes, Congresswoman.

Ms. JACKSON LEE. And you will be in my office. You are based here in Washington?

Mr. GELBER. I am based in Washington, D.C.

Ms. JACKSON LEE. All right, sir. So we will be together with paperwork and documentation to ensure that this situation is remedied.

Let me thank the Chairman for his indulgence. I yield back.

Mr. MARINO. Mr. Holding?

Mr. HOLDING. Thank you, Mr. Chairman.

Having been a tenant of GSA for about 10 years, I am not particularly surprised by the problems illuminated in the hearing today. Out of 93 United States Attorneys and all their various offices, there is a good mix of GSA tenants, and there are tenants of private entities as well. I think it is fair to say that GSA tenants unhappy, private tenants happy.

But we are here to talk about the Federal Judiciary, and the Federal Judiciary has responded to the difficult budget requirements imposed on them by sequestration by making sacrifices across the board to reduce spending. Unfortunately, for far too long, judges in North Carolina and around the country have related to me instances where GSA has failed to be good stewards of scarce taxpayer resources.

In the run-up to this hearing I have heard from a growing number of Federal judges who share with me a number of specific instances where GSA failed to live up to the standard which we place on all Federal employees, ourselves included, particularly in these times of austerity.

The United States Bankruptcy Court for the Eastern District of North Carolina, Judge Humrickhouse, has faced an ongoing battle with the GSA to have her chambers renovated. Despite the GSA originally estimating that the project would take 6 months to complete, today, 4 years and 8 months, a myriad of problems and a fired subcontractor later, the project has yet to be completed.

More troubling than the contractor's failures, according to the judges on the ground, is the GSA's lack of oversight which led to over-billing.

In the Western District of Louisiana's Bankruptcy Court, judges and clerks relay that, in their experience, GSA has proved to be both inefficient and ineffective in meeting the needs of the court. Judges there tell me that the GSA management structure promotes slow decisions, creates delays, and causes large-scale cost overruns. This experience caused the cancellation of their most recent space renovation project, the remodeling of one bathroom for one of their judges. The judge there states that there were false starts on the project due to lack of communication between the different branches of the GSA, innumerable weekly telephone conferences, and steadily climbing cost projections.

After court funds had been obligated for the second time, GSA returned with one additional \$4,000 cost requirement. At this point, the judge chose to abandon the project altogether. While this was not a matter of large consequence, it is the smallness of the project that makes GSA's inability to get it done noteworthy.

So failure on large projects, failure on small projects.

Judges in Texas advise me that GSA PBS has been permitted through its pricing policies to unreasonably shift some of the cost of building ownership to tenant agencies, as we were just discussing. They tell me that, for example, we have been routinely required over the past decade to pay for cyclical maintenance and repairs and court space from our salaries and expenses account even though we already pay market value to rent the space from GSA and buildings that the Federal Government has owned for decades.

Now, certainly there are a lot of fine folks working at GSA, and I want to tell you that during my tenancy at GSA I met a number

of these people and continue to be friends with them, and I appreciate their service. But I have heard far too many accounts from judges that I have worked with in the past and their colleagues around the country that this cannot be ignored.

There has been some mention that we are only hearing about two projects. Well, I beg to differ and say we are hearing about a lot of projects and instances in Federal courthouses around the country.

So, Mr. Gelber, what does GSA have to say for itself? We have heard about what is going on in Virginia and North Carolina, Texas, Louisiana, and I plan to submit for the record additional information.

So you have 51 seconds. You are welcome to respond, and any further response you are welcome to submit in writing.

Mr. GELBER. Thank you, sir. GSA is committed to working with not only the Judiciary but all other Federal agencies who occupy our facilities to ensure they have the best space possible to meet their needs, and that is our commitment to the court here today, to the Congress, as well as all the other executive branch agencies we work with.

Mr. GOODLATTE. Would the gentleman from North Carolina yield on that point? I thank the gentleman for yielding, and I would like to join the—not with regard to her specific courthouses, but you heard Judge Conrad express and allude to security concerns that have gone unaddressed with regard to the courthouse in Roanoke, and I would like to ask that you and representatives that deal with those issues, if you would be willing to meet with me to determine how those are going to be addressed. I think it is better discussed outside of a public hearing because they are, after all, security matters that we don't want to discuss the details of. But I would like to have the opportunity to have that discussion with you as well. Would you be willing to commit to doing that?

Mr. GELBER. I would be happy to meet with you, sir.

Mr. GOODLATTE. I appreciate it. Thank you very much.

And I thank the gentleman for yielding.

Mr. MARINO. Mr. Bachus?

Mr. BACHUS. Thank you.

Mr. Gelber, I want to quote 28 USC 566. The reason I am, I want everyone to sort of acknowledge this law in the Federal Code. It says, and I will quote, "U.S. Marshals Service retains final authority regarding security requirements for the Judicial Branch of the Federal Government."

Now, the Administrative Office of the Courts says that the Chief Justice and local U.S. Marshals have final authority regarding security matters, which I think is consistent with this code.

That having been said, the Chief Judge of the Northern District who is in charge of security, along with the U.S. Marshal, have both indicated to your agency that a statue placed 10 feet from the front door creates a serious security threat. Our U.S. Marshal, longstanding under both Administrations, says it is a perfect sniper hide. He further says that it creates a fatal funnel because you can actually hide behind that and you can see all the way through the rotunda to the very back of the courthouse. So essentially there is only one place to hide inside for a Marshal, and that is behind the



statue of Hugo Black, which is much more priceless than this statue of Red Mountain in front of the building that the GSA insists be located there.

It was removed, and now they want it back. This won't cost you a dime. I want you just to follow the law and honor when a chief justice and the U.S. Marshal in charge of security in that building says it is a security threat, please listen to them. Follow the law. I am not going to name names, but we have a letter to our chief justice, and also this is supplied by Jeff Sessions, my senator, where the GSA responded that they consulted before they made this decision. They did a security assessment and they said they consulted both the Federal Protection Service and the Administrative Office of Courts.

The Federal Protection Service—and I can give you those things—they are in charge of not only the perimeter, they are in charge of non-judicial Federal buildings. So I think there is some confusion within GSA there. They may be responsible for some perimeter obligations, but it is the U.S. Marshal that is in charge of the actual security. The GSA said they consulted with the Administrative Office of Courts and with the Federal Protection Service. Well, one doesn't have any responsibility, the Federal Protection Service, for this building. The other one they consulted with was the Administrative Office of Courts, and Mr. Templeton, who they consulted there, actually, here is what he tells us.

He tells us, in fact, no. He said I did not agree that it should be put back up. In fact, he said, and I will quote, "I told Mr. Shaw that the Chief Justice and the local U.S. Marshal have final authority regarding security matters." In other words, he also said that he agrees with the U.S. Marshal's assessment of security concerns.

So I just can't imagine how that gets to we consulted with the Federal Protection Service and with the Administrative Office of Courts and they agree with the GSA assessment.

So as you meet with the Chairman and Mr. Holding and all, I am going to give you a letter from the Chief Justice. I just don't think it is getting—I think there is a misunderstanding on what the law is. And please, if nothing else, please sit down with your staff, like I do with mine, and say, look, the Chief Justice and the Marshal Service by law is charged with security. The Administrative Office of Courts says we would like to leave that final decision to them. And when they tell you that it is a threat to their people, honor that, honor that, particularly when you are talking about a piece of metal as opposed to human beings.

I am not even going to ask you for a response. If you want to respond, you can.

Mr. GELBER. I am aware of the issue, sir. We would be happy to work with the court and the Marshals Service and the Administrative Office of the Courts to pursue a resolution to this issue.

Mr. BACHUS. Thank you, I appreciate that. I think this is something you ought to kind of review and look at.

Mr. GELBER. Thank you, sir.

Mr. MARINO. I think I am the last guy here to speak, so I am just going to get right to the point. But one issue I want to bring out is there is a difference between legislative jurisdiction and

oversight jurisdiction. That is why they call us Judiciary, because we have oversight jurisdiction of matters concerning the administration of justice, and I think the administrative of justice is hindered here because it is handcuffing—excuse the pun—the courts based on what we have heard.

Now, Mr. Gelber, you are a trooper. You drew the short stick, and you have been a perfect gentleman here today, and I just want you to know how much we appreciate that. Please don't take my colleagues' questions or statements personally, but there is an issue, and I think if we did anything today, we were able to get GSA, you representing GSA, and the courts together, and the architect, and perhaps maybe before the shovel is turned over in these situations, everybody who has a dog in the fight will be at the table and can eliminate these problems.

I was a U.S. Attorney for quite a few years, spent a lot of time in a courthouse. My GSA guys were great. Every time I needed something from them, they were right there for me. I did have an instance where I wanted a doorway put in, and I know where the judges are coming from on this. One of the guys in my office, one of the attorneys, he is a construction guy too. I said how much will it cost us to put the door in, and I remember this precisely. It was \$300, no more than that. That includes the door. But we got a bill well over \$1,000 from GSA, and I know it is because of a lot of administrative issues that you personally have no jurisdiction over.

But I want to go back to the issue concerning the brick veneer—do you know what I am referring to?—on the building, on the Poff. Would not a proper inspection—and let me qualify that first. Was there an inspection of that building? And if there were an inspection, wouldn't that have determined the condition of the veneer wall, of the collapsing? And if that were the case—and the primary tenant was the Veterans Affairs Regional Office. They were removed from that building. Should these costs have been factored into your decision to invest more than \$50 million into the Poff Building, and were they considered?

Mr. GELBER. Those costs were considered. There had been evaluations of the wall on the east and west sides of the facility. We felt while they were minor issues, they were manageable in place. As we progressed with the ARRA project, we became aware of greater deterioration to those walls on the east and west facade, and as a result of that new information, that is why you have the proposal, or why the Congress has the proposal before it for additional monies to be spent at that facility.

Mr. MARINO. Can you give us an indication of what the cost would be to renovate the 13th floor for the director of the Veterans Affairs Regional Office? GSA does expect to be able to relocate the entire operation of the VA to the Poff Federal Building.

Mr. GELBER. I don't have an exact figure for that, but I would be happy to provide that to you.

Mr. MARINO. Would you please, sir?

Mr. GELBER. That would be okay.

Mr. MARINO. And regarding the cost/benefit analysis on the Poff Building, can you please explain why it took GSA more than a year to make it public? Why did GSA conduct it after the decision to expend more than \$40 million on the renovation was already made,

and is this behavior typical of the manner in which GSA performs its work?

Mr. GELBER. In terms of releasing information of that nature publicly, we usually wait until an appropriate time in the project history so that we don't affect the government's ability to get good bids on the project. Given that, on this particular project I know there were some irregularities regarding the bidding.

Mr. MARINO. And my second question and last question, depending on my time, I am going to refer to a comment made by Judge Conrad.

Judge, I want to make sure that I am right on this. Did you state that after all the disruptions and expenses, the building was no more functional, less functional?

Judge CONRAD. Yes, I said that, and I stand by that statement.

Mr. MARINO. Okay. With that, sir, Mr. Gelber—thank you, Judge—with what you know, did you consider the Poff Building to be a hallmark in taxpayer savings? And do you personally consider the project to be one that shows GSA to be a responsible steward of taxpayer dollars? Because—let me finish; I don't want to sandbag you here—because the GSA spokesperson, Gina Gilliam, characterized it in the press release dated June 21, 2010, as a responsible steward of taxpayer dollars.

Mr. GELBER. I think the intent of that project was to maintain a Federal asset, and that is what GSA did. I understand that the court feels that there was no visible improvement in the facility. From GSA's perspective, by maintaining the infrastructure, it maintained that facility in a better condition than if we had let that infrastructure further deteriorate.

Mr. MARINO. Okay. I have one more question, and maybe if you want to think about this, that I want to ask Chief Judge Conrad, if you don't mind, sir. When GSA's Inspector General determined the agency had violated Federal law in awarding the construction contract and not seeing to it that taxpayers had a fair and reasonable price for the work, he recommended GSA not exercise a \$7.6 million option to improve security at the building and a \$4.5 million option to improve life and safety.

How does it make you feel to know the reason GSA never performed this critical work was because of their failure to follow the law?

Judge CONRAD. It is disturbing, and I will have to say that when we were first advised of the stimulus project, one of the keynotes of that communication was that the money was going to be spent to address unmet security needs. My ears perked up because we had more than our share of unmet security needs in the Poff Building, and I saw this as a way, a mechanism of getting some of these things addressed.

As the project progressed, we came to understand that there were to be no security enhancements, there were to be no improvements, and now I am advised that perhaps there were violations in procedures in not undertaking to do those things.

Now, at the conclusion, in the last days of the project, we are being advised that to the extent the building needs these security upgrades, and we desperately need to have some, perhaps more so than before, the court is going to have to fund these ourselves. And

if we do not, along with the other tenant agencies, the improvements are not going to be made.

So it is very disturbing. It is very bothersome in terms of how we advise our employees about the performance of their functions. They had to endure these many months of hardship, and now they are given to understand that they are no better off in terms of security, in terms of working environment, than they were at the outset. It is bothersome.

Mr. MARINO. Okay. And lastly, do you know of anyone at GSA who has been held accountable for this illegal action which undeniably led to you and members of the public being exposed to unnecessary risk over the past 4 years?

Judge CONRAD. Congressman, I do not. As a judge, I make mistakes. I make more than my share. But the Court of Appeals is very quick to tell me about those mistakes, and I am very quick to try to rectify those. I don't think anyone would seriously contend—and I appreciate Mr. Gelber's candor today. I don't think anyone would contend that there weren't many mistakes made at the Poff Federal Building in Roanoke, and that is my biggest concern looking back, in retrospect, that it seemingly is going to be a situation where no one is held accountable.

Mr. MARINO. And, Mr. Gelber, respectfully, I think you have a little bit of a list to take back to your superiors and have a discussion with them, and we appreciate that.

That concludes our hearing today, and I want to thank all the witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

This hearing is adjourned.

[Whereupon, at 12:10 p.m., the Subcommittee was adjourned.]

A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Material submitted by the Honorable George Holding, a Representative in Congress from the State of North Carolina, and Member, Subcommittee on Courts, Intellectual Property, and the Internet**

**United States Bankruptcy Court  
Eastern District of North Carolina**

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June 16, 2014

Honorable Bob Goodlatte  
Member of Congress  
Chairman, House Judiciary Committee  
US House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515-4606

Re: Subcommittee on Courts, Intellectual Property and the Internet; Hearing on June 19, 2014

Dear Chairman Goodlatte:

I submit this letter, in conjunction with that of my Chief Judge, Randy D. Doub, regarding the hearing before the Subcommittee on Courts, Intellectual Property and the Internet on the GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste. I would request that this letter be considered by the Subcommittee as a written statement on the subject matter of the hearing.

I was sworn in as a United States Bankruptcy Judge for the Eastern District of North Carolina on January 6, 2010. My chambers are located in the historic Century Station Post Office and Courthouse in Raleigh, North Carolina, and in anticipation of my taking the bench, I participated in an initial meeting with GSA in October of 2009, along with our Clerk, Stephanie Edmondson, to plan necessary renovations. This fine old building was built in 1879, with additions in 1915 and 1935. My predecessor, the Honorable A. Thomas Small, retired, had occupied the chambers for 28 years with very little refurbishment. Therefore, it not only needed refurbishment cosmetically, but required substantial rewiring to accommodate present day technology and security. Funds were allocated to the project and approved by the District Court. Our court, which strongly believed that it was acting as the steward of both public funds and trust, set out to complete the project efficiently, cost effectively, and in a timely manner. It was also very important to us that we respected and followed the architectural integrity of the building. A fine and historically accurate renovation had been completed to the third floor chambers of the Honorable J. Rich Leonard only a few years before and it was our goal to replicate that effort to the extent possible.

**Honorable Bob Goodlatte**  
**June 16, 2014**  
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The purpose of the initial GSA meeting purportedly was to review procedures, delineate the scope of the project and to set timetables. The arrogance of GSA personnel and the inefficiencies of their practices became immediately apparent. Despite the recent and successfully completed project in the very same building, GSA did not solicit, nor would it accept or even consider recommendations from the court for the choice of contractor. The GSA chose not to take advantage of the very important institutional knowledge of the previous contractor regarding the building systems, including, but not limited to, water heater schematics, electrical systems and wood stain references. At the very first meeting, GSA representatives made it abundantly clear that the selection of the contractor and the administration of the project was its sole province. In essence, we were advised by the GSA, that although the court budget for the project, funded with public funds, would be used to pay for the renovation contract, which included the GSA's very ample, but unearned 15% profit margin, the court would have no say in the contract terms or choice of contractor.

The renovation project, which the GSA originally estimated would be completed within six months, is as of this date - nearly five years after the initial meeting- incomplete. The GSA choice of contractor could not have been less appropriate. To this day, I cannot fathom the basis for the selection of WECC as general contractor for the project: a company that had previously only built metal buildings and performed asphalt paving jobs. Needless to say, WECC was unable to complete the project. After demolition, the project remained stagnant for months, WECC personnel were inept, rude and incompetent. I was uncomfortable being in the building when WECC personnel were ostensibly working in it. WECC failed to follow the plans (bookshelves were built in the wrong areas and omitted from others; non-compliant hardware was installed in incorrect places; hot water lines were not reconnected and/or tested; heating vents were obstructed; plastered walls crumbled and paint peeled; ceiling tiles were mismatched). The contractor over-billed on the contract (incorrect bathroom hardware was purchased but still billed when the contract hardware had to be substituted; ceiling wells were incorrectly fabricated and then double billed when re-fabricated, estimates for a lavatory cabinet were thousands of dollars more than equal lavatory cabinet ultimately purchased at Lowe's at my insistence; contractor attempted to bill contract for repainting when their original paint job began to peel). More troubling than the failures of the contractor was the non-existent oversight of the GSA. In fact, rather than be a representative of the court, championing its position, the GSA constantly sided with the contractor in every dispute and despite the overwhelming evidence that there was a basis for terminating the contract for cause, GSA refused to do so. The liquidated damages provision of the contract should have been enforced, thus freeing thousands of dollars to allow the court to retain a qualified contractor to complete the job. When questioned by the court as to why GSA refused to terminate for cause, representatives of the GSA advised us that its legal department did not believe that litigation with the contractor would be advisable - again the court, with its full complement of legal minds, had no input in the decision. Again, it was the arrogance of GSA personnel and absolute disregard for the trust placed in them by the government to efficiently administer this project without waste that most struck me.

**Honorable Bob Goodlatte**

**June 16, 2014**

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I spent the first two-and-one-half years of my judgeship in temporary chambers awaiting completion of my permanent chambers. Although the project was only partially completed in September of 2012, I took up residence: painting was not finished, wallpaper was not hung, ceiling fixtures were not installed, incorrect hardware was put up in the bathroom, there was no hot water in the bathroom or kitchen, the ceiling tile installation was incomplete, woodwork staining was not finished, law clerk cubicles had not been fabricated or installed; and, no heat ducts had properly been installed to the bathroom. This far into the project, GSA had still not fired the contractor and arranged for a new one. At last, in late 2013, GSA finally succumbed to court pressure, terminated WECC (but not "for cause"), and began the process for replacing it. That process was delayed repeatedly, and earlier this year, GSA finally figured out that the remaining items on the contract could be completed by the company that provides maintenance to the building - a competent company who has diligently tried to fix things.

Today, over four-and-one-half years after taking the bench, my chambers are not yet completed! Although the wallpaper has now been installed, and heat now has been properly directed into my bathroom, those items were only finished earlier this month. I still await the fabrication and installation of my law clerk cubicles and hot water to my kitchen and bathroom. I am told those items will be completed before the end of this month - four years and eight months after the initiation of the project.

I would be remiss if I did not mention the water quality in the building and GSA's handling of the matter. Simply put, the water at Century Station is not drinkable. It tastes awful and leaves a red scum in any container it is placed in. I have provided bottled water to my staff from day one of my judgeship at a personal cost of over \$1300. It was not until our Clerk brought samples of the water to a meeting in Washington several weeks ago and asked GSA personnel present to drink it that something was finally done (By the way, no one was willing to drink the water!). That is simply a travesty.

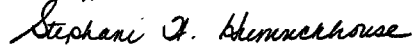
My renovation was fraught with GSA ineptitude, carelessness, and downright disregard for the public interest. We, at the court, have a fiduciary duty to see that monies allocated to us are spent correctly. We cannot discharge that duty to protect those funds from waste and misuse when



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GSA prevents us from doing so. I appreciate the members of the Subcommittee recognizing the failures of GSA and holding this hearing. I am happy to provide additional information or answer any questions that may arise.

Sincerely,



Stephani W. Humrickhouse

cc: Honorable George E.B. Holding, Member of Congress  
Honorable Walter B. Jones, Member of Congress  
Honorable Glen Downs, Chief of Staff  
Honorable Randy D. Doub  
Honorable David M. Warren  
Stephanie J. Edmondson, Clerk of Court

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**Randy D. Doub**  
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June 16, 2014

Honorable Bob Goodlatte  
Member of Congress  
Chairman, House Judiciary Committee  
U. S. House of Representatives  
2138 Rayburn House Office Building  
Washington, D. C. 20515-4606

Re: Subcommittee on Courts, Intellectual Property and  
the Internet, Hearing on June 19, 2014

Dear Chairman Goodlatte:

In regard to the above captioned hearing before the House Judiciary Committee Subcommittee on Courts, Intellectual Property and the Internet regarding GSA's Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste, I am submitting this letter and supporting documentation and request that this letter and attachments be submitted to the subcommittee as a written statement on the subject matter of the hearing.

Since becoming Chief Judge of the United States Bankruptcy Court for the Eastern District of North Carolina in 2007, our court has experienced many instances of the bureaucratic negligence and waste of the General Services Administration. I am attaching to this correspondence the various attachments which verify the various problems our court has experienced with the General Services Administration.

I will briefly summarize the topics of concern our court has experienced with the General Services Administration.

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First, Judge Stephani Humrickhouse was notified of her appointment in August, 2009. Our Clerk, Stephanie Edmondson, began working with GSA, prior to Judge Humrickhouse's installation, on the renovation of her chambers. We expect that project to be finally complete next week with the installation of desks and shelves in Judge Humrickhouse's library. The contractor first selected by GSA advertised on their internet site that their specialty was asphalt repaving and construction of metal buildings. Needless to say, the firm selected was slow, and very difficult to keep on schedule. We always had concerns about how and why this firm was selected, and suspect they were selected for the wrong reasons. The renovations for Judge Humrickhouse were to be done in the historically significant Century Station Post Office and Courthouse in Raleigh. The firm hired had no such experience with such projects of historical significance. Needless to say, Judge Humrickhouse will see her renovations now completely finished over four and one-half years from the start. Judge Humrickhouse will be sending separate correspondence on her experiences with the renovations.

Second, we began plans in 2009 to relocate our main headquarters to Raleigh, close our Wilson facility, and obtain replacement space in Greenville, N. C. You will find in the attachments, the GSA prepared Solicitation for Offers(SFO) and the response to same by our Fourth Circuit Architect Richard Perkins. You will also find various copies of emails regarding the bidding process conducted by the GSA contracting officer Robert Scott on the Greenville, N. C. facility. To my shock and dismay, Mr. Scott disclosed prior to bidding, the highest amount of rent GSA would pay on the Greenville building to both prospective bidders. I requested copies of the GSA bidding regulations for leased space and was told there were none; that these decisions were left to the judgment of the contracting officer. Clearly, competitive forces were not allowed to work in this bid procedure. Additionally, GSA used comparable rents in Atlanta and Charlotte to determine the rental rate in Greenville, N. C. Our Fourth Circuit Architect found GSA leased facilities in Greenville, N. C. such as the offices of the Federal Bureau of Investigation and its rental rate and office space for East Carolina University, which were all much lower than the rental rates in Atlanta and Charlotte. Since GSA gets a commission on the rents, GSA has no incentive to work to get lower bids or lower costs.

Third, you will also find a confidential memorandum prepared by our Clerk to District Judge Louise W. Flanagan regarding problems encountered with one of the GSA employees, Mr. Don Harrison. Also attached are the minutes of the District Security Meeting of August 19, 2011 which detail the many transgressions of Mr. Harrison.

Fourth, you will find various emails, correspondence and documentation regarding the undrinkable water in the Century Station Building in Raleigh. For years, the employees of the Court, and the attorneys that practice there have been warned and refused to drink the water from the water fountains. The pipes in the building are rusty, and the rust material causes the turbidity level in the water to be at unsafe levels. Our Chief Deputy Clerk enlisted the City of Raleigh to test the water, which tests showed a very high turbidity level. I made a request to GSA to provide bottled water in the short term and in the long term fix the pipes. Such requests were denied until our Clerk confronted a GSA representative in Washington, D. C. at a Space and Security Advisory Council meeting with a picture of the water that was drawn at a faucet on the fourth floor of Century Station. A copy of the picture is in the attachments. When asked if he would drink that water, his obvious response was "no." GSA is now providing bottled water to the

Honorable Bob Goodlatte  
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employees that work at Century Station.

Fifth, the U. S. Marshal Service had requested that GSA provide a heating and air conditioning duct and vent to the Court Security Officer station at Century Station some four and one-half years ago. I first learned of this request this past April, and began inquiring on why it took so long to run some duct work to the CSO station for heating and air conditioning. Fortunately, the vent and duct work are now in place and is providing some relief to our Raleigh Court Security Officers. But it should not have take four and one-half years to get this small request accomplished.

It also took over four years for GSA to relocate the "SCORE" office on the third floor of Century Station for room for a much needed conference room to serve our third floor courtroom. The time for accomplishing these type requests is simply unjustifiable.

We also had an incident at the Century Station secured parking where the card reader was broken into and the "mother board" was stolen. GSA representatives neither notified the U. S. Marshal Service nor our court regarding this breach of security.

I appreciate the members of the subcommittee holding this hearing on the negligence, unresponsiveness, and incompetence of the General Services Administration. In my opinion, the General Services Administration should be abolished or dramatically reformed so that the free enterprise concepts of competition, responsiveness and accountability would become the norm for this government agency.

If I can provide you with further information, or if you have further questions, please do not hesitate to contact me.

Sincerely yours,



Randy D. Doub

RDD/sga  
Enclosures

cc: Honorable George E. B. Holding, Member of Congress  
Honorable Walter B. Jones, Member of Congress  
Honorable Stephani W. Humrickhouse  
Honorable David M. Warren  
Stephanie J. Edmondson, Clerk of Court  
Mr. Glen Downs  
Mr. Jonathan Nabavi  
Mr. Brandon Ritchie  
Ms. Shelley Husband

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
413 MIDDLE STREET  
NEW BERN, NORTH CAROLINA 28560

Louise W. Flanagan  
United States District Judge

Telephone (252) 638-3068  
Facsimile (252) 637-9143

April 18, 2014

Via Electronic Mail

Mr. Jaron Chriss, Attorney-Advisor  
General Services Administration  
77 Forsyth St., SW, Ste. 600  
Atlanta, GA 30303-3490

Dear Mr. Chriss:

With respect to recent inquiries, I decline request made of me in accordance with the Touhy regulations. I also decline to authorize my former judicial assistant, Ms. Marsha Castania, to respond. These declinations also are grounded on fact that any further expenditure of court resources would be contrary to Chapter 8: Testimony and Production of Records, Volume 20: Administrative Claims and Litigation, of the Guide to Judiciary Policy.

GSA is authorized to rely on documentation in its possession or to which you have access, generated by the Court, in address of complaint. Given that a GSA representative was in attendance at the Court's District Security Committee meeting on August 19, 2011, it is likely that you already have, or could obtain, a copy of those meeting minutes. However, I enclose for your ease of reference and reliance a copy of said minutes, as an affirmative statement of issues presented in the District by conduct of GSA personnel.

I cannot help in closing but to remark that the attitude of GSA in its failure properly to address repeated, documented concerns arising out of this District over years about subject personnel has contributed mightily to the situation in which GSA finds itself. Court expenditure of more time and resources would endorse GSA's lack of accountability for actions of its employees, and this the Court cannot countenance.

The Marshals Service ultimately at New Bern was compelled to direct the Court about need for safety reasons to remove access rights of these GSA employees in 2011, which was reported then to GSA. This, coupled with fact that there was no timely effort by your organization to address issues, save GSA's attempts to impugn motivations of the Court and the Marshals Service at both the Circuit and District levels, underscores determination not to dedicate or authorize further depletion of Court resources in this matter. I will be providing this information also to our Congressional representatives for their information.

Yours very truly,

*/s/ Louise W. Flanagan*

Louise W. Flanagan

Enclosure

cc. Hon. James C. Dever, III, Chief Judge  
Mr. Sigmund R. Adams, Asst. Gen. Counsel, USAOC  
Ms. Marsha Castania, Deputy Clerk of Court

**Prepared Statement of Thomas A. Schatz,  
President, Citizens Against Government Waste**

My name is Thomas A. Schatz, and I am president of Citizens Against Government Waste (CAGW). CAGW was founded in 1984 by the late industrialist J. Peter Grace and nationally-syndicated columnist Jack Anderson to follow up on the recommendations of the Grace Commission report under President Reagan. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government. Over the past 30 years, CAGW has helped save taxpayers \$1.2 trillion through the implementation of Grace Commission findings and other recommendations.

We commend the House Judiciary Committee for holding this hearing today on the General Services Administration's (GSA) "Failure to Meet the Needs of the Judiciary: A Case Study of Bureaucratic Negligence and Waste." On behalf of CAGW's 1.3 million members and supporters nationwide, I am pleased to submit this testimony for the record.

CAGW does not accept government funds. The organization's mission reflects the interests of taxpayers. All citizens benefit when government programs work cost-effectively, when deficit spending is eliminated, and when government is held accountable. Not only will representative government benefit from the pursuit of these interests, but the country will prosper economically because government mismanagement, fiscal profligacy, and chronic deficits soak up private savings and crowd out the private investment necessary for long-term growth.

When Congress passed the American Recovery and Reinvestment Act (ARRA or stimulus) in 2009, funding was substantially increased for many existing agencies and programs. As one example, the GSA received \$4.5 billion to improve the efficiency of federal buildings. Stimulus money was supposed to be spent within a limited period of time on "shovel ready" projects. As a result, GSA squandered millions of dollars on projects such as the renovation of the Poff Federal Building in Roanoke, Virginia and landscaping for the Pete V. Domenici U.S. District Courthouse in Albuquerque, New Mexico.

The Poff building project was intended to improve the building's efficiency, which was not an urgent problem. According to the November 6, 2010 *Roanoke Times*, GSA officials hastened the renovation because of "an expedited process that applied to projects funded by stimulus money." A cost-benefit analysis was conducted after GSA had already awarded a contract. GSA also guaranteed its bidders a maximum price of \$42 million (later amended to \$39 million) for the bulk of the renovation, violating federal procurement law and ensuring that a competitive bid could not be attained. Despite the effort to rush forward with the renovation, ground was broken more than two years after the stimulus bill was enacted. To date, GSA has spent \$65 million and the agency claimed that the energy upgrades were substantially completed in January, 2014. However, problems remain in regard to security, and all of the prior tenants have not yet moved back into the 14-story building.

The renovation greatly inconvenienced the building's two primary tenants, the Department of Veterans Affairs Roanoke Regional Office and regional branches of the U.S. federal court system. After issues arose regarding the security of the court system's office space, federal judges asked GSA for a reevaluation of the project's efficiency and security. The Veterans Affairs office was forced to relocate to multiple locations during construction, worsening an existing backlog of processing claims and leading a veterans lobbying group to file court papers asking to halt the move.

GSA has attempted to deflect inquiries about the process, which have frequently come from House Judiciary Committee Chairman Bob Goodlatte (R-Va.), whose district includes Roanoke. Rep. Goodlatte has been repeatedly frustrated by GSA's delayed or unsatisfactory responses. According to an article in the September 27, 2010 *Roanoke Times*, when Rep. Goodlatte requested a copy of an 84-page feasibility study on the renovation, GSA gave him a version with key sections redacted, explaining that this was necessary for the protection of its "deliberative process."

The Poff building is not the only example of excessive and wasteful spending by GSA with stimulus funds. Federal judges at the Pete V. Domenici U.S. District Courthouse in Albuquerque asked GSA to fix a garage leak and replace its grass with a more efficient species. Instead, as the *Albuquerque Journal* reported on Feb-

ruary 13, 2013, GSA put together a \$3.4 million makeover that totaled nearly one-tenth of the entire building's original \$41 million cost. In this case as well, the intended beneficiaries of the project objected to the wasteful spending. Yet GSA remained enthusiastic about the project, even professing its hope that the landscape would win an award.

Perhaps GSA perceives these projects as relatively inconsequential, given that it was provided \$4.5 billion for improving building efficiency by the ARRA. Yet even if the sum is merely a drop in the ocean of GSA's budget, the bill is being footed by overburdened taxpayers who deserve to see their dollars invested efficiently and with adequate forethought.

CAGW has closely tracked earmark spending since the organization issued its first *Congressional Pig Book* in 1991. Since fiscal year 1992, Congress has earmarked \$2.2 billion for courthouses. While earmarks are (supposedly) no longer being added to appropriations bills due to the congressional earmark moratorium that does not mean taxpayer dollars should otherwise be wasted on courthouse construction and renovation.

There is no excuse for mismanaging the taxpayers' money. The American people would be well-served if every day government officials came to work thinking first and foremost about how they could better manage the taxpayers' money and solve problems effectively with their substantial resources. In other words, each agency should ask questions first and spend money much later, if at all.

I appreciate the opportunity to submit this testimony, and would be glad to answer any questions.

