

**GSA'S PUBLIC BUILDING AND COURTHOUSE  
PROGRAM**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE**

**ONE HUNDRED FIFTH CONGRESS  
SECOND SESSION**

—————  
**SEPTEMBER 17, 1998**  
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Printed for the use of the Committee on Environment and Public Works



U.S. GOVERNMENT PRINTING OFFICE

53-126 cc

WASHINGTON : 1999

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## **GSA'S PUBLIC BUILDING AND COURTHOUSE PROGRAM**

**THURSDAY, SEPTEMBER 17, 1998**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:10 a.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Warner, Allard, Sessions, Baucus and Wyden.

### **OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. We're here to take a look at Federal buildings policy, how it's developed, how it's put into action each fiscal year.

Today we will hear from the General Services Administration, the Federal Government's landlord and real estate expert on the management of Federal property in general and more specifically on the various projects that GSA would like to undertake in fiscal year 1999.

We will also hear from the Judicial Conference of the United States regarding the needs of the Federal judiciary as they work for the administration of justice now and in the future, and we will take a look at the projects that they are recommending for the coming fiscal year.

The two sets of proposals before us today provide the committee with an opportunity to examine not only how Federal buildings policy is made but whether it may be improved for the benefit of both the tenant agencies and the taxpayer. Toward that end, we'll be looking at S. 2481, the Public Buildings Reform Act, legislation put forward by Senator Baucus with Senator Warner and myself joining in, to establish a clear process for Federal buildings policy. I believe it's a good bill and look forward to comments from the panels on that proposal.

I believe the physical characteristics of Federal buildings should be commensurate with the duties that are carried on therein. Often, it's appropriate for a Federal building to convey to those who enter or pass by a sense of dignity, solemnity and indeed, beauty.

At the same time, obviously we have a real duty to all Americans to get the most out of the property the Federal Government uses and that means we have to look at the most effective use of space at the very best possible deal.

In general, and when it comes to courthouses in particular, I do not believe the two elements need to be mutually exclusive. Surely we can have buildings that inspire pride in the heart as well as confidence regarding our expenditures policy. Toward that end, this committee has pressed the Judicial Conference and the GSA to work closely together to guarantee that all recommended projects are meritorious and worthy of taxpayer funds. To their credit, both of these groups have worked together. Just recently, the Judicial Conference agreed to prioritize its requests which has helped greatly in our efforts to ensure wise use of public funds.

I believe that the GSA-courts partnership and the additional steps taken by the judiciary are slowly restoring whatever lack of confidence might have existed regarding courthouse projects. There has been, in the past, some criticism of some of the courthouses that have been built.

I look forward to hearing about how the partnership is progressing and hearing from our witnesses.

I know Senator Allard has been here, so Senator, do you have any comments?

Senator ALLARD. No, Mr. Chairman, I don't have any comments this morning.

Senator CHAFEE. Senator Sessions?

**OPENING STATEMENT OF HON. JEFF SESSIONS,  
U.S. SENATOR FROM THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Mr. Chairman.

I hope that we can do a good job dealing with buildings. Some of the prices, and one I want to ask about today, the U.N. Mission, is extraordinary, beyond my imagination. I think we need to ask some tough questions about that. When you get \$400, \$500 per square foot, we're in Never, Never Land it seems to me. I've got to be convinced that is legitimate or I will do all I can to see that it's not approved.

Senator CHAFEE. We have Mr. Burleigh here from the United Nations, so you'll have an opportunity. I hope you can stay and that's why I want to move right along.

First, we're going to hear from Mr. Peck, Commissioner, Public Buildings Service. Mr. Peck, we welcome you here. Why don't you proceed?

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

Mr. PECK. Thank you, Mr. Chairman, and other members of the committee.

As you noted, my name is Bob Peck, I'm the Commissioner of the Public Buildings Service at GSA. I have a statement which I'd like to submit for the record and I will summarize orally.

Before I go into our program, I'd like to briefly give you some background on the Public Buildings Service because we haven't been in front of you for quite some time and we have initiated a number of reforms I think since you last hear from GSA, one of which is most relevant to what we're meeting about today.

I want to remind you that the Public Buildings Service provides work space for approximately 1 million Federal employees nationwide, about 39 percent of the Government's owned and leased office space and in addition, we provide the Nation's Federal courthouses, border stations, many of the laboratories and warehouse space. It's more than 300 million rentable square feet of space. We have a budget of over \$5 billion and we're the largest real estate organization in the United States.

One of the great things about the Federal Buildings Fund, which the Congress did to us in 1972, was to put us on a businesslike basis. We have an advantage that very few government officials have. We take in revenues and we have expenses. We can measure our bottom line and we can manage it and that is precisely what we are doing.

We can track a net income, a financial bottom line. Our net income is not a profit as it would be in business, of course, but it is nonetheless crucial. Our income, net of fixed expenses and our revenues, I note, are the rentals we take in from Federal agencies who occupy our space and that in itself gives them an incentive to economize on the space they occupy.

Our income net of fixed expenses is the funding we depend on to carry out major repairs, renovations and some modest new construction in our program. We can and should operate in a businesslike manner, measuring our efficiency in terms of time and money and making our customers, Federal agencies, and our shareholders, the American taxpayers, satisfied customers.

We have responsibility for more than 1,800 government-owned Federal buildings. It's a large real estate inventory and an unusual one as well. The average age of the buildings in our inventory is 47 years. By comparison, if you talk to people who manage real estate investment trust and other large commercial inventories, they start thinking about selling their buildings when they approach 15 years. Again, ours average 47 years.

What that means is that we have a very large inventory that needs a lot of repair work and modernization because our job is to provide modern work space for Federal employees.

We have put into place, and this is one of the reforms I alluded to before, a system by which we decide where and how much we will invest in Federal buildings in terms of repair and alteration. We have set up a return on investment measure, much as private businesses do, to determine which projects meet a threshold test for putting our money into them.

For fiscal year 1999, we have proposed a capital improvement program in our inventory which consists of ten prospectus level repair and alteration projects. They are budgeted at approximately \$257 million and we have nine prospectus level R&A project designs for future projects estimated at \$16.7 million; six prospectus level design and construction projects estimated at \$44 million; and nine prospectus level replacement operating leases for the proposed annual cost of not to exceed \$37.6 million. I'd just remind you that under the Public Buildings Act, we also have to bring you leases over the prospectus level amount.

Again, I emphasize that in our capital inventory, it is the annual revenues of the Federal Buildings Fund and not money out of the

general fund of the Treasury that we use to pay for renovations to our Federal buildings.

We now have some 26 years of experience with the Federal Buildings Fund and I can tell you the experience tells us the following. We get enough money in revenues each year to fund the basic operations of our buildings, which includes heating them, cooling them, and providing security, an ever increasing important business these days unfortunately. It's enough money to pay private landlords for the leases that we have in buildings—that's almost half of our \$5 billion, lease payments to lessors—and it gives us enough money generally to keep up with the repair and alterations needs of our inventory.

How do I know that it's enough? We do benchmark against the private sector and we look at people who have private sector inventories. We know if you have an inventory of a certain value, you want to reinvest a certain amount in keeping up your buildings. That's how we decide on the overall amount of money we're prepared to spend on repairs and alterations.

Finally, I'd note that although when you read the history of the Federal Building Fund enactment in 1972, the Congress was hoping there would be enough money as well in the Fund to provide for new construction projects. The history of the Fund, for various reasons included the imposition of rent caps at various points during our existence, a form of rent control which is strange when you're trying to operate a market system. We have not had enough money to undertake much major construction and when we do have major construction programs, as we do at the moment with the courthouse program, Congress generally does appropriate additional funds.

The analogy in the private sector would be that when you go to build new buildings in the private sector, do major capital investments, you go out and borrow. We don't do that in the Government. In essence, of course, we do borrow when we take general appropriations.

I'm talking a lot about repairs and alterations because they get lost but just as operating expenditures and repairs can lose out in other Federal programs too to the more noticeable, glitzier new construction projects, our bread and butter is keeping up the inventory in which we house the Federal work force. So I urge you to continue to give us the support you have in the past for approving our repair and alterations projects.

With respect to new construction and acquisition, in the fiscal year 1999 budget, the Administration proposed a modest new construction program which includes two border stations, the design of a new U.S. Mission to the United Nations, additional funding for remediation at the Southeast Federal Center which would close out our remediation needs on that site in Washington, DC, and the design of a new headquarters facility for the Department of Transportation.

I recognize that we have had extended discussions with you and staff about the Department of Transportation. You and I believe the Congress have clearly indicated your desire about how we proceed on that project and so I don't propose to talk about it anymore at this time.

I will just say this about the courthouse construction program. As you know, this year the Administration did not, in fiscal year 1999, propose a construction budget but I want to tell you about the program a bit anyway because I note that both appropriations committees have recommended significant funding for the program.

About 10 years ago, the Judiciary came to GSA and told us they recognized a tremendous need for expanded courthouse capacity in the United States. They came up with a program which they have now put in priority order with a total of 160 projects spread throughout the country. We have completed 16 of the projects without 24 under construction.

We are proud of the courthouses we are producing. Effective project management is allowing us to bring in very high quality buildings within the appropriated project budgets. This is the largest Federal building program since the 1930's, the largest building program as opposed to other public works.

In partnership with the Judiciary and the design and construction industries, we are producing landmark Federal courthouses that are worthy of the American people and their pride in the American judicial system and their belief in the rule of law.

We are commissioning America's best architects and winning praise for the courthouse design and functionality from architecture critics, most importantly from the judges and other building users and from local community leaders.

I can report to you that we are conscientious about the budgets we set in buildings. We have a very sophisticated system of cost benchmarks to make sure we maintain cost and quality parity among projects with varying functional requirements and different site conditions in locations dispersed throughout the country.

I can tell you that in fiscal 1998, we have completed seven courthouses within the aggregated budgets for those projects. In the first month of fiscal year 1999, we will complete two more courthouses which we will bring in for \$11 million under the project budgets.

In determining how we layout the courthouses, we rely on the Design Guide produced by the Judicial Conference. I think it's a good guide. Courthouses are complex buildings. They have three separate circulation systems to provide security; they have high-ceilinged courtrooms much in line with the traditions in this country and in England for courtrooms, providing them the requisite dignity that you need to conduct courthouse proceedings.

They are complex buildings. They are not efficient by commercial standards because of the varied circulation systems and the need for public spaces, but we are squeezing them as tough as we think we can consistent with the need to produce landmark buildings in which the public can see the majesty of justice carried out.

We do believe there are some other cost refinements we could make but I have to tell you we believe with our cost benchmarking process, which has produced about \$31 million in avoided expenditures since 1995, we have a program that we can all be proud of.

I will note since the bombing in Oklahoma City, we have added security features to buildings. Some I can talk about such as our attempts to set more of the buildings back from the street. We have put in security measures which are visible to the public and some

that are not so visible, including some changes in glazing in various parts of our courthouses.

I will just note we have about \$5 billion remaining that needs to be funded for the 120 courthouses in the program left to be done. In previous years, Congress has provided funding at an average rate of about \$500 million.

Again, I would note to you that our projected revenue in the Federal Buildings Fund is not sufficient to carry out that sort of a program and appropriations would be necessary. I'd just note that appropriations to the Federal Building Fund for new construction between fiscal years 1990 and 1997 have already amounted to over \$2.8 billion. I believe Congress has recognized that is the way you do support a large Federal construction program.

Finally, I will just say I am as proud as I can be of the progress that GSA has made with our partners, the courts, in producing buildings that no longer say to the American people that they should not have confidence in the Government or our system of justice. We are looking forward to continuing our work on that program in the future.

I'm happy to answer any questions you have.

Senator CHAFEE. I think what we'll do is hear from Judge Stahl and then ask questions of both of you. Judge Stahl is a member of the First Circuit and has been indefatigable in working in connection with the funding for courthouse construction and the general problem of courthouses overall.

Judge if you would proceed?

**STATEMENT OF HON. NORMAN H. STAHL, U.S. COURT OF APPEALS FOR THE FIRST CIRCUIT; CHAIRMAN, COMMITTEE ON SECURITY AND FACILITIES, JUDICIAL CONFERENCE OF THE UNITED STATES**

Judge STAHL. Mr. Chairman and members of the committee, my name is Norman Stahl. I serve as a judge on the First Circuit Court of Appeals and as Chairman of the Judicial Conference Committee on Security and Facilities.

I'm appreciative of the opportunity to appear before all of you today to discuss the Judiciary's continuous efforts to improve management of the courthouse construction program and to discuss the fiscal year 1999 courthouse construction projects that have been prioritized in our 5-year plan.

Senator CHAFEE. Judge, just one question: when you're speaking before us now, you're not wearing a hardhat solely as a representative of the First Circuit? You're speaking for the Nation as a whole?

Judge STAHL. I am not speaking really as a First Circuit representative except as I am on the committee. I am speaking for the Judicial Conference in my position as Chairman of the Committee on Security and Facilities.

Senator CHAFEE. So you speak for all the districts?

Judge STAHL. Not parochial. It is the entire country.

In my formal statement, I've included a listing of the projects needing authorization for this year and more detailed justification for each of the projects. As you know, on panel 2, Judge Edenfield, who has been delayed by 2 hours this morning but I think will

make the hearing, and Judge Ponsor will be available to discuss their case specific projects.

Over the past several years, we have worked cooperatively with the General Services Administration and your committee to respond to issues that have been raised about the courthouse construction program. I believe that our joint efforts have been both productive and mutually instructive. We have what I would view as an excellent working relationship with the committee and the staff.

The Judicial Conference has marshalled a number of initiatives that will further improve our management and control costs to the entire courthouse program. We will continue to do this as the program proceeds.

We are most grateful for Congress' willingness to work with us this year to secure funding for courthouse projects. Notwithstanding my numerous contacts with OMB prior to the submission of the Executive's budget, when I believed that we would have funding in the 1999 budget, that funding was abruptly withdrawn and it was up to Congress to take the necessary action to ensure that funding for the 1999 projects would be in this year's budget.

As I said, we have prioritized all of our projects in accordance with the 5-year plan. The prioritization system was requested by this committee. We were somewhat unsure as to how it would work and it has worked very well. It has received the acceptance of the entire judicial family and is no longer an issue for the Judiciary.

Each year we seek comments from courts about the 5-year plan to determine if any of the factors affecting a project score have changed. By a continuous review of priorities, we are able to ensure that changing circumstances at a particular location are taken into account so that necessary adjustments to the plan can be made.

We have also discussed and adopted a policy through the Conference on courtroom sharing that balances the essential need for judges to have an available courtroom to fulfill their constitutional duties and responsibilities with the economic reality of limited resources.

We continue the standard of providing one courtroom to each active district judge. In addition, with regard to senior judges who do not carry full caseloads requiring a substantial use of a courtroom, and visiting judges at a particular courthouse, the policy sets forth a number of nonexclusive factors for circuit councils to consider when determining the number of courtrooms needed at a particular facility.

Each judicial council has the statutory authority to determine the need for court accommodations, and has developed a policy for sharing courtrooms by senior judges and that policy is fully in effect.

We have had a comprehensive 2-year review of the Design Guide. The Design Guide was first published in 1991 and contains the necessary information for GSA, private sector designers, builders and members of the judiciary about the special requirements of Federal courthouses that will make them functional, secure and quality public buildings.

The comments received from users indicated the Guide was accomplishing its purpose. The judiciary has also received a number

of excellent suggestions for improvements including recommendations for your committee.

We believe the most recent revisions will avoid certain construction costs by about 5 percent, \$2 million for an average sized \$40 million project and they will be incorporated into new projects as they are designed.

As part of the judiciary's commitment to cost containment and program assessment and evaluation, we are now planning to embark upon a major top-to-bottom review of our entire space and facilities program. We anticipate contracting with a major independent consulting firm to assist us with this review.

The study will include an assessment of our planning and design assumptions, recommendations on appropriate management roles and responsibilities of court personnel and others in the courthouse construction process, further examination of the issue of courtroom sharing and utilization and funding mechanisms and resource allocation strategies.

We will consult with this committee, others in Congress, GSA, OMB and the General Accounting Office during the course of the study. We intend to move as quickly as possible but it will take some time to award the contract to a consulting firm due to the broad scope and special skills needed to perform our analysis. Once the contract is awarded, however, we hope to have a final product in 9-12 months.

You have also asked that I address the subject of the public building reform legislation, Senate Bill 1005, which I understand was reintroduced yesterday.

Previously, we had raised two or three issues about the bill which we felt should be changed. Section 6 of the bill directs GSA in consultation with the Director of the AO to submit a report that specifies the characteristics of court accommodations that are essential to the provision of due process of law and the safe, fair and efficient administration of justice by the Federal court system and to develop design guides and standards for Federal court accommodations based on the report.

We have done that. This provision of the bill seems to me to be completely superfluous to where we are going today. We have an excellent Design Guide. I think the General Services Administration would agree the Design Guide does its job, that it is effective, and there seems to be no need to try to reinvent a wheel we already have working.

Section 5 of the bill requires a 10 percent reduction in aggregate office space by Federal agencies, including the judiciary. That is for the judiciary probably an impossibility. Our caseload grows exponentially as the committee knows and we need some more space because of that. I would hope if this bill goes forward, the judiciary would be exempted from the requirement to achieve a 10 percent reduction.

Finally, Section 5 also directs the GSA to prepare uniform standards for housing needs for establishments of the Judicial Branch. This is somewhat unclear but the Thurgood Marshall Federal Judiciary Building, which was built by and is presently under the oversight of the Architect of the Capitol as is the Supreme Court building, are not subject to GSA and we would hope it would be clarified

that they would continue to be subject to the Capitol Architect and not the General Services Administration.

I understand that the Chief Justice is strongly opposed to this provision.

Finally, there is a matter which is not in my written statement which I'm prepared to discuss. The judiciary has requested a change in the way our budget goes to Congress. We have suggested that OMB be taken out of the picture in the sense that now it has the ability to zero us out of the budget and makes our work much more difficult. We are not attempting to change any relationship with Congress, with the GSA, oversight or anything else. We'd like the budget to come over here with the money in it so we don't have to do what we did this year and that is all that we're trying to do. We think that it would make everyone's task significantly easier, and I'm prepared to speak to that if the committee wishes me to.

Senator WARNER. Mr. Chairman, if I could have a word on that subject. I'm glad you brought it up.

As you know, this is a reproduction of what we put together under the Chafee-Warner administration and it's my understanding that your efforts are largely directed to open the appropriations cycle. Would that be correct?

Judge STAHL. Let me put it to you this way, Senator. It's late in the year and we needed a method to try to do this, so we thought putting it on the Treasury-Postal appropriations bill in conference would be a way to do it, but we had no intention of changing—I think the language makes it clear—we have no intention of changing any of the relationships.

Senator WARNER. I would have to respectfully disagree with you on that. I would say up front as you've said up front, I will interpose my objections to this. I think the system works pretty well.

It's true this year the Congress, in a sense, is circumventing OMB's decision but I think that shows you how the system can work with checks and balances.

Judicial people, we forget, are politicians by nature. People often ask me how I got interested in politics. I was a law clerk to a Federal circuit judge and he was a brilliant politician and a jurist. That's where I learned my first lessons. I admire you fellows for going to the appropriators. They're always out there ready to solve everything.

I would hope, Mr. Chairman, that our committee would take a look at this *de novo*, as we say.

Judge STAHL. Senator Warner, I hope that the committee will. I've had a chance, not to speak with you about it, but I have spoken with Senator Chafee and he has asked me some very hard questions as he has the habit of doing. I'm prepared to respond.

As you know, one of the reasons why we are interested in this is in 1998 and again in 1999, there was no money for buildings. I have a reasonable suspicion that in the year 2000 unless a miracle occurs, you will get a budget without any money for Federal buildings from OMB. I have had numerous conversations with OMB; they're interesting; they're informative; and when all is said and done, it's zero. That was why we were trying.

Senator WARNER. What a great boon to Members of Congress to say when they go back home and get the courthouse, I overruled the President and got it for you.

Judge STAHL. That's politics also, I guess.

Senator CHAFEE. It wasn't my intention to get into this but it has been raised. We're now in the question period. Have you completed, Judge? Why don't you finish up?

Judge STAHL. I was just going to say that we've learned a lot over the past several years. I think we're building very high quality, functional court facilities that are going to last for decades to come. I think the public is being well served. I think we can all be proud of the buildings we're putting on line.

I have my chambers in Concord, New Hampshire and that courthouse is a wonderful building.

Senator CHAFEE. Which one is this?

Judge STAHL. That's the one in Concord, New Hampshire, been on line for about a year.

Senator CHAFEE. I think it's called the Rudman Courthouse, isn't it? You can't go too far wrong with that. We encourage naming courthouses after members of the Senate.

Judge STAHL. I saw the Senator yesterday afternoon and he asked me how the courthouse works, and I said it works very well. I told him I was going to see all of you this morning and he asked me to send his regards.

Mr. PECK. Mr. Chairman, we just dedicated the Howard Baker in Tennessee.

Senator CHAFEE. Well, you're on a roll and I suggest you keep it up.

Let me just say this. I think although courthouses are not a major part of the daily work you do, Mr. Peck, obviously they attract the most attention.

I'm very sympathetic of the problems that you're encountering in trying to address the security, traffic flows, and circulation. It's just a very difficult problem. We watch them around the Senate buildings trying to provide security. In Oklahoma City a truck and some fertilizer did tremendous damage, but we can't have every public building set back 100 yards from the nearest street. So it's a very difficult task that you are undertaking. I'm very sympathetic with the challenges you face.

Mr. Peck, I don't want to get into a long back and forth on the proposal that Judge Stahl is talking about but could you give us your thoughts on that. Basically, what the courts are suggesting is taking OMB out of the review process.

Mr. PECK. I have to say we haven't cleared any Administration position through OMB but it's fairly safe to assume that the Administration and OMB, in particular, would object.

I have to agree with Senator Warner, the system works right. I happen to have made the same political argument to the people in the Administration of my own party about the specter of having the Administration oppose and the Congress take credit for all the projects, but I have to say just in terms of good public policy, I'll put it this way. If we were to build a new GSA headquarters building, I would come to you and suggest that someone else take a look

at our layout and our budget so that someone other than us could set the budget.

One of my concerns in this proposal is that one of the advantages of having OMB in the process is that we do have to answer some hard questions about the cost on all of the projects and are asked hard questions about balancing functionality and cost. I think that's a useful thing to do.

That would sum up why I would be concerned about this proposal.

Senator CHAFEE. Let me say that it's been extremely helpful to us since you've adopted this prioritization process. Having the list in the order of priority is very helpful to us. Obviously this committee can't tell whether San Jose comes ahead of Savannah. That's something you know much more about than we do. Such prioritization has only been going on for the last couple of years, and it's much better now than it was in the past.

Mr. PECK, one of the questions I had is the question Senator Sessions raised about the U.N. Mission. I know there's going to be testimony from the representative U.S. Mission. Could you tell us your thoughts on the proposal for the U.N. building?

Mr. PECK. Yes, sir. The issue is this. We have a small building on a site across from the U.N. that houses the U.S. Mission to the U.N. It is some 40 years old.

Senator CHAFEE. How old?

Mr. PECK. Forty. The electrical systems are out of date, the security systems are out of date, we can't provide sufficient heating, ventilation and air conditioning in the building. So it's obsolete. We need either to completely renovate or abandon, quite honestly.

It is a quite valuable site, both in terms of its location, obviously, and I would also note it is a free site to the Government, which is very important. It was donated to the Government by the Rockefeller family.

To take the mission somewhere else in New York, we would certainly have to pay a pretty penny for a site, so it's the right location. We really underutilize the site. You would see that's surrounded by rather tall buildings and this one is rather short.

Senator Sessions rightly calls attention to the fact that it is an expensive job and there are several reasons for this. There is a demolition expense on the site, it is a very tight site which means that to build it, because it's surrounded by other buildings, the construction equipment can't back away and you pay a premium for constructing on that kind of site.

By our estimate, the construction cost, sort of comparing apples to apples, is about \$305 per gross square foot, which I will tell you is not cheap but in New York City for high end office construction with security requirements we would have in a building like this, we think that's the fair estimate of those costs.

Again, I would just note that the Mission obviously has to be housed someplace. When we did our analysis of leasing buildings somewhere else or building on this site, our analysis actually concluded that this is the cheapest, long-run alternative for the Government. I stress in the long run you're looking at 30-year costs total and our prospectus reflects that analysis.

Senator CHAFEE. My time is up. Senator Baucus, did you have a statement?

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

Senator BAUCUS. Thank you, Mr. Chairman.  
[The prepared statement of Senator Baucus follows:]

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

Thank you, Mr. Chairman for holding this hearing.

Mr. Chairman, today we will examine the public building projects requested by the General Services Administration for Fiscal Year 1999. We will also be discussing 14 courthouse projects that were not requested by GSA but that are the Fiscal Year 1999 priority projects of the Administrative Office of the Courts.

I have long been a proponent of the need for close oversight of the public buildings construction and leasing process. This committee takes its role in approving public buildings projects very seriously. This hearing will allow us to focus on not only the individual projects, but the process for proposing the projects to Congress.

Three years ago, the Senate unanimously passed a reform bill that I authored with the support of this committee. Unfortunately, the House failed to take any action on this measure. But we haven't given up. I am very pleased that the Chairman of this committee and the Chairman of the subcommittee are also interested in reforming the public buildings approval process.

I thank Senators Chafee and Warner for joining me yesterday in the introduction of the Public Buildings Reform Act of 1998. It is very important that Congress take the necessary steps to ensure that all public buildings projects especially courthouses are appropriately reviewed by GSA and Congress. This bill is a step in that direction.

Mr. Chairman, I intend to ask Mr. Peck from GSA to assure this committee that all of the projects we are discussing today have been closely examined by GSA. As you know, the courthouse projects are not part of the GSA budget proposal. That is fine. Congress can set its own priorities separate from GSA.

But courthouse projects must still be accompanied by the appropriate justification documents even if those documents are unsigned prospectuses.

We need to be sure that the courthouse projects have been scrubbed and reviewed by the experts at GSA. There have been some well planned and designed courthouses—Alexandria, Virginia and St. Louis are fine examples. We need more such projects. We owe it to the Senate and we owe it to the taxpayers.

Again, I thank you for holding this hearing and look forward to the testimony of our witnesses.

Senator BAUCUS. Mr. Peck, obviously we're a little concerned because these prospectuses are unsigned, it doesn't have the GSA review. Can you assure us that these projects have the same scrutiny that a signed prospectus would have in terms of costs, cost overruns, quality control and so forth? Obviously, we're concerned about what we're doing here because these are not signed.

Mr. PECK. The 11-Bs, yes, they have gone through the same benchmarking process that all of our other projects have gone through, so they are scrubbed as much as we can scrub these projects, yes, sir. The answer is we think that they are fair prices and about as inexpensively as you can do them and get the job done.

Senator BAUCUS. So for the purpose of the taxpayers getting their money's worth, there's no difference whether they're signed or unsigned with respect to the review that you've given them?

Mr. PECK. Yes, sir.

Senator BAUCUS. That's the only question I have at this point.

Senator CHAFEE. OK. By the early bird rule, I think Senator Allard was first.

Senator ALLARD. Thank you, Mr. Chairman.

I'd like to pose a couple of questions to Judge Stahl. How much do judges enter into the negotiating of a new building, new office space and whatnot? We've had some controversy in the State of Colorado where a new judge came onto the bench and he said, "When I come onto the bench, I'd like to have this, this and this." A newspaper reporter got hold of it and said, "You know, this seems like it's inappropriate."

Our office had to deal with it. And so my question to you is, when judges take on these duties, do they use office space to negotiate, whether they assume the duties or not?

Judge STAHL. First of all, the Colorado situation I think was somewhat unique and as you know, that ultimately never happened.

Senator ALLARD. Yes.

Judge STAHL. I can only tell you that when I became a Federal judge, the space that I was given to occupy had not had any work done on it in, I think, 17 years. There was falling concrete, torn rugs and unpainted walls. I believe we spent something like \$5,000 in 1990 to paint the rooms and to put new rugs on the floor. I didn't negotiate with anybody except the Boston office of GSA.

Senator ALLARD. I know, but when you got started, I'm sure, but I just wondered if things have changed to date?

Judge STAHL. I don't think so. We are very careful about this. The circuit councils do have the oversight. I routinely get things circulated to me saying, "Will you approve this?" I ask questions and I think everybody does.

I think that by and large, most of the judges I know are very, very conscious of these issues and we try to be careful.

Senator ALLARD. The only reason I bring it up is just to call everybody's attention that these projects do get scrutinized and I think you have to be careful.

Judge STAHL. I agree with you, Senator. I couldn't agree more.

Senator ALLARD. The other thing I wanted to ask you about is when a decision is made to build a courthouse for a particular area, are people other than the judiciary itself consulted? For example, in a large State like Texas, maybe Alaska, Colorado, some of the larger western States, access to the courts by law enforcement, for example, gets to be an issue. Sometimes they have a need just for transportation from some distant part of the State. I think sometimes the pressure is where to locate it, and judges like to live where there's a metropolitan area but there may be a need for outlying areas.

I'm just asking, is there a way for law enforcement and maybe prosecutors and whatnot to have some access and some input into the process?

Judge STAHL. Congress sets forth the places where courts are held. One of the cost-containment programs the judiciary has undertaken in recent years has been to close courthouses which are not used very much.

My State of New Hampshire is a good example. The State runs north to south and if you know New Hampshire at all, the northern part of the State is relatively sparsely populated. We had a lovely courthouse which Senator Chafee mentioned to me the other day in Littleton. In the late 1970's, the decision was made by the judge

sitting there simply was not enough business in Littleton to warrant having a place of court.

Senator CHAFEE. Because you have to have the clerks there, all the retinues that go with it?

Judge STAHL. Exactly. It was too much money for the amount of use we were giving it. It was a great place to go in the fall or in ski season but we didn't think it was appropriate. That was closed and is now used by the State as a courthouse.

Senator CHAFEE. And now everybody has to go down to Nashua or Concord.

Judge STAHL. Yes. It is true that in that sense, I think that law enforcement officers, lawyers, and the public. I travel every day to Concord. I don't live in Concord. I travel on the interstate every day to get to my office.

Senator ALLARD. I'm not disputing the question, I'm just wondering if they have an opportunity. I'm not disputing your decision, I'm just wondering if they have an opportunity to make some comments.

Judge STAHL. In our State, yes, they would have had—in our district they would have been able to talk with us about it, but ultimately the decision is made here, the places of court are made here.

Senator ALLARD. I see.

Judge STAHL. Sometimes we add them and sometimes we close them and you have input into when we want to close places of court.

Senator ALLARD. When the recommendation comes to the Congress, who has major input on that recommendation?

Judge STAHL. It will ultimately come through the Judicial Conference. My committee, for instance, will get a recommendation from a circuit as part of our budget saying that we should close a courthouse in "X" location.

Senator ALLARD. And the judges in that circuit basically put that proposal together?

Judge STAHL. Right.

Senator ALLARD. My suggestion to you is when they're doing that, have them reach out a little bit. Maybe they do but I think it's important that they reach out and at least get some input from these side groups that may have an interest.

Judge STAHL. We just had an experience like that in the 1st Circuit where there was a lot of input from the public, from the local lawyers, and the court is still open.

Senator ALLARD. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you very much, Senator.

Senator SESSIONS?

Senator SESSIONS. Thank you, Mr. Chairman.

Mr. Peck, with regard to the U.N. Mission building, the design, planning, construction cost is \$53 million which would be a cost of \$378 per square foot. Would you dispute that?

Mr. PECK. No, sir. What I stated before was actual construction. That includes demolition and design costs, management and inspection.

Senator SESSIONS. You say that's going to come in at \$300?

Mr. PECK. No, sir. I said the construction, just construction, the cost of the construction contractors and fitout is \$305. You are correct that you then add to that design, demolition and all that and it comes up to \$378.

Senator SESSIONS. So the real cost is \$378 because if you're going to tear it down, you've got to do the demolition?

Mr. PECK. Yes, sir.

Senator SESSIONS. In addition to that, you don't have in this costs, fortunately—no real estate costs. You don't have to purchase any real estate?

Mr. PECK. That is correct.

Senator SESSIONS. In addition to that, I understand the State Department intends to contribute \$24 million in addition for security. Is that your understanding?

Mr. PECK. Yes, sir.

Senator SESSIONS. So we're talking about, as I calculate it, \$548 per square foot. Let me ask you, in the history of Federal construction, have you ever heard of a building costing \$548 per square foot for an office space?

Mr. PECK. If you'll allow me, let me compare apples to apples. The extra money the State Department contributes, we don't track that generally in our system, but I can still give you an answer that \$378 a square foot, even \$305, is high. As I said, it is a large amount of money and it has to do with security and the tight site and construction costs in New York City, quite honestly.

Senator SESSIONS. I don't know what we can do about it, but I don't see how we can spend that. I think you're just going to have to reevaluate the project. Maybe renovation is going to have to be necessary. Maybe some of the space can be shifted to noncritical, it doesn't have to be right onsite, could be separated from the project.

I noted, Mr. Chairman, in my office I just ran a total. It looks to me like for the U.N. Mission of 292 employees, that would be 470 square feet per employee whereas in our office in Russell, we have 131 square feet for employees. There may be a need for more storage or something that would go in with this building but that's 3.5 times as much square footage per employee. Maybe we ought to use some modern techniques to utilize our space better.

It would seem to me being able to renovate the air conditioning system would not be impossible to do.

Mr. PECK. Senator, let me suggest how we would go about that because we've already looked at some of these and I could get some additional cost figures.

Because there's not enough space, we would probably lease space somewhere nearby in Manhattan. That's expensive in and of itself. I think there is need for some space in the building for receptions and other kinds of purposes which is what drives up the space per employee when you do it on that basis. I think probably Ambassador Burleigh could probably talk to that better than I can.

Senator SESSIONS. Sometimes you have to lease hotel ballrooms for receptions and things. Businesses have to do that. They can't always have one in their main office building.

That to me is one of the most extraordinary figures I've seen that I can imagine.

Senator CHAFEE. Instead of doing it just in square feet, what does the project work out to, Mr. Peck, roughly?

Mr. PECK. The total project cost?

Senator CHAFEE. The total project cost that you envision. In effect, as I understand it, the proposal is to take the existing building and remodel it, is that it?

Mr. PECK. No, sir. We would demolish this building and build a new one.

Senator CHAFEE. Demolish it and start from scratch. When it's all said and done, what would the overall cost be?

Mr. PECK. It's \$53.5 million, not including the \$24 million that the State Department would add for security and other aspects. If you add that, it's \$77 million.

Senator SESSIONS. That's a lot for small office space for 300 employees.

Judge Stahl, let me say I like the priority list and I agree with you that courthouse space ought to reflect the augustness of the Federal Court system and that sort of thing. As Senator Allard mentioned, Federal judges sometimes are pretty tough on GSA and pretty demanding and I wonder whether three circulation systems are really necessary, how much security is really necessary, but fundamentally let me ask you a question.

I just want to ask don't we need to be tougher about how much courtroom space is allocated per magistrate and per senior judge? Isn't it possible that judges could share space, share courtrooms and even the ceremonial courtrooms could be reserved not just for the presiding judge but for the major trials in the courthouse and people have to, on occasion, do a little working together? Couldn't we save some space in that regard?

Judge STAHL. I'm glad you asked me that, Senator. It's a reasonable question to ask.

You've asked several different questions but let me speak to the last one first, the courtroom sharing. It's something I know something about because when I became a Federal judge, we did not have a courtroom for me and I shared a courtroom with an active judge. We had two active judges. I shared my space with the other two judges and we worked out a system and the system was that I had 2 weeks, they had 2 weeks.

The difficulty with that is that is not the way trials really work. I used to begin with a list. Assume I had ten cases on my list. There were two active judges and we had one senior at the time and we had two courtrooms. The result was that we had a very, very long list of cases. I had over 400 active cases all the time and I think I was working pretty hard.

Today, each active judge in the District of New Hampshire has available to him a courtroom. Each judge carries about 140 cases. The cases get decided more quickly, so the backlog has been reduced. It works much more efficiently, it works smoother. You don't have the problems of having a list collapse and then not being able to get space, the cases to fill up the list, you don't have a situation where a judge goes into the next judge's time and his cases get canceled.

For active judges, I think the Judicial Conference policy is absolutely right. For senior judges who are not carrying a full caseload,

yes, you can work out sharing and we're doing that. That's exactly what our program intends to do as we design the new courthouses.

The courtroom itself is one of the least expensive parts of our courthouse. There is a need for chambers for every judge. We are the most expensive part of the process. You want to make us as efficient as you can. I think our system does do that.

I'll speak briefly to the triple circulation. I cannot tell you how many times I sentenced someone, got on the elevator with a member of the family, a defendant's girlfriend or someone else. I cannot tell you how many times we had jurors mixing with lawyers and witnesses. I cannot tell you how many times I stepped on the elevator and was confronting a man or a woman in an orange suit and in chains. It is uncomfortable. Federal judges are at risk these days.

I can tell you that I am much more comfortable, and I'm not an easily scared person, not going to work in the morning and being on the same floor as Pretrial Services, Probation and the like. It makes a difference. That's why we have the triple circulation.

Senator SESSIONS. I appreciate that, Mr. Chairman. My time is up. I just know that we have magistrates and senior judges and many times they're reluctant to give up or share a courtroom that may be in use less than 10 percent of the time. It can make a difference in whether a courthouse is inadequate or whether or not it can be rearranged in a way to preserve it.

Judge STAHL. If I may add one thing. In Concord, our courtrooms are unassigned. No judge has a courtroom. They are assigned to the cases. In other words, the clerk starting a week says to Judge X, you will be in Courtroom 3. If you have the large case, we don't call it the ceremonial courtroom, we call it "special purpose" for the big cases, the multidefendant trials. That's how we do them. They are not assigned to judges. That's happening in many districts.

Senator CHAFEE. Also you have a system, as I understand it, for the senior judges. There's not a courtroom available for them on a regular basis. They have to share with the active judge, is that right?

Judge STAHL. That's what we're doing. That is the program we have adopted for our new courthouses—to take a look at all of this and sizing them, yes. Those senior judges who do not carry a full caseload will not, in the normal course, have a courtroom. They will share. That's the purpose of the policy. We are attempting to implement that.

Senator SESSIONS. I think we've got to look at that and I do know of circumstances in which you couldn't get a grand jury room because nobody would give up, a senior judge or whatever, a little used courtroom to be made into a grand jury room. I think we've got to use the space wisely.

My general philosophy is we ought to wait until we absolutely have to have a courthouse and then build a great courthouse and not start building them before it's necessary.

Judge STAHL. I think that's what we've been trying to do. I think what the Senator says is accurate. I think that is our whole approach today with the prioritization, the way we go about prioritization, the way we make the determination of this list. We are not doing it the way it sometimes happened in the past. I think

we've made, at this committee's request, tremendous strides in doing this more rationally.

Senator CHAFEE. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

For the benefit of the committee, and I cleared this with the Chairman and the Ranking Member, but my subcommittee will hold a hearing on the Patent Trademark Office consolidation, Mr. Peck, on Wednesday, the 23rd at 2:30. There's been a great deal of criticism directed at that project which is before this committee, both within the Congress and elsewhere. I just want to give everybody an opportunity to get all the facts on the table. We welcome you to attend, Mr. Peck.

Mr. PECK. I will be here next week.

Senator WARNER. I appreciate that. By the way, I think you do a wonderful job and we're fortunate to have you.

Mr. PECK. Thank you, sir.

Senator WARNER. It's not an easy one.

Judge I hope this committee has the benefit of your services for an indeterminate number of years to come. You're the prototype of the man who can get this job done.

Judge STAHL. Like Robert Peck, I believe that the——

Senator WARNER. You say you like him.

Judge STAHL. I both like him and as Robert Peck says, I think that when we're all done with this, we want to look back at what we did and say we gave the public a real good project, one which will last for not 10 years but 100 years. I want these buildings that we build to be good enough so that when 50 years comes up, people will say you can't do anything except do some rehabilitation. It's too good. I think we are building appropriate buildings in the public spaces.

Senator WARNER. I think you've done a marvelous job. It's been my privilege to be a modest part of the procedure through these years.

I share fully your concern about the triple circulation. It's essential that we do that, absolutely. You're going to get my full support.

Judge STAHL. Thank you, Senator.

Senator WARNER. On the question of the U.N. Mission headquarters, I'm very much in support and I recognize this is the high dollar figure and I listened very carefully, Mr. Peck, when you responded to Mr. Chairman's question about the cost of it and you said a phrase which may be known in the real estate business but I think we need to revise it for those of us just in everyday life, my understanding of this cost is it is commensurate with comparable construction for the commercial side, given that you've got to have an added cost for security which the commercial side would not likely incorporate. Is that a phrase you could adopt?

Mr. PECK. Yes, sir. What I was trying to say was when you just throw out the number figure unrelated to cost in New York City and the cost of this kind of construction, sure, it's a big number. I'd like to say on all of our projects, they are not inexpensive.

Senator WARNER. You accepted and the record is clear. I also think each of us here in the Congress has had more than one opportunity, I'm sure I've had many, to visit the U.N. It's a unique organization, it's the object of great criticism. Nevertheless, I per-

sonally think it's essential for the United States to be an integral part of it and to have headquarters which reflect the leadership role we must take.

There's some suggestion that this facility incorporate space for the housing of the Ambassador and the Deputy Chief of Mission. Can you comment on that?

Mr. PECK. I'd rather defer that to the State Department. They have more information about it. The proposal we've put in is that the Deputy, Ambassador or some other high official would occupy a residential space in the building.

Senator WARNER. I'll divert quickly to another question, Mr. Peck. On the DOT, are you going to go ahead with that before November 1, that leasing arrangement?

Mr. PECK. Yes, sir. Well, let me put it this way. As I understand the language in both appropriations bills now in conference direct us to go out on the market with a lease by November 1. Assuming that is the language that comes out in the bill, that's what we will do.

Senator WARNER. Good. It's very important that we proceed. That's a badly needed project.

I thank the Chair and the Ranking Member. That concludes my questions.

Senator CHAFEE. Senator Wyden?

**OPENING STATEMENT OF HON. RON WYDEN,  
U.S. SENATOR FROM THE STATE OF OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman. I just have a brief comment.

I'm very pleased that you've scheduled this hearing. As you know, Senator Gordon Smith and I have teamed up on a bipartisan basis on the matter of the courthouse in Eugene, Oregon. I was taking note of Senator Sessions' important comments.

The Marshals service and the GSA have found that the current situation in Eugene, Oregon is life-threatening and note that the staff memo deems it one of the worse security situations now in the United States.

Senator Smith and I note in a recent letter, there have been prisoner escape attempts and a variety of security problems associated with this.

We just want to assure you, Mr. Chairman and members of the committee, on both sides of the aisle, that Senator Smith and I want to work very closely with all of you to get this project moving with site and design very quickly because we do think it's urgent in one of the fastest growing parts of our State, Eugene, Oregon.

I thank you for the time.

Senator CHAFEE. You've noticed it is No. 4. Anything else?

Senator WYDEN. No.

Senator CHAFEE. Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Judge Stahl, I'd like to address a little the questions raised by Senator Sessions. First, let me tell you I have the highest regard for the Federal judiciary. When I grew up, law school, I thought, boy, that's it, to be a Federal judge, maybe a Court of Appeals judge, the Federal judiciary is the protector of American freedoms.

In fact, a course I took in college called Civil Liberties, basically a constitutional law course, is one of the events that got me interested later in public service, with just a deep reverence for civil liberties, particularly as protected by the Constitution. So that's the base.

Senator Sessions did ask a couple of interesting questions, that judges don't give up their space. They're so proud of it and they want to use it, it's their's and so forth. We all know sometimes judges can be judges and don't give up their space. What do you do about a problem like that?

Judge STAHL. Maybe I come from a benign area of the world but in New Hampshire, we don't have that kind of a problem. When I became a district judge, Judge Loughlin, who had taken senior status, said to me, "You need the chambers. I will give up the chambers and you take my chambers because you need more space than I'm going to need." He took some temporary space, we built a small office for him in the old courthouse and that's what happened in New Hampshire.

When I came on board, I was the third judge. We only had two courtrooms as I explained and each judge had a courtroom but there was no problem. I shared. It was not efficient but they gave up their space.

Senator BAUCUS. I appreciate that but I'm not talking about New Hampshire. I'm talking about just where those problems do occur in other parts of the country, what does the Federal judiciary do about it?

Judge STAHL. The Circuit Council can do something about it. The Chief Judge of the district can do something about it.

Senator BAUCUS. Do they?

Judge STAHL. I think in some cases, yes, they do.

Senator BAUCUS. I asked the question because I know lots of cases where judges are not carrying their load and it is extremely difficult to get a judge who is not carrying his fair caseload and as a consequence puts that load on other judges, to get the judge who is not carrying his fair share to change. They're judges, they're independent judges. It's extremely difficult.

I know from experience if that's the case in this situation, it probably is the case in the situation that Senator Sessions is talking about.

Judge STAHL. The only thing that I can say is this. If you are talking about a senior judge who has a courtroom that is underutilized, our push is not to have that happen. If you are talking about active district judges, at least in the districts I know of, the cases are assigned on a wheel and a judge who is not performing well may be further behind but we keep on them.

I can tell you that every quarterly session of our Circuit Council, and I'm sure it's true of every circuit council, we review judges who are behind in their work. Under the Biden bill, all that has to be reported.

It's not perfect, I will grant you and I will also grant you that some people are not reasonable. However, I think there are efforts made to deal with this problem. It's not an easy problem. There have been changes.

Senator BAUCUS. I urge you to work harder because it really is not, in my experience, near where it should be.

You mentioned the judges' chambers, maybe you meant courthouses, security tends to be more expensive than other Federal buildings. It is for that reason I hope we can pass again legislation to have the courthouse applications go through the GSA and also OMB so that Congress has an opportunity to have their views as well.

I must say, Judge, I disagree with the view that courthouses should be submitted only directly from the judiciary to the Congress without being screened by OMB or by the GSA. That's a view I very much disagree with and I hope we can get that resolved.

I also want to say, Mr. Peck, I want to echo the views of Senator Warner. As you know when you came to Montana, we had a very difficult Federal building situation and you did a great job.

I want to tell the Chairman and everyone else that Mr. Peck came to Montana, we'd already beat up on him for all the problems we were having and he was terrific. He just sat there, he was very direct, very straight, took all the questions and gave good, solid answers. Even more than that, he and his people sat down and worked out a solution to the problem.

The basic problem was that people in Montana felt they weren't being listened to at first but now I know you've set up procedures. I want to tell you, Mr. Peck, in Helena, Montana, people feel they've been listened to.

Mr. PECK. Thank you.

Senator BAUCUS. They very much appreciate that approach you took.

Mr. PECK. Could I also say that you also ran a very fair field hearing in a situation in which you might have thrown fuel on the fire and instead ran it in as fair a manner as is possible. We appreciated that as well.

I was proud of the career GSA people who stood up and admitted they had made a lot of mistakes. I think that helped us a lot.

One thing I'll note is that in Billings where we did not have as good an outcome, we nonetheless sent our people back and just last week had a session with people in the city and there was a very positive article in the newspaper with everyone talking about a better process.

Finally, I will tell you that this has helped to prompt us to roll out at the beginning of next year a new community planning program in the public building service. We are going to train our folks on working with communities as early as possible in projects and how you do that in a way to carry out our responsibilities but also to make sure that we listen to people and in fact carry out our own guidelines so we don't get into those situations again.

Senator BAUCUS. You've done a great job.

Thank you.

Senator CHAFEE. Thank you very much, both of you.

Judge I just want to say that I believe the First Circuit is extremely well represented on the Supreme Court, your alumni. You have two?

Judge STAHL. We have two.

Senator CHAFEE. That's pretty good for one circuit.

Judge STAHL. They are both fine people and good friends.

Senator BAUCUS. We've got three from my law school.

Senator CHAFEE. That's all right too.

Thank you both very much.

If we could have the next panel, we will start right off with the Honorable A. Peter Burleigh, Acting U.S. Representative to the United Nations. Judge Ponsor will be here and perhaps Judge Edenfield. I'm not sure.

Ambassador Burleigh, will you proceed?

**STATEMENT OF HON. A. PETER BURLEIGH, ACTING U.S. REPRESENTATIVE TO THE UNITED NATIONS, U.S. MISSION TO THE UNITED NATIONS**

Ambassador Burleigh. Thank you very much.

I appreciate being here this morning to have this opportunity to discuss with the committee these plans for the construction of the new office building for our mission to the United Nations in New York.

The Department of State is actively committed to the efforts of the United Nations to grapple with the complex international concerns inherent in the post-cold war era. The Mission to the United Nations, our mission to the United Nations, is a vital and visible part of that effort. This mission building, which was built on land which was a gift from John D. Rockefeller, Jr. to the U.S. Government, constitutes the platform for the United States' activities and is located in a prime location right across the street from the main United Nations building.

The existing building was constructed on a one-third acre site in 1959. The present structure limits the net occupiable floor space. Its 39-year-old mechanical and electrical systems are in need of replacement to avoid potentially hazardous conditions. The age, the cost to maintain and repair these systems, and the lack of energy efficiency would necessitate costly replacement of the equipment in the building that no longer serves the U.S. Government's needs.

In an effort to determine the best solution to this problem, the GSA studied the building and our program needs. They determined that the building was in a sufficient state of disrepair that it could hinder our ability to protect our people in this vital mission they perform. There was no acceptable means of renovating the structure or adding onto it that would meet our current and future requirements.

In June 1997, GSA proposed that the existing building be demolished and a new building be constructed on the same site with the U.S. United Nations, our Mission staff, relocated in nearby, temporary leased space. The new building will maximize use of the site to provide additional space while improving the net to gross occupiable square footage.

It will further enhance the physical security of the building and provide essential protection to the information we manage. I cannot overemphasize the importance of protecting information which is integral to the diplomatic negotiation process. Due to lack of space in the existing building, much of the existing special purpose space has been converted to office use, resulting in staff being displaced for meetings, events and by visiting dignitaries. In addition to

meeting the U.S. U.N. Mission needs, the proposed building would allow us to provide consolidated office space for the U.S. Information Agency and the Department of State's Office of Foreign Missions, both of which are currently housed in separate leased buildings in Manhattan. The resulting rent savings will offset some of the increased annual charges for the new building.

As stewards of this asset, GSA recommended the demolition of the existing building and construction of a new, larger building. Our desire to remain at this site is a sign of the U.S. commitment to the United Nations and a valuable symbol of our leadership in that organization. The Department of State approved GSA's proposal and seeks your support and funding of this essential project.

GSA stands ready to proceed with the A&E design of the new building in fiscal year 1999. We are exploring options to lease temporary space for our mission in mid-1999 with planned occupancy in January of 2000. If all the funding is provided and the schedules are not changed, we would take occupancy of the new building late in 2003 or early 2004.

Mr. Chairman, we're very aware of the financial constraints in this budget environment and we continually strive to be good stewards of public funds. We believe this is an appropriate time to undertake this project and request your support and that of the committee for the GSA budget of approximately \$55 million.

The Department of State will have additional costs for this project as we heard earlier. These relate to construction security, above standard construction, telecommunications and other associated modifications. Funding for these items will be requested through the Department of State's normal appropriations process.

Let me close by stressing that with the end of the cold war, U.S. multilateral diplomacy has become more critical and more demanding than ever before as we strive to ensure global peace. A state-of-the-art facility that provides enhanced security and telecommunications technology, as well as additional space to accomplish our mission is key to continued U.S. leadership in the new U.N. in the new millennium.

In that regard, Mr. Chairman, I would like to say how much I appreciated hearing what Senator Warner said in his very strong statement a few moments ago, that the U.N. must play a key role in our U.S. foreign policy pursuits. Similarly, we agree with him that the structure we work from, the platform we work from in New York, it has to be something we're proud of; reflecting our leadership role.

Mr. Chairman, if you'll allow me, I'd like to respond briefly to some of the questions that Senator Sessions raised. I just want to make two or three points about them and then of course I'm happy to answer any questions you or Senator Baucus may have.

I am a career diplomat and I am not an expert in construction. I do have with me here, Mr. Vincent Chaverini, who is our Deputy Assistant Secretary of State for Projects for foreign building operations. If you have detailed questions about the costs, I would like to ask him to help me respond to these.

I want to make an appeal to the committee which is, one, the comparisons here should be to embassy construction costs overseas. We have the same standards in New York and we are insisting

that we have the same standards for all the obvious reasons that we are well aware of now with the blowing up of our two embassies very recently with our colleagues endangered. We have the same kinds of threats. This is a diplomatic mission. It happens to be in New York, but we have the same kind of security standards, so some of that additional cost that is coming out of the State Department budget is directly targeted to that. That is No. 1.

No. 2, there are construction security costs which are very unusual and as I understand it, in domestic construction, and we follow FBI standards, so we are required to do so and that means we have intense supervision of the entire construction project as it is proceeding in New York.

Senator CHAFEE. To make sure somebody is not putting a listening device in the eagle?

Ambassador Burleigh. Yes. Senator, we have the same security standards inside the building, that is, the required protection of national security information as any embassy would overseas. These are requirements that are dictated by the intelligence community. This is not an option for the State Department. If we're going to have a full functioning embassy, which is what this is, we have to have special procedures which we can brief the committee on if you would like maybe in another forum about exactly what those standards are, but these are not optional.

If our Ambassador to the United Nations is going to have the information he needs to do the job in New York, we have to have those facilities within this structure. That adds to costs as well.

We have to worry about the threat level. This is not unique to State Department buildings around the world but it's something I noticed you were discussing with regard to the courthouses in the country. After Oklahoma City and the World Trade Center bombings and the bombings of our colleagues in Nairobi and Dar es-Salaam recently, this is very much on our minds that we have to keep constantly under review the threat to our employees in New York. Even though we're here in the U.S., we are targets and we are vulnerable.

I'd request the committee take that into consideration as well as you look at these cost questions.

With that, Mr. Chairman, I'd like to stop my presentation and I'd be happy to field any questions.

Senator CHAFEE. We will go with the two judges and then come back and ask the panel questions. I think Judge Ponsor, you're next.

**STATEMENT OF HON. MICHAEL PONSOR, JUDGE, U.S.  
DISTRICT COURT, DISTRICT OF MASSACHUSETTS**

Judge PONSOR. My name is Michael Ponsor. I'm the United States District Court Judge for the District of Massachusetts, sitting in what we call the western section which is the four counties of western Massachusetts, about 900,000 people and 100 cities and towns.

I'm here to present my views with regard to the proposed new Springfield courthouse and to describe to you why I think it is very important that courthouse be built.

Senator CHAFEE. Judge, we have before us, as you know, the courts' prioritization. We see that Springfield is on the list. I think what would be helpful for you to tell us some of the issues you are encountering with your courthouse. We don't need a pitch for Springfield because it's already on the list and indeed, if it wasn't on the list, no matter what you said, I don't think I'd be persuaded to put it on the list.

We have this new prioritization list that comes from GSA and the Judicial Conference, and we have confidence in that. Since there's no way in the world for us to judge why you come ahead of San Jose, why don't you just tell us how you go to be No. 6 on the list, and what are some of the problems you're encountering. That would help me.

Judge PONSOR. Very good. Briefly, and in a single word, the concern is security with regard to the Springfield courthouse.

We are in a corridor from New York to Hartford through New Haven for gang-related violence, which has been moving into western Massachusetts over the past decade in ways that have been very upsetting.

My caseload in the last 10 years has been virtually, at least on the criminal side, taken over by gang-related prosecutions. Two young boys shot in a drive-by shooting—that's a case I had a few months ago. I have a gang-related case right now, a so-called RICO conspiracy involving eight defendants. It will be a 3-month jury trial. We have a number of witnesses in the witness security program. Part of the charges in this RICO case involve conspiracy to murder a State trooper and actual murder of another gang member. So the security concerns with regard to our courthouse are very, very close to my heart.

We have situations where we've actually had gang violence in the neighborhood of the courthouse. We had 40 gang members fighting in front of our courthouse, spilling over into the courtyard in front of the courthouse.

Senator CHAFEE. In nice Springfield, all this occurring?

Judge PONSOR. Well, it's a beautiful area, but we have problems as just about any locale does.

For example, one of the things that brought it to my attention perhaps the most dramatically, was in 1994 and again in 1997. I came into my courtroom in the morning and found what appeared to be bullet holes in the courtroom windows shot from an adjoining garage. The glass had to be replaced on both of those occasions and it's an unsettling experience if you're a juror to look across the courtroom and see something that looks like a windshield out of an Al Capone movie. We had to keep the blinds drawn during that period of time.

You talked about these circulation of patterns. I'd be happy to have two circulation patterns. Right now, we have one circulation pattern in our courthouse. Prisoners are moved in one circulation pattern, and members of the public have to have physical contact with those prisoners as they move through these public corridors. I have had many experiences as Judge Stahl has.

Just about 2 weeks ago, I finished a 1-month, major drug conspiracy trial, got on the elevator to go home and the wife of the defendant, whom I had just ordered to be confined after his being

found guilty, stepped onto the elevator with me. I didn't feel physically threatened but I can tell you there were an awkward few moments as we went down to the first floor with this defendant's wife sobbing hysterically for the entire trip.

These types of encounters in my courthouse are practically a daily occurrence and we have been told since 1985, following a study by the U.S. Marshals Service, that we are essentially a disaster waiting to happen. The quote from the Marshals Service contained in my letter to you, Mr. Chairman, indicates that "The longer the public judiciary, U.S. Marshals Service and other building tenants continue to operate under these conditions, the greater the continued risk for an incident and loss of life at this location."

There is no secure sallyport for prisoners that are brought in. They come into the same area where we unload the furniture and the mail. They have to be surrounded by marshals as they are being taken out of their van. So there is no area we can close off for prisoners. There is no secure elevator to get them into the marshals' lockup. Once they are up in the marshal's lockup, they have to move through public corridors to get to the courtrooms where they're being tried.

These are all very serious problems that we have in the Springfield courthouse. That is, in essence, the reason why we feel we need this new courthouse in Springfield.

Senator CHAFEE. We'll have some questions for you later. Judge Edenfield?

**STATEMENT OF HON. B. AVANT EDENFIELD, JUDGE, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA**

Judge EDENFIELD. I have submitted a statement and I will take my clue from your observations to my colleague here and not present it. You have it for your review. I will tell you why we need a new courthouse annex in Savannah, Georgia.

We were one of the 13 original courts created by the Judiciary Act of 1789. Through good luck and good fortune, Savannah has retained its historic character and we wish to build the courthouse annex in that area. This, obviously, makes us have to conform to the rigid criteria that is necessary to keep Savannah on the Historic Register.

We have no security. We have had no security for 20 years. I've been riding elevators with everybody I sentence, and with the witnesses. The marshals have to blockade the street during times of high profile cases, and we do have high profile cases.

In fact, the attorney general 5 or 6 years ago, Attorney General Barr, said we had the second worse gang in the United States. They had executed 26 people. One of the initiation requirements was to execute someone gratuitously in order to become a member. I tried that group. They indeed were a bloody group.

So, like Springfield, Savannah can have its problems. We simply have no security. All of the prisoners are loaded from the street, they are brought in and use the same elevator with the judges and the jury.

We have outgrown our facility but it is the facility on a lot that was designated as a courthouse lot by James Edward Oglethorpe and we're very proud of that and we want to keep it in an historic

district. In order to do that, it cost money because we cannot exceed the height of the existing building and the outside of the building has to be in conformity with the existing building. We're trying to make these two buildings operate as one facility. They need to be tied together by a tunnel.

We have, in the State of Georgia, three Federal districts. In the Southern District where Savannah is the headquarters, we have six places of holding court. We go out, we travel to three unmanned districts, that is unstaffed districts. We take the clerks and all with us, but our bankruptcy staffs, our district court clerks, and the probation officers are largely housed in Savannah.

The State of Georgia has seen fit to build its new prisons in the southern district of Georgia and thanks to your legislation passing the Prison Reform Act, our load has been stabilized for approximately 2 or 3 years but now there are three additional prisons under construction, so we foresee there will be a dramatic rise in prisoner cases. Of course, south Georgia receives the spillover from Florida and showing significant increases in litigation and population growth.

We need a new Federal courthouse annex. We have worked at it for 10 years. Nothing had been done to the building since 1930. Until a few years ago, the electrical cords were not even behind the panel. We were running them around and telephone wires were on the interior walls of the building. There have been so many changes that GSA does not even know now what line goes to what, so we're in sad shape.

The height of my courtroom ceiling is less than nine feet. I refer to it as my doublewide mobile home. It is no palatial place to hold court. I do think that Judge Stahl hit it square on the head when he said we need to build these buildings so that they will last for a century with only minor modifications.

I would hope in your wisdom that you would fund an adequate building for this annex and allow us to preserve what we have which is a grand building. To quote Daniel Webster in the Dartmouth College case, he said, "There are those of us who love it."

I will answer specific questions but that is the capsule of my testimony.

Senator CHAFEE. Than you very much, Judge.

I want to say to Ambassador Burleigh that I'm supportive of what you're trying to do. I recognize that it will be open to criticism because of all the additional costs that have to be incorporated. For instance, I never even thought of that FBI situation that you talked about. The question is, if we're going to have a building there, then we might as well come to terms with the fact that it's going to be very expensive.

I'm confused whether this is strictly an office building. There was some talk, which I didn't quite understand, of including the residential quarters for the Chief of Mission?

Ambassador Burleigh. Under the current plan that the committee has before it from GSA, the plan is to have my residence in the building—I'm the No. 2 normally in our Mission structure. I'm now the Acting Representative. Bill Richardson resigned last week to take up his new duties as Secretary of Energy and we don't have a replacement who has been nominated yet. Normally, I'm consid-

ered the Deputy Chief of Mission. That would be the analogy with our overseas embassies.

The current plan has a residence for my successors in this building, not for the Chief of Mission, not for the Senior Ambassador, the permanent representative.

Senator CHAFEE. What is the philosophy behind that? If it's a security matter, then what about the Ambassador? Say we go back a year ago, when it was then Ambassador Richardson. Under your proposal, would he not be living in this reconstructed building?

Ambassador Burleigh. That's right.

Senator CHAFEE. Just the Deputy?

Ambassador Burleigh. Just the Deputy.

Senator CHAFEE. Why?

Ambassador Burleigh. In a kind of facetious comment, I'd say, and then I'll get to the more serious ones, but the facetious but also serious one is we haven't had many Ambassadors to the U.N. in recent years who wanted to live in the office building as these plans were under consideration.

The serious one is that we have a long-term relationship, our permanent representative lives in the Waldorf-Astoria Towers. We have a longstanding relationship with the Waldorf-Astoria Towers and they provide a lot more than the basic space there. The studies that I have seen since this question has been raised again with regard to this project have led me to the conclusion that at least over a 10-year period, certainly it is cheaper for the U.S. Government to continue the current arrangements at the Waldorf-Astoria Towers than it would be to add the additional space into this building.

Senator CHAFEE. I'm not suggesting that; I'm taking the other attitude. It seems to me you've planned an office building and have in the middle of it a residential quarters which must take up a lot of space, with kitchens and so forth. It just seems curious.

Also, I have to be kind of careful of the use of words, but I think it's kind of debilitating to live right in the middle of where you work. You ought to get out and see something different.

Ambassador Burleigh. Well, Mr. Chairman, I can tell you I agree with you completely and I am glad I am not going to be living there, but we have been under considerable pressure.

Senator CHAFEE. Is it for financial reasons that this is being done or for security reasons?

Ambassador Burleigh. Not for security reasons. Financial reasons, I don't think those have loomed large either. Frankly, we've been under some pressure from some of your colleagues on the other side of the Congress to have more residential space in the building, including for the permanent representative. That's why I was responding to your question the way I did the first time around.

As a matter of principle, I think it's a bad idea to live in your office space, but the current plan does have that. It would be for my successor, probably two successors down the road by 2004.

Senator CHAFEE. I must say, I don't quite get the rationale. Let's try it again. Why are they doing this? You say not for security or financial reasons. For what reason?

Ambassador Burleigh. I think the motivation is that we pay high rents for the apartment residences of both the permanent rep-

representative and the deputy permanent representative, which is my position. My colleagues have just passed me a note, Mr. Chairman, that says this was something that OMB favored many years ago when this project started which was 5 or 6 years ago the thinking for this project.

Senator CHAFEE. I don't want to beat this to death. Obviously, it doesn't appeal to me particularly. We'd have to talk with GSA about what the space requirements are and whether the space could be better used and how it could work out.

Judges both your courthouses are on the priority list now. Do you feel that the current system of classification is a fair one? In other words, obviously you don't know everything about—let's see, Savannah is number 12, Springfield is number 6. You probably don't know whether Biloxi has a more urgent situation than you do or Laredo, yet they are both ahead of you. Nonetheless, do you have some confidence in the current system?

Judge PONSOR. I have to say I do.

Senator CHAFEE. You haven't been on the list before presumably, is that right? Last year's list, you weren't on, were you?

Judge PONSOR. Yes. We are on the list for fiscal year 1999, in the 5-year plan. We've been on the fiscal year 1999 list for some time. In fact, I think we might have been in fiscal year 1998, but because there were no appropriations for a year, we got bumped up a year.

Having spoken to the people responsible for creating the list, I have to say that I appreciate the fact that there is an objectivity that goes into these prioritizations. It gives you a feeling of confidence that you're getting a fair opportunity to present your situation and have it judged by some objective criteria and take your place in line.

I'd have to say I think it's been a very healthy process and I am comfortable with it.

Senator CHAFEE. What do you say to it, Judge Edenfield?

Judge EDENFIELD. I share those same feelings. I think the process works better than any other I've seen.

Senator CHAFEE. There might be some judge representing some court that's been trying to get on the list who might take a different view for all I know but nonetheless you've made it. The historic element obviously is adding cost to it but I believe the historic element is important.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Ambassador Burleigh, first of all, I want to commend you for all that you're doing now. You have a heavy workload since we don't have a permanent representative to the U.N.

I was listening to National Public Radio not too long ago describing all the problems, the ins and outs and ramifications and the conclusion was you've got a heavy burden on you and I commend you for all that you're doing at this time.

Ambassador Burleigh. Thank you.

Senator BAUCUS. I'm curious, how secure would this new building be from a car bomb or truck bomb if it's rebuilt in the same location?

Ambassador Burleigh. It's going to maintain some vulnerabilities but part of this construction expense we've been talking about, the quality of the construction and the materials, as I understand it, should go a long way to protecting us. You've seen it, I'm sure, where we're right on First Avenue, right across the street from the main U.N. building and that's where we will stay.

I'm sorry to say we're not in a position where we can say we will be as safe as could be possible if we were able to have the setback arrangements that are now standard for our overseas embassies, but on balance, our judgment has been that it is important, given the kind of security we can get through modern construction procedures and materials, it's important to stay where we are for the symbolic as well as the convenience of it.

Senator BAUCUS. You're satisfied that the safety requirements of the personnel are met?

Ambassador Burleigh. I am. We have gone over this. For me, frankly, this is No. 1 priority and I wouldn't be here today if I didn't think this was what we needed to do and we need to have these standards. The point I was making earlier is that we have to treat it like an overseas embassy. We are vulnerable and we are targeted. We know that, so we have to have those standards. I would think we would not come forward with the proposal if we didn't think we met those demands.

Senator BAUCUS. I haven't been in the building recently but I have several times recently been to our embassy in Beijing which is a rat trap. It's in terrible shape. Why aren't we rebuilding that embassy? I would guess it's in worse shape than the secretariat or the building in New York. That's my guess.

Ambassador Burleigh. Senator, two comments. One is I was laughing to myself when Mr. Peck said that our current building was obsolete. I would say it's a dump basically and we're constantly having to put Band-Aids on it.

Senator BAUCUS. Have you been to the U.S. Embassy in Beijing?

Ambassador Burleigh. I have not but I can tell you that we're building a new embassy in Beijing and in Berlin. These are the two big State Department projects.

Senator BAUCUS. I urge you to take a little trip over to Beijing.

Ambassador Burleigh. I might be happier where I am.

Senator BAUCUS. I think you'd be very happy where you are. So when are we building the new embassy in Beijing?

Ambassador Burleigh. I can not give you the details here but these are the two big projects for 1999 and 2000, starting in fiscal year 1999, it's in our appropriations request for the State Department construction projects overseas.

Senator BAUCUS. It's a total embarrassment, totally.

Ambassador Burleigh. Many of our embassies are.

Senator BAUCUS. I know but next to the Canadian and other embassies in Beijing, the American embassy is just the pits. It's that bad.

I'd like to ask the judges, where do we draw the line between security and sort of accessibility? It's a tough one. We're facing it here all the time with the bombing of the Capitol building not too long ago and the officer who was slain. This is the peoples' house here, the Congress, and yet we want to protect people who work

here. We want to be available to the public, which to some Members of Congress is an inconvenience, but after all, they're our employers. We're the public servants here. Where does a judge draw that line in designing his courthouse or where do we draw the line?

We face irate constituents often, as we should, so I don't mean to be difficult here but what's wrong with seeing the wife or spouse of a defendant cry?

Judge PONSOR. Nothing is wrong with seeing the wife cry.

Senator BAUCUS. So where do we draw the line here?

Judge PONSOR. I'll address that particular situation in a moment, but we are the court of the people. We are the place where people have to feel comfortable coming and bringing their sense of having been wronged. It's what I've decided to give my life to, so it's something I feel very strongly in my heart—a court is a secular holy place. It is a place where people have to be able to come and feel safe. They have to be able to know that when they come into that courthouse, they are not going to be intimidated, they are not going to be worried about getting attacked and they are going to be able to come into our clerk's office and come into our courts and testify. We have to be open in that way and the physical look for the courthouse has to be open in that way.

In the last few years, there have been a lot of developments architecturally in designing courthouses that actually seem to reach out to the public and convey to the public a sense that this is where you can come while at the same time not turning themselves into a clay pigeon. So you're trying not to be inattentive to security concerns, but you don't want to build a pillbox and make it look like it's some "Tower of Orthank" from J.R. Tolkien or something like that where people would be frightened to ever go into it. It's got to be a human entity that people can come into.

I have no problem with people crying and people do in my courtrooms all the time, but I do think it is not a good situation where the absence of independent circulation patterns forces a judge or a juror day after day into close contact with the immediate relatives of people that you've just put in jail.

We were fine, there was no problem. In fact, she was with her lawyer. They said, "Do you mind if we come on the elevator." I said, "I just sentenced your husband. If you don't have a problem riding with me, get on the elevator." It was no problem and we rode down together. I didn't mean to sound insensitive about the situation that she was in, but it's not a good idea for witnesses, jurors, and judges to be mixing right in the immediate emotional context of the trial with people who have found themselves sentenced or in danger of losing their liberty.

Senator BAUCUS. Judge Edenfield, do you have any comments on where we draw the line?

Judge EDENFIELD. Yes. I share your concern. I do not wish the United States courts to have or develop a fortress mentality. At the same time, there is a need for separation of certain judicial officials and the members of the jury from the witnesses.

In many of the cases that I try and my colleagues, the witnesses are pretty bad people and when they circulate with the jury, there are complaints by the jury to me that witnesses or members of the

family seek to intimidate through stares, glares and muttering on the elevators and in the corridors. We do need some separation.

I think there is a 100-foot separation or setback area in new courthouse constructions if you are not building in an area like we are. So in cities like Savannah, we try to stiffen the building some to protect from bombs but I wish we could solve the problem of not having a fortress and having accessibility like when I began practicing law. I never saw any security; there was usually some bailiff who was asleep in the courtroom and everybody did what they were supposed to do.

Senator BAUCUS. Thank you.

Senator CHAFEE. Senator Warner?

Senator WARNER. Thank you, Mr. Chairman.

Again, we express our appreciation to the jurists who have taken your time to come here. It enables us to more effectively serve the Judicial Branch in our role of trying to prepare for the coming generations of courthouses and the ever complex issue of security. Testimony like you're provided today is of great help to us.

Mr. Burleigh, I thank you for taking time to come down here. I just stepped out to take a call from an ambassador from one of our principal allies to give him my views on Bosnia and Kosovo. I was there a week ago. In the U.N. today I think they're beginning to work on that very difficult situation.

I frankly foresee the role of the United States Ambassador and DCM and the U.N. as ever increasing in the years to come with the complexity of weapons of mass destruction, terrorism, the dispersal of the threats, 360 degrees on the globe. It's quite different than when I was a young man many, many years ago. We knew the difference between Tojo and Hitler and where the problems were in Stalin's time, but not today. So much for that speech.

I hope you look upon this Senator as an asset in trying to get through a proper structure up there, to get it done and done correctly.

If I could give you a little friendly advice, because I have done some research, I think you need to very promptly get with the Foreign Relations Committee because while this committee has jurisdiction over the basic costs of the contract, the additional costs primarily for security and the like more or less are within their jurisdiction. You recognize that. If I can be of any help in that line, I would do it.

I think that's about as much as I can say. I just thank you for what you're doing professionally and taking the time to come down on this important project. I want to see that my old friend, King Richard, and you know of whom I'm speaking, is properly housed. We don't have direct jurisdiction over the old suite. He'll do a good job and I have a high respect for him. He's a man who enjoys a little humor. I'm sorry about the confirmation procedure but those things take their own road.

I've visited many times in the Waldorf and I think it's important. That sends a signal in that community and I hope we can continue that. We don't have jurisdiction over that in this committee.

Mr. Chairman, I'm not going to take the further time of our important witnesses or the committee. I was going to deal with the

security thing, but I think the less we bring out in the open on some of these things, the better.

I'll close with the observation we're going to back the department with whatever I think reasonable requests they have about security.

Senator CHAFEE. You mean the State Department?

Senator WARNER. Yes, the State Department.

Ambassador Burleigh. Thank you, Senator. I just wanted to say how much I appreciated what you said earlier about the importance, the symbolic and practical importance of how we're housed and the structure from which we do our business with regard to the U.N. and also to assure you that we have gone to our appropriations committees with regard to the State Department costs with relation to this particular structure in addition to the embassies and project in Beijing and Berlin that we were talking about.

Senator WARNER. I share Senator Baucus' view about Beijing. That's a rabid barn over there.

Senator CHAFEE. I think they're all that way. I think the one in Canada, you're liable to trip over a filing case.

Senator WARNER. I remember the old one in Moscow during the days of the Soviet Union when I visited there in 1971-1972.

Ambassador Burleigh. I just wonder if we could come to this committee for our regular appropriations.

Senator CHAFEE. Senator Sessions?

Senator SESSIONS. Thank you.

Ambassador Burleigh, I understand the need on occasion for additional space but we do have a responsibility if it's not a reasonable cost. These costs are very extraordinary when you talk about \$578 per square foot. You're talking about an extraordinary cost that's difficult for us to justify.

Just to say we need a new embassy in Beijing, I think we do but that doesn't say how big it's got to be, how fine it's got to be, how much we're going to have to cost on it.

Judge Edenfield, it's good to see you. Do you think there may be some excessive sensitivity on the part of the judges to security? It seems to me that prosecutors have criminals come in their office, young probation officers, many of them female, have people alone with them in their office, and then a judge says, I might be on an elevator 1 day with one. Nobody drove me home when I was a Federal prosecutor.

Don't you think sometimes there's a little bit too much sensitivity on that subject and there is a limit on how much we can spend?

Judge EDENFIELD. I served on the 11th Circuit with Judge Vance and Judge Cox and of course you know what happened to Judge Vance, so I'm cognizant of security but it's not anything I dwell on. I was referring to Senator Baucus about the fright sometimes I get from members of the jury who complain about being mixed in the corridors, in the elevators with witnesses and defendants, the intimidation they feel, the fear they have that they are being singled out, and that's another part of our constituency for whom we must provide.

Senator SESSIONS. Under the Victim Witness Act, they are required to be provided separate space. Is that not happening now?

Judge EDENFIELD. No, we have none. We have the corridors. The judges use the same corridors as the witnesses and defendants. We simply have no security in the sense of what the U.S. Marshals would call a secure place to hold court.

Senator SESSIONS. The Act requires that there be separate rooms so that our government witnesses and victim witnesses could be in one room and not necessarily be in the same room with the others as I recall.

Judge EDENFIELD. We don't even have a witness room. They all sit out in the lobby and the marshal or bailiff goes and picks them up as they are called.

Senator SESSIONS. Well, you'd better hope you don't get sued or something because the Act requires that, does it not?

Judge EDENFIELD. I think it does.

Senator SESSIONS. Maybe they need to use another floor or something.

Judge EDENFIELD. The courtroom I use has less than a nine foot ceiling. We've just used everything and we're not in compliance with guidelines now but we do the best we can and so far we've gotten by without any bad incidents. We had a couple of members of the grand jury who took bribes from people in the hall but we found out about those, so we would like to separate them.

Senator SESSIONS. I understand. One of the defendants was offering one of the jurors in my case the right to come hunt on his land. He hung it up 11 to 1 too, we didn't get a conviction. I hope he got his dogs when the time came.

Judge Cox from the 11th Circuit, Mr. Chairman, made a marvelous talk to the Mobile Bar Association. He talked about the importance of appropriate buildings for the judiciary. Some of the modern buildings, I think, maybe 10 or 15 years ago failed to meet the appropriate standards. Would you agree, Judge Ponsor? Are you familiar with any you feel just are not satisfactory for Federal court buildings?

Judge PONSOR. I feel like I've got a slow pitch over the plate there because I happen to be in one of those buildings. We are in a Federal office building which isn't even really a Federal court in any sense. A bankruptcy judge occupies part of the second floor and we have two district courtrooms and a magistrate courtroom on the fifth floor, but we also have a VA clinic, a Social Security office, we have recruiting offices for all five services and various other individuals and entities using the building.

The result is that the building was not built with any sense of security or really much sense of the fact this was a courthouse, a place for people to come and try to seek remedies for injustice or to receive trials when they're charged with crimes. We're sort of a court operation that's been stuck onto an office building. I don't think it was well thought out. This was a building designed in the late 1970's and the result is we have security problems and space problems. We have to work very hard to balance all the different operations that are going on in the building.

Senator SESSIONS. I don't know how soon it would take, Mr. Chairman, to fix those things. Some we're just going to be stuck with because somebody made a bad decision 15 or 20 years ago. When we do build a new building, I think it should be on the

standards that would reflect the seriousness of a Federal court and the United States of America's attempt to achieve justice. I think the surroundings have a role to play in that.

With regard to security, Mr. Chairman, I'm not of the opinion that we can guarantee everybody's security. Senator Warner, everybody recognizes Senator Warner, he walks all over town. All of us are subject to being assassinated, murdered, bombed or whatever. I don't see how we can double or triple cost of construction of every building we build because somebody might do something bad in there and that extra money might make a difference in whether someone lives or dies.

There is just a limit and I don't know what that limit is. We do know that metal detectors and things like that do have some intimidating effect in increasing safety. A lot of study has been done on that and we need to be careful about it but I just don't know we're at a point where we can justify doubling our construction costs on the idea of increasing some safety.

That's all I have.

Senator CHAFEE. I think you're right, Senator. As you say, where you draw the line is a difficult question.

I just want to comment, Judge Edenfield, about the Savannah courthouse. Originally that came in with a price tag of \$27 million and then it jumped to \$42 million. I'm supportive of historic preservation and I know Savannah has done wonderful things. Your city is a major attraction, as it well should be because of the historic preservation that has taken place there. Indeed, I supported the historic preservation efforts we made in other courthouses like the one in San Juan, Puerto Rico, for example. Judge Stahl, do you know when they're going to dedicate that courthouse?

Judge STAHL. I would expect next spring. There were a little contract problems that delayed it.

Senator CHAFEE. What we did there was restore a beautiful, old courthouse in downtown San Juan. It could have been done less expensively some other place, or we could have built a new one, but we chose, I think rightfully, to preserve it.

I must say I am a little worried about that jump in the projected costs for the Savannah courthouse. Are you familiar with why that took place, that quite significant jump from \$27 million to \$42 million?

Judge EDENFIELD. In all candor, I'm not familiar with it. We have gone through a number of processes for 5 or 6 years and how expanded, I know about \$1.6 million was when there was an agreement reached between the Historical Commission, the Historic Savannah Foundation, the General Services Administration, with the Congressmen, that the exterior of the building should be clothed in the same fashion as the existing court building. The existing court building is clothed or has a skin of Georgia marble on it. I understand that cost about \$1.8 million. These figures could be wrong, I'm trying to remember. It might not be that much. That's about the only thing I can tell you about that.

I'm not familiar with the \$27 million figure. It might have been there.

Senator CHAFEE. Regarding the cost of this project, have the Judicial Conference or the GSA talked to you about the reorganiza-

tion of your offices and how things might be adjusted in order to achieve the goals of security plus obviously do what we can to hold down the costs?

Judge EDENFIELD. Yes. We've had numerous discussions about that and we do share courtrooms. That was a matter of consideration earlier this morning. We have senior judges who have no courtroom; they share courtrooms with me and with my colleagues.

Senator CHAFEE. You have the Bankruptcy Court in there too?

Judge EDENFIELD. Yes. We have the Bankruptcy Court in there too and we expect to have another bankruptcy judge. Statistics several years ago showed or demonstrated that we need it, we've held off on acquiring it. For one reason, we don't have the space and we're getting by without it but my colleague, who is a bankruptcy judge, Judge Davis, and his colleagues think the time is long since past due for trying to get that other judge.

Senator CHAFEE. OK, fine. Thank you all very much for coming. You've all come considerable distance and we appreciate that.

Thank you.

[Whereupon, at 11:15 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

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

I would like to thank Robert A. Peck, Commissioner of the Public Building Service of the General Services Administration, U.S. Court of Appeals Judge Norman H. Stahl, Chairman of the Security, Space and Facilities Committee, Ambassador Burleigh, Acting U.S. Representative to the United Nations, Judge Ponsor, U.S. District Court, District of Massachusetts, and Judge B. Avant Edenfield, U.S. District Court, Southern District of Georgia for testifying before the subcommittee on courthouse construction program, as well as the Federal building construction program. The committee has before it 22 official projects totaling approximately \$211 million.

Eight of these projects are for repair and alteration. They are the following: Appraisers Building, San Francisco, California; Federal Office Building 10B, Washington, DC; Old Executive Office Building, Washington, DC; Internal Revenue Service Center, Brookhaven, New York; U.S. Courthouse, Foley Square, New York, New York; Byrne-Green Federal Building, Philadelphia, Pennsylvania; J.W. Powell Building, Reston, Virginia; Advanced Design Alterations Projects, in a number of locations. Repair and alteration projects have traditionally been a committee priority, as they are an existing government asset.

The Administration has proposed four new construction projects for FY1999. This committee has already acted on the Department of Transportation project request, and three additional projects are still before us for consideration. These include: Sault Sainte Marie Border Station, the Piegan U.S. Border Station and the U.S. Mission to the United Nations.

Finally, we have nine leases scheduled for expiration, which need approval from our committee. They include the following: the Department of Justice, Washington, DC; Internal Revenue Service, Washington, DC; Department of Health and Human Services, Rockville, Maryland; Internal Revenue Service Regional Counsel, New York, New York; Department of Defense, Arlington, Virginia; Department of Defense, Arlington, Virginia; Department of Defense, Falls Church, Virginia; Department of the Army, Alexandria, Virginia; and Department of Justice, Falls Church, Virginia.

As you know the Administration's budget proposal for FY1999 does not include funds for courthouse construction. However the Senate Budget Committee provided a \$457 million allocation for the proposed FY1999 construction. At the request of Chairman Chafee, the Administration has released 14 unsigned courthouse construction prospectuses for the approval of this committee. These courthouses are in various stages of development and include the following: Brooklyn, New York (renovation); Biloxi/Gulfport, Mississippi (site and design); Denver, Colorado (construction); Eugene, Oregon (site and design); Laredo, Texas (construction); Springfield,

Massachusetts (site and design); Wheeling, West Virginia (construction); Little Rock, Arkansas (site and design); Cape Girardeau, Missouri (design); Greeneville, Tennessee (construction); Savannah, Georgia (construction); San Diego, California (site); San Jose, California (site); and Richmond, Virginia (site and design).

The 14 unsigned prospectuses for courthouse construction are the FY1999 Judicial Conference approved ranked projects. In addition to the 14, it is my intention to move the Richmond, Virginia courthouse, which is ranked first in priority by the Judicial Conference in FY2000.

I am also pleased to announce my cosponsorship of Senator Baucus' Public Buildings Reform bill, S. 2481. I believe that this bill incorporates many valuable concepts which would save the Federal Government money by imposing controls on the design and costs of Federal buildings, and in particular courthouses.

I look forward to the witnesses' testimony.

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

Good morning Mr. Chairman, and members of the subcommittee. My name is Bob Peck, and I am the Commissioner of the Public Buildings Service (PBS). I am pleased to appear before you today to discuss two very important aspects of our proposed Fiscal Year 1999 budget: our Capital Improvement Program and our courthouse construction program. First, I would like to give you some background on PBS in general because our funding and operations are, in many ways, unique in the Federal Government and because we have initiated a number of reforms in our capital funding programs since we last appeared before you.

*Public Buildings Program*

PBS provides workspace for approximately a million Federal employees nationwide and controls 39 percent of the Federal Government's owned and leased of floor space, in addition to Federal courthouses, border stations, laboratories and warehouses. We manage more than 300 million rentable square feet of space in which the Federal Government does its business on behalf of the public. Our revenues and expenses for Fiscal Year 1999 are projected to be just over \$5 billion. We are the largest commercial-style real estate organization in the United States.

Most years, we fund the preponderance of our budget from the Rent payments of our tenants, the agencies of the Federal Government, which are deposited into the Federal Buildings Fund (FBF). (By law, the Rents we set must approximate commercial rates

found in the marketplace.) In the current fiscal year, our entire new obligational authority is funded out of Rents from the FBF. We propose no appropriation for FY 1999 so, once again, our revenues will support our entire budget.

We have an advantage possessed by few other agencies in government: with clearly articulated revenue and expense flows, we can identify net income, a financial bottom line by which we can measure our performance. Our net income is not a profit, of course, but it is crucial: our income, net of fixed expenses (which are comprised of building operations, leasing and installment payment costs), is the funding we depend on to carry out major repairs, renovations and new construction. We can and should operate in a businesslike manner, measuring our efficiency in terms of time and money and making our customers—Federal agencies, and our shareholders—the American taxpayers—satisfied customers.

*Capital Improvement Program*

The GSA's Public Buildings Service has responsibility for more than 1,800 government-owned Federal buildings across the nation. More than half of the buildings in the total inventory are over 45 years old. In order to maximize the value of these assets to the taxpayer we practice sound financial planning and management. Decisions on investment for construction, acquisition, and repair and alteration of our real estate assets are key elements of our financial and asset management.

Based on our decision making process we prepared the fiscal year 1999 Capital Improvement Program, which is before you today. It consists of 10 prospectus-level repair and alteration projects budgeted at approximately \$257 million, 9 prospectus-level R&A designs for future projects, estimated at \$16.7 million, 6 prospectus-level design and construction projects estimated at \$44 million, 9 prospectus-level replacement operating leases with a proposed annual cost not to exceed \$37.6 million and the ongoing chlorofluorocarbon reduction and energy-saving programs, each budgeted at \$25 million.

### *Repair and Alteration*

Annual revenues of the Federal Buildings Fund—principally the Rent payments to us from the Federal agency tenants in our buildings—provide sufficient funds to operate the inventory and make payments to lessors; however, it has never provided sufficient funds to meet all of our capital requirements. It has provided enough revenue in the past to keep up with major repair and renovation needs and to fund a modest construction program.

With limited resources and an increasingly aging inventory, we have developed asset management strategies which include the following priorities for the allocation of resources:

1. Protecting the safety and health of tenants in owned and leased assets;
2. Maintaining the operational viability of owned assets through day-to-day repairs and alterations below prospectus level;
3. Altering vacant space in owned assets to relocate client agencies from leased space into Government-owned space when available;
4. Completing planned modernization of major buildings to maintain and enhance their ability to support client agencies' missions and to enhance their value; and
5. Providing new housing solutions (construction, acquisition, and leasing) to meet the changing requirements of client agencies.

To better select among competing projects, we have changed the way we evaluate repair and alterations projects. We are using a "return on investment" measure to determine the financial impact of each repair and alteration project. This use of ROI is similar to the way capital real estate investments are screened in the private sector. The screening will identify, among other things, if an R&A project adds or detracts from net income to the FBF when the project is completed. Using the ROI as one of the criteria for selecting a project thus strengthens the long-term fiscal health of the FBF.

We are also evaluating proposed major R&A projects to see if we can reduce the scope of work without jeopardizing the required results. By reducing the scope of a project we can often realize additional cost savings as well as reduce the time required. We often find that by scaling down planned major modernization, we are able to free up additional funds for more projects.

Additional criteria used for the selection of major R&A projects nationwide include the timeliness of projects (follow-on phases of multi-phase projects) and ability to award projects within the fiscal year; the effect of the project related to the overall portfolio considerations and, finally, the urgency of execution, based on imminent system failure, hazardous condition or health and safety issues, imminent tenant requirements or avoidance of duplicate costs for swing space.

By applying these criteria during the decision making process we are able to prioritize the R&A projects and ensure that the available funding is devoted to the most important ones.

### *New Construction and Acquisition*

In the fiscal year 1999 budget, the Administration proposed a modest new construction and acquisition program, all to be funded out of FBF revenues. It includes two border stations, the design of a new U.S. Mission to the U.N., additional funding for the remediation efforts at the Southeast Federal Center (SEFC) and the design of a new headquarters facility for the Department of Transportation. We recognize that, since the submission of the President's budget, we have had extensive discussions with you about the DOT headquarters and that you have asked us to take a different tack on it.

Resources in the FBF are limited. Our first priority is the repair and modernization of our existing inventory. As I mentioned before, the FBF cannot support a large construction/acquisition program. At the same time, we are well aware of the needs and requirements of other client agencies, such as the Judiciary, whose needs we cannot satisfy through existing resources in the FBF.

Which brings me to the second topic you asked us to address today—namely the Federal courthouse construction program.

### *Courthouse Construction Program*

*Need for and Scope of the Program.*—Ten years ago, the Judicial Branch undertook a survey of its facilities and determined that one-third of courthouses were grossly inadequate for their purpose, either because the space was inadequate to accommodate expanding needs or because of serious deficiencies in security, or both. We have estimated the cost of the 160 proposed projects at about \$8 billion. To date, we have completed 16 of the Judiciary's recommended 160 courthouses, with another 24 under construction or soon to be.

The Judicial Conference has produced a list of the projects in order of their priority and we have been using that priority list exclusively in determining the order in which we recommend funding and constructing the projects. Of course, our recommendations are subject to review and change as we go through the Administration's annual budget process; and the final funding decisions are up to the Congress, through this committee, its counterpart in the House, and the appropriations process.

We are proud of the courthouses we are producing. Effective project management is allowing us to bring in high-quality buildings within the appropriated project budgets.

The program is the largest such since the 1930's. I am pleased to report that, in partnership with the Judiciary and the private design and construction industries, GSA is producing landmark Federal courthouses that are worthy of the American people and their justified pride in the American judicial system. We are commissioning America's best architects and are winning praise for the courthouses' designs and functionality from architecture critics, judges and other building users, and from local community leaders.

I can also report to you that we are as conscientious about budgets as we are about excellence in design. The courthouses are designed and constructed to judicious and exacting standards. We have established a sophisticated system of cost benchmarks to ensure that we maintain cost and quality parity among projects with varying functional requirements and different site conditions at locations dispersed throughout the country. If all parties hold to the fiscal discipline that the cost benchmarking system encourages, we are confident that we can bring projects in on budget.

For example, in fiscal year 1998, we have completed seven courthouses, within their aggregated budgets. In the first month of fiscal year 1999, we will complete two more courthouses, which we will bring in for \$11 million under project budgets.

In determining the space requirements and layout of individual courthouses, we rely on the Design Guide produced by the Judicial Conference. Courthouses are complex buildings. To provide security, three separate circulation systems are incorporated into their design: one for judges, jurors and court personnel; another for defendants in custody; and a third for the public. Courtrooms are high-ceilinged to provide a sense of dignity and decorum and require carefully plotted sightlines and acoustics, while other courthouse workspaces are more typical office space; and the two types of space need to be meshed.

We have found that we can achieve about a 65–70 percent ratio of occupied space to circulation and service space in the courthouses. We insist on achieving a minimum of 67 percent in each project. We continue to investigate various layouts that might increase the proportion of occupied space. We looked, for example, at "collegial floors"—grouping judges' chambers together on designated floors, with courtrooms grouped on other floors—but we have not found that the layout generated a cost savings. It may have another benefit, however: some judges prefer the layout because it facilitates conferring with their colleagues.

There are potential cost savings that we have not yet achieved. The most significant determinant in the cost of a building is its overall size. This single factor outweighs such visible items as the exterior cladding and the interior finishes. Accordingly, we would welcome the opportunity to work with the Judiciary to evaluate further how many courtrooms we need to build to accommodate the projected caseloads in new courthouses. Courtroom sharing and other strategies might allow us to reduce the building volumes and square footage, and thus the costs, that we need to provide in some locations. We need to clarify the options available to meet the Judiciary's needs for more courtroom space in a tight budget climate.

#### *Cost Benchmarking*

GSA has a well-established, successful cost benchmarking process for new courthouse construction. A cost benchmark is a reference cost estimate which we use to evaluate the appropriateness of a proposed project's budget. In addition, benchmarks help unify our construction program nationwide by providing a method to compare project costs. Since 1995, benchmarking analyses have resulted in approximately \$31 million in avoided expenditures for new courthouse construction.

The courthouses we are building today are being constructed within the budgets which were established based on the cost benchmark. Benchmarking provides for adequate, but not excessive, budgets following court Design Guide criteria.

We are now exploring ways to refine the cost benchmarking process. Currently, benchmarks account for the specific characteristics of individual buildings such as building height, geographic location, seismic design costs, and the amount of indoor parking. The process does not allow us to distinguish between courthouse projects

with varying ratios of office space to more expensive special purpose space such as courtrooms. Consequently, a courthouse project with many courtrooms would have a cost benchmark identical to a project of the same size, in the same location, with fewer courtrooms and a higher proportion of office space. We are evaluating possible refinements to the benchmarking process which will allow us to calculate cost benchmarks according to the mix of office and special purpose space in a proposed building. Of course, if we decide to revise the current benchmark system, we will brief the committee before any new methodology is implemented.

#### *Security*

Courthouse security continues to be of critical importance to all of us. GSA is now conducting risk analyses during the design and construction of new courthouses and identifying appropriate security measures for each location. In Hammond, Indiana, for instance, the building is designed so that windows in judges chambers are not exposed to the nearby street.

Other creative and subtle measures, such as landscaping and street furniture, are being used to keep unauthorized vehicles away from the building. In Minneapolis, artwork commissioned for the project includes earthen mounds which separate the building from the street, while allowing easy pedestrian access to the courthouse. Many of our courthouse designs incorporate a plinth, a raised plaza, between the street and the building. This allows us to maintain an accessible, open presence in the community, while increasing building security.

The buildings need to be open and accessible, as courthouses traditionally have been, but they also need to be consistent with our security requirements. We estimate that security concerns, increased since the Oklahoma City bombing in 1995, have added between 5 and 10 percent to the costs of the buildings we have in design.

#### *Funding for the Remainder of the Program*

Approximately \$5 billion remains to be funded for the 120 courthouses in the program remaining to be designed and constructed. At the rate of \$500 million per year, which is the rate at which the Judiciary had anticipated, 10 years will be required to complete funding for the program.

As I noted earlier in my statement, our projections of income to the Federal Buildings Fund (FBF) over the next several years indicate that the Fund will have adequate resources to fund the capital repairs and modernizations necessary to keep our existing real property inventory functional and productive. Like any prudent real estate owner, our first priority out of operating funds is to maintain and improve the income-producing properties that we already have. However, this leaves little or no internally-generated funds for new construction.

In the past, recognizing this limited availability of revenues to fund new construction, Congress has appropriated funds to the FBF to provide for a construction program of the magnitude anticipated by the Judiciary. Appropriations to the FBF for new construction between fiscal years 1990 and 1997 amounted to over \$2.8 billion.

Given the cost of the Judiciary construction program, the Administration believes that we must redouble our efforts to ensure that these new landmark public buildings are designed and built as efficiently and cost-effectively as possible. Only by examining ways to reduce the overall number of courtrooms and the amount of ancillary space we need to build, by refining our benchmarks, and by holding firm to project budgets once they are set, can we assure the taxpayers that these needed buildings have taken advantage of every realistic opportunity to save costs. Towards this end, we look forward to working with the Judiciary to perform an appropriately-designed courtroom utilization study and to seek other opportunities to ensure that these much needed public buildings are designed and built in the most cost-effective manner possible as we proceed with the construction program.

As you probably know, GSA's fiscal year 1999 appropriations bill in the House and Senate includes funding for approximately \$500 million in courthouse construction for the fiscal year 1999 part of the plan. This would provide funding for site, design, and/or construction of 15 projects.

Mr. Chairman, I am pleased to have had this opportunity to discuss our Capital Improvement Program as well as the courthouse construction program with you. We appreciate the subcommittee's continuing interest in our capital program. I would be pleased to answer any questions the subcommittee may have.

#### RESPONSES BY ROBERT PECK TO ADDITIONAL QUESTIONS FROM SENATOR GRAHAM

*Question 1.* On page 4 of your prepared testimony, you reference the evaluation of proposed repair and alteration projects to determine if cost savings can be real-

ized bar reducing the scope of the projects. Clearly, costs are reduced when projects are descoped. How is this accomplished without compromising the desired outcome of the project? Please provide specific examples.

Response: In formulating our capital budget for FY 1999, we focused in many cases on systems-related projects, rather than full modernizations. These systems replacements are less costly than total building renovations, yet still improve building performance. While the work necessary for a full modernization still has to be done in the fixture, we are able to address the building's most critical needs in a timely manner. By reducing the scope and cost of each project we can improve a greater number of our properties at a time within a given limited budget. The most important projects, such as life and safety projects, always receive priority attention.

A specific example of a descoped project is the renovation project for the 40 Foley Square building in New York. The initial proposal was for a full modernization project. Due to finding constraints GSA reviewed this project and decided that a full modernization was not required at this time. Instead, only funding for the life safety work associated with the building's electrical system is required.

*Question 2.* With regard to the construction of the U.S. Mission to the U.N., the current design includes the residence of the Deputy Ambassador as part of the Mission. Is there not a concern that by locating the residence in the building, security risks are heightened/increased? Please provide an analysis of what the square footage cost would be if the Deputy Ambassador's residence was not included in the design of the Mission.

Response: GSA agrees that housing the Deputy Ambassador in the U.S. Mission might heighten the security risk; however, in order to ensure adequate safety and security for the Deputy Ambassador, GSA plans to design additional security features into the facility, such as a separate elevator and separate heating and cooling systems.

GSA calculated a potential reduction in cost to the project of \$350,153 if no residential quarters are required. This amount includes the cost of the residential buildout and the residential elevator. The total project cost under those conditions would amount to \$53,181,347. Based on a total of 41,307 gross square feet, this reduction would not have a significant effect on the cost per square foot.

*Question 3a.* Please describe the criteria/process used to select designers/architects and construction contractors.

Response: *Contracting for A/E Services.*—Architectural and engineering services are procured pursuant to the procedures in the Brooks Architect-Engineers Act, 40 U.S.C., 541–544, and Subpart 36.6 of the Federal Acquisition Regulation (FAR). GSA uses a two-step qualifications-based process for A/E selection known as “Design Excellence”, which complies with FAR Part 36.6 and the Brooks Act.

Step One: A public solicitation for interested firms is published in the Commerce Business Daily outlining specific selection criteria. A GSA evaluation team reviews the submissions for compliance with the selection criteria. The GSA team includes a representative from the client agency and a private sector peer advisor. The peer advisor is a nationally recognized expert in design and selected from the PBS Commissioners Register of Peer Advisors. The team identifies the “short list” of 3 to 5 firms to interview.

Step Two: The 3 to 5 shortlisted firms are interviewed by a GSA panel, and each firm's full production team is evaluated. The panel then ranks the firms and the list is submitted to the selection authority for final selection of the A/E firm.

The selection criteria set out in the FAR include:

- a. Professional qualifications
- b. Specialized experience
- c. Capacity to accomplish work
- d. Past performance on government and private industry work
- e. Location of firm and knowledge of locality of project

Once the selection is made and after the proper authorization and required appropriation is received negotiations are held with the A/E firm. If negotiations are successful, a contract award is made based on a negotiated fixed price. If a reasonable price can't be negotiated, GSA will negotiate with the second preferred firm, and if negotiations are successful, an award will be made to that firm.

A brochure further describing the Design Excellence Program is enclosed.

*Contracting for Construction Contractors.*—The FAR also provides a number of methods for contracting for construction contractors.

#### *Sealed Bid*

GSA has traditionally selected its construction contractor under FAR Part 14, “Sealed Bidding”. Under this method, the low priced, responsive, responsible bidder

is awarded the contract. Non-responsive bids might include the failure to provide a price for every line item, failure to sign the bid, or failure to provide adequate bonding.

*Best Value Source Selection.*—Recently, GSA has been making more construction awards based on FAR Part 15, “Contracting by Negotiation”. Under the FAR’s “Source Selection” provisions, GSA has two alternative methods to choose from.

The first is the “tradeoff process”. Under this method, GSA establishes evaluation factors which will always include cost or price and past performance and ranks these factors in their relative importance. The solicitation must state whether all evaluation factors other than cost or price.

The selection then proceeds in two stages. In Stage One the technical proposals are evaluated and then the price proposals are opened and evaluated. Unless award is made on initial offers, based on the ratings of each proposal, the contracting officer establishes a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to FAR 15.306(c).

In Stage Two negotiations are conducted with all offerors remaining in the competitive range and offerors are allowed to revise their proposals to correct any weaknesses or deficiencies or other aspects of their proposals which could be altered or explained to materially enhance the offerors potential for award. Following, the submission of final proposal revisions, award is made to the offeror submitting the proposal representing the best value on the evaluation factors in the request for proposals (RFPs).

*Lowest Price Technically Acceptable.*—The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. Under this process, the request for proposal specifies that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. This selection process is similar to the “trade-off process” described above except that tradeoffs are not permitted and proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

*Design-Build.*—Design-build combines design and construction in a single contract with one contractor. Unless another acquisition procedure authorized by law is used, the criteria for using design-build and the two-phase procedures for awarding a design-build contract are prescribed in 41 U.S.C. 253m and FAR Subpart 36.3. GSA establishes technical criteria and in Phase One, only technical proposals are submitted. Following the evaluation of Phase One proposals, the most highly qualified offerors (usually not to exceed 5 offerors) are requested to submit Phase Two competitive proposals that include more detailed technical and cost or price information. GSA may make tradeoffs regarding; the price and technical capabilities and selects the firm providing the best overall value to the Government.

*Question 3b.* In your printed testimony, you state that a sophisticated system of cost benchmarks has been established. Please describe these benchmarks.

Response: The benchmark is a reference cost estimate which is used in judging the appropriateness of a proposed projects budget. Benchmarking yields a reference point, or standard, to which a project’s actual costs can be compared. GSA has adopted a cost benchmarking process to support the evaluation of proposed new construction projects and to help identify potential savings using private sector cost data for commercial buildings, unit cost benchmarks are developed for each of our proposed new construction projects. Benchmarks help unify GSA’s construction program nationwide by providing a method to compare projects to one another and to ensure fair and equal evaluation of all projects.

The benchmark process accounts for the specific characteristics of individual buildings including building height, geographic location, seismic design costs, and the amount of indoor parking to be constructed. Because construction costs change from year to year; benchmarks are linked to the project year of construction award, and are adjusted if a project is delayed. Benchmarks also are adjusted to reflect variations in material and labor costs across the country. Benchmarks do not include the cost of construction requirements that are driven by the site rather than the building, such as demolition of existing buildings, relocation of utility lines, or archaeological work. These costs are appropriately included in project budgets and prospectuses submitted for congressional approval, but are not part of the benchmarks.

Since 1995, benchmarking has resulted in approximately \$31 million in avoided expenditures in the courthouse construction program.

*Question 3c:* What incentives are offered to the contractors to stay within and/or below budgeted costs?

Response: In any bid construction project, including sealed bid or any form of source selection (see the explanations above), the contractor may attempt to identify discrepancies in the contract documents which would allow him to request additional money from GSA to compensate for change orders resulting from these discrepancies. Although GSA does not expect to eliminate change orders in its construction contracts recently, the agency has begun using contract language to provide incentives to contractors to maintain their budgets.

For example, projects can be awarded requiring a Guaranteed Maximum Price (GMP) which sets a maximum project cost. GSA then has an established maximum cost for a project. This strategy can only be used in conjunction with negotiated procurements.

Contracts can also be written to allow contractors to share in savings they identify through value engineering. The contractor therefore will have an incentive to keep Construction costs below the GMP, allowing the firm to share us the savings and generate profits based on the final cost of the project. GSA allows shared savings associated with value engineering in virtually all of its construction contracting.

Incentive contracting also allows GSA to grade the quality of the construction contractor at various phases during the project. The contractor is required to pledge a significant portion of the firm's profits at the time the contract is awarded. GSA ranks the contractor in areas such as quality, cooperation, and timeliness. The firm earns its profits based on these factors and this acts as an incentive to properly construct the project and maintain project budgets. Such incentives can be used in conjunction with all of GSA's source selection contracts.

*Question 4.* What are your views on S. 2481? Do you feel that this legislation complements the current direction of GSA in terms of providing a sound and clear statutory framework for Federal Public Buildings policy development? Are there portions of the proposed legislation that, in your opinions need to be revised? Please elaborate.

Response: GSA is currently evaluating the proposed bill S. 2481 We will be happy to provide formal comments as part of an official review by the Administration, initiated by the Office of Management and Budget. Meanwhile GSA is also in the process of developing legislative initiatives as part of the FY 2000 Budget Process, which we would be glad to share with the committee in the future.

GSA looks forward to an opportunity to work with the committee in developing a Public Buildings Reform Act, which will improve the effectiveness and efficiency of GSA's asset management practices and procedures.

#### RESPONSES BY ROBERT PECK TO ADDITIONAL QUESTIONS FROM SENATOR SESSIONS

*Question 1:* Was the current design prospectus developed before the recent embassy bombing in Africa?

Response: Yes, the General Services Administration (GSA) completed the Prospectus Development Study (PDS) on February 10, 1995 and prepared the prospectus as part of the FY 1999 Capital Improvement Program on March 11, 1998 The study was the result of a long-standing request to improve the building to meet the mission and goals of the Department of State (DOS) GSA submitted a proposal for a new building to the DOS on June 3, 1997, and sought the Department's support for the project. DOS accepted GSA's proposal on June 30, 1997.

*Question 2:* What would be the occupiable square footage per each employee it a new U.S. Mission to the U.N. Building? What is the current square footage per employee?

Response: The GSA prospectus reflects the USUN space program requirements and the GSA space utilization ratio (U/R) guidelines. The primary (office) space, excluding support space, totals 52,785 usable square feet (usf) and the projected peak number of employees in the building is 326, which equates to 162 usf per employee The remainder of space is identified in the prospectus as "special purpose", i.e. space for press briefings, conferences, computer networks, security; rooms for representational purposes, mechanical equipment; as well as space for a staff cafeteria 10 parking spaces and standard circulation areas.

The office space in the existing building, excluding support space, is approximately 29,200 usf and the peak number of employees in that facility is current 217, which equates to 135 usf per person. Given the unique functions performed by the primary tenant agency, these utilization rates are not excessive.

*Question 3:* What individual initiated the request for a new facility to house the U.S. Mission to the U.N.?

Response. Improving the USUN Mission Building has been an issue for several years due to State Department's increasing requirements that could no longer be ac-

commodated in the existing building and the condition of the building itself. When Secretary Albright was the USUN Permanent Representative, she was instrumental in making this project a priority DOS highlighted this project as a top priority in its FY 99 budget request. The Department's Bureau of International Organization Affairs and the USUN staff worked closely with GSA to ensure that all alternatives were explored prior to supporting the decision for a new facility.

*Question 4:* If Congress approves the design resolution, will there be a competitive bidding process for the design work? Have any preliminary designs been submitted to the GSA or Department of State? If so, were they solicited by any government agency?

Response: GSA has entered into the process of selecting a design firm through our Design Excellence Program, which complies with the Federal Acquisition Regulation (FAR) Subpart 36.6 and the Brooks Architect-Engineers Act. Approximately twenty-five (25) architectural-engineering (A/E) Firms responded to the Commerce Business Daily notice and the firm of Gwathmey Siegel & Associates Architects LLC (GSAA) of New York was tentatively selected. A design award has not been awarded yet. GSA cannot legally enter into contract negotiations until the design prospectus has been authorized and the design funds have been appropriated.

The June 1997 GSA proposal included a proposed schematic for the building which reflected a "blocking" plan for maximum massing of the building and the height that would be attainable based on the current zoning and building codes This schematic drawing may have been mistaken for a preliminary design.

The bid for the construction contract will be open to all U.S.-owned contractors, with the requirement that only security-cleared U.S. personnel can work on the project.

*Question 5:* How were the total project costs estimated? Please provide a detailed explanation for all estimated costs including those costs to be born by both GSA and the Department of State?

Response: An project costs are estimates at this stage, since we do not yet have a design that can be costed out in a detailed manner. Cost estimates are based on the professional experience and judgment of government engineers. GSA's project costs reflect basic construction cost estimates for a standard "courthouse-type" building in Manhattan, as the security and special use requirements are Poseur matched to such a model DOS's cost estimates are based on experience in pricing out the construction and equipment required for technical and procedural security requirements. GSA and DOS provided a detailed break-out of the estimated costs to the committee during our last staff briefing on September 29, 1998.

*Question 6:* How many employees of the U.S. Mission to the U.N. will be housed in the: new facility? How many employees from the U.S. Information Agency will be housed in the new facility and how many employees from the Office of Foreign Missions will be housed in the new facility?

Response: The State Department planning on a "peak-period" staff in the range of 270 to 275 persons with the additional need to accommodate numerous visitors and conference attendees. DOS plans to accommodate the U.S. Information Agency staff of 46 and the Office of Foreign Mission's (OFM) staff of ten in the new building. Both USIA and OFM are currently housed in leased space in Manhattan. This consolidation will result in annual rental savings of approximately \$600,000.

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STATEMENT OF JUDGE NORMAN H. STAHL, FIRST CIRCUIT COURT OF APPEALS, AND  
CHAIRMAN, JUDICIAL CONFERENCE COMMITTEE ON SECURITY AND FACILITIES.

Mr. Chairman and members of the committee: My name is Norman Stahl. I serve as a judge on the First Circuit Court of Appeals and as Chairman of the Judicial Conference's Committee on Security and Facilities.<sup>1</sup> Thank you for the opportunity to appear before you today to discuss the judiciary's continuous efforts to improve management of the courthouse construction program and the fiscal year 1999 courthouse construction projects that have been prioritized in our 5-year plan. I have included with my statement a listing of the projects needing authorization this year and a more detailed description and justification for the projects. I am also pleased that Judge Avant Edenfield and Judge Lamar Davis from Savannah, Georgia and Judge Michael Ponsor from Springfield, Massachusetts are able to join me today to respond to questions you may have on their specific courthouses.

We have worked closely with this committee over the past several years to respond to issues you and previous chairmen have raised about the courthouse con-

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<sup>1</sup>The Judicial Conference of the United States is the Judiciary's policy-making body.

struction program. I believe our work together has been productive and mutually instructive. We have what I would view as an excellent working relationship with the committee and its staff. The Judicial Conference has marshaled a number of initiatives that will further improve management and control costs of the entire courthouse program. We also, of course, continue our joint efforts with GSA to make this a more effective program.

We are pleased by the willingness of Congress to work with us this year to secure funding for courthouse projects. Notwithstanding my understanding from meetings I had last year with the Office of Management and Budget that it would include court projects in the FY 1999 presidential budget request, OMB abruptly withdrew funding for the courthouse program just before it transmitted the request to Congress. This action was taken without any consultation with the judiciary. We are very appreciative of the actions taken by the budget, appropriations and authorizing committees thus far to provide funding and the necessary project approvals for fiscal year 1999. We hope that our testimony here today will satisfy this committee as to the need and merit of the projects before you for consideration and enable you to proceed to their authorization.

I would like to briefly summarize our progress to date and future plans.

#### *Prioritizing Courthouse Projects*

The 14 courthouse construction projects before the committee for authorization in FY 1999 were ranked and approved by the Judicial Conference as part of our 5-year plan. A copy of the most recently approved 5-year plan is attached to this statement. That prioritization process and development of a 5-year plan were begun at the request of this committee in FY 1996 and continue today. I am pleased to report that the process appears to be working very well and is accepted within the judiciary.

Our prioritization process requires that all courthouse projects be scored, considering four factors: (1) the year the courthouse is out of space, (2) the level of security problems, (3) the number of judges affected and (4) operational concerns.

The Judicial Conference of the United States is the Judiciary's policy-making body.

A courthouse project is not proposed for consideration unless the district's long range facility plan indicates that there is no more room for judges in the existing facility. In virtually every proposed project, this determination is made after all executive branch agencies and court related units (probation, pretrial services, the bankruptcy court) already have been moved from the existing building. The expansion capacity of the building is the primary consideration in determining the need to take some action. The lack of sufficient space can cause great waste and inefficiency in court operations. In worst case scenarios, trial courts are split into separate facilities causing the dual management of records, prisoners, and duplicate security screening.

Security and obsolescence also are extremely important considerations. Security risks are a grave concern in all public buildings, especially Federal courthouses. Tragic events in Oklahoma City, Oklahoma and Topeka, Kansas underscore the need for proper security arrangements in Federal courthouses. In addition, we are finding that very old buildings cannot accommodate the infrastructure needed to install technological innovations without incurring significant costs. Although not a factor used to determine the need for a new building, this last consideration is very important as we move into the "information age." I would be happy to share my experiences with technologies that have been installed in the new Rudman Courthouse in Concord, New Hampshire.

Each year the judiciary seeks comments from courts about the 5-year plan to determine if any of the factors affecting a project's score have changed. By continuously reviewing our priorities, we are able to ensure that changing circumstances at a particular location are taken into account so that necessary adjustments can be made. For example, as the years pass there may be shifts in a court's caseload that might warrant moving a judge's duty station to another location, unanticipated growth in staff might require locating a clerk's office or some judges away from the main courthouse creating split court operations, or the Congress might determine that additional judgeships should be established at a location not initially contemplated. These changing circumstances can affect a project score, and thus its ranking in the plan.

GSA analyses can also impact the ranking and scoring of a project. For example, GSA recently has been studying a number of options for housing the courts in downtown Los Angeles, California. Because the Conference was advised that GSA planned to initiate site and design funding for this project in FY 2000 as opposed to FY 2001 (as had been planned at one time) the project's position in the plan was changed. Until recently, some of the projects appearing in earlier years had lower

scores than some projects scheduled for action in subsequent years. This situation occurred because planning for the projects had begun prior to the adoption of the scoring and ranking process. Once the FY 2000 projects are funded, the new projects (i.e., those that have not been previously considered for site or design) appear in numerical order by score.

#### *Courtroom Assignment and Use*

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

The Conference asked each judicial council (councils have the statutory authority to determine the need for court accommodations) to develop a policy on sharing courtrooms by senior judges when a senior judge does not draw a caseload requiring substantial use of a courtroom, and for visiting judges. All judicial councils have developed courtroom sharing policies for senior and visiting judges. Implementation of these policies will assist the judiciary in its continued effort to contain the costs of court facilities, while assuring the appropriate number of courtrooms necessary to fulfill its constitutional mission. The Judicial Conference also has adopted a number of planning assumptions that are being used to determine the courtroom capacity in a new building.

#### *Revisions to the United States Courts Design Guide*

Following a comprehensive 2-year review, the Judicial Conference approved numerous changes to the U.S. Courts Design Guide at its March 1997 meeting. First published in 1991, the Guide contains the information needed by GSA, private sector designers and builders, and members of the judiciary about the special requirements in Federal courthouses that make them functional, secure, quality public buildings. While the comments received from users indicated the Guide was accomplishing its purpose, the judiciary also received a number of excellent suggestions for improvements, including recommendations from your committee.

The revisions are expected to avoid certain construction costs by about 5 percent (\$2 million) for an average-size (\$40 million) project and are being incorporated into new projects not yet in design. These savings are in addition to the estimated \$1.5 million per facility construction reduction effected by previous changes to the Guide. The new Guide also includes changes and clarifications that should produce more cost reductions, but these savings cannot be estimated at this time. For example, the new Guide will emphasize cost control and budget constraint both in a separate chapter and in notes throughout the document.

The 5 percent construction cost avoidance was determined by the National Institute of Building Sciences, which assisted the judiciary with the Guide review, using a nationally recognized construction cost estimating firm familiar with Federal building construction costs. The firm also had been involved in the development of the 1991 edition of the Guide and its subsequent revisions. The approach used was to compare a typical courthouse project that might have been designed without the approved changes to the same courthouse if it were designed with the revisions. It is not possible to effect all of the cost savings in every project because the project budgets might already have taken into account the savings, or certain items or design features that would generate the savings cannot be included in a project.

The following summarizes the changes to the Guide intended to control future costs:

- A new chapter on general programming and budget considerations was added to help control costs.
- Shared use of space common to all court offices, such as conference and training rooms and staff lavatories is encouraged, and specific standards on the size and number of these facilities now is included.
- The sizes of chambers suites when chambers library collections are shared between or among judges was reduced. Also, designs that reduce lawbook costs, and that do not increase rental costs, are now included as optional confirmations for new construction and remodeled space.

- Guidelines were added to assist with determining the appropriate space required for satellite lawbook collections.
- Use of exotic hardwoods is prohibited.
- The important role that the project budget, long term durability, and maintenance costs play in determining the level and type of interior finishes in new courthouses and in renovation projects is emphasized.
- Staff office sizes are delineated in more specific terms.
- Circulation space, i.e., the amount of space needed to move from one space to another, is defined in more detail and has been reduced in a number of significant areas.
- Narrative was added emphasizing that courts and circuit judicial councils are not to take any actions that would lead to extravagance in courthouse construction or renovation.
- The Congress is to be advised of any exceptions approved by the circuit judicial councils to the space standards included in the Design Guide.

#### *Further Study*

As part of our on-going commitment to cost containment and program assessment and evaluation, the judiciary is now planning to embark upon another top-to-bottom review of our entire space and facilities program. We anticipate contracting with a major independent consulting firm to assist us with this review. The study will include an assessment of our planning and design assumptions, recommendations on appropriate management roles and responsibilities of court personnel and others in the courthouse construction process, further examination of the issue of courtroom sharing and utilization, and funding mechanisms and resource allocation strategies. We will consult with this committee and others in the Congress, GSA, OMB, and the General Accounting Office in the course of this study. We intend to move as quickly as possible, but it will take some time to award a contract to a consulting firm due to the broad scope and special skills needed to perform the analysis. Once the contract is awarded, however, we hope to have a final product in about nine to 12 months.

#### *Public Buildings Reform*

You also asked that we address the subject of public buildings reform. As you know, a bill passed the Senate in 1996 that was introduced in this committee that, if enacted, would have provided, among other things, the GSA administrator with the authority to set housing standards for the judicial branch and to determine essential characteristics of accommodations needed by the courts. We continue to be concerned about this aspect of any public buildings reform initiative. In our view, the user of a facility is in the best position to determine what it needs to do its work. There are unique design features for courthouses that involve proper sightlines in courtrooms, security requirements of U.S. Marshals, and other features that are best determined by those working on a daily basis in a modern day Federal court. Speaking from a personal perspective and based on my years of experience with construction of buildings prior to my becoming a Federal judge, it has always been my view that the most successful building project is one that has been determined by the needs of the user.

As I said earlier in my statement, the judiciary is committed to working with the Congress, GSA and OMB, on any number of issues related to the courthouse program. That is why we are embarking upon a major independent review of the entire program. I would be pleased to provide the views of the Judicial Conference on this matter for the hearing record.

#### *Summary*

Many lessons have been learned as the Congress, GSA and the judiciary have worked together over the past several years to build high quality, functional court facilities that will last for several decades. We have incorporated many of the recommendations made by this committee into our planning process and design standards in order to improve management of the program, and we will continue to study additional steps to control costs and make the program even more effective in the months ahead. The judiciary hopes the committee will recognize the actions taken by the Judicial Conference as evidence of the judiciary's commitment to a productive and cooperative working relationship. We ask that you take action to authorize the projects included in GSA's pending fiscal year 1999 appropriations bill.

I would be pleased to answer any questions you might have at this time.

## FISCAL YEAR 1999 COURTHOUSE PROJECTS (IN ORDER OF PRIORITY)

*Brooklyn, NY (Post Office Renovation for Bankruptcy Court)*

The leased space currently occupied by the bankruptcy court is above a drugstore on a busy street in downtown Brooklyn. It adjoins an area recognized as a source of violent terrorist activity. Four homicides have been reported within a block of the court in the last 6 years. The space provides little protection for the building or its occupants. Because of the lack of security, "after-hours" work by court personnel has been severely restricted. The building routinely leaks, toilets flood, and the heating and air conditioning systems repeatedly fail. If new facilities are not available in the Post Office soon, the Court will have to move to other leased space in order to keep up with the workload. As the building is now 100 percent occupied, there is no readily co-located space to house the one new bankruptcy judge expected to be authorized in fiscal year 1999.

In the meantime, the Post Office, which is already owned by the U.S. Government and on the National Register of Historic Places, and which will be renovated to house the bankruptcy court, stands almost empty and continues to decay and deteriorate, increasing the cost of the eventual restoration.

In addition to the aforementioned operational and security problems, assuming a 3-4 percent rate of inflation, the financial impact of any delay in this project will be devastating. Current cost estimates place the monthly escalation figure at approximately \$475,000. Under the most optimistic circumstances, with a further funding delay, the project will lose approximately \$5,000,000 in value due to inflationary pressures. Such a loss to this truly unique project could very well force additional redesign and more cost. Recent experience in the New York market shows that the cost of construction is escalating faster than anticipated because of an increase in the number of major private sector projects currently underway.

The Post Office renovation is designed to house the bankruptcy court as well as the United States Attorney's Office, which is currently paying top rental dollar for office space in the Pierrepont Plaza building which it shares with the stockbrokers it sometimes regulates. The project has for several years proceeded smoothly. To date nearly \$16 million already has been committed to this project. The bankruptcy court is dealing with an unacceptable situation: cramped, dangerous, and demeaning courtrooms and offices.

*Biloxi/Gulfport, MS (Mississippi Gulf Coast) (Site and Design)*

Because of the tremendous success of the casino gaming industry, the Biloxi and Gulfport area is growing economically, in population, in employment, and in requirements for the judiciary. GSA does not have existing space available to meet the needs of the court.

The lease in the court's current facility terminates in FY 2003. Construction on a new facility, therefore, must begin early in 2000 to accommodate the timing of the court's relocation. Any delay in the authority to proceed with site acquisition and design in FY 1999 would create almost insurmountable problems with timing and funding of the court's subsequent relocation to permanent facilities in 2003.

The current leased facility has design, construction, mechanical operation, maintenance, health, and safety problems. Given the condition of the facility, it is not anticipated that GSA will renew the lease. Further compounding operational and security concerns is the fact that of 1000 seats for a senior judge and a visiting judge's of 1000 are located outside the building. Real estate values in Biloxi/Gulfport are increasing rapidly due to new casino development. Because of muggings and a general lack of security, the U.S. Attorney has moved grand jury functions away from the building. Jurors regularly complain of eye and throat irritation. Jurors often deliberate in judges' chambers because the jury rooms are small and poorly ventilated. Heating and cooling is loud, unregulated and unreliable, often causing disruption of court proceedings. Roof leaks, appearance of mold and mildew on walls and ceilings, along with elevator failures are routinely documented.

*Denver, CO Construction*

Any delay increases pressure on housing additional judicial officers within the existing building. The district court could be forced to house judges and staff, along with the critical jury assembly function, in separate facilities. Currently, the district court has been forced to use the jury assembly space to house the clerk's existing staff. This has caused the utilization of existing magistrate and district courtrooms for juror pools, leading to further problems with jury control, assembly, restroom, and lounge accommodations. Additionally, the court is concerned that any delay of the funding for the construction of this project may indirectly delay the purchase of the planned site for the project.

In summary, the existing facility has operational and functional deficiencies, which are exacerbated with increased caseloads and added personnel, and will need room for more judicial officers in the near term. Separating court staffs, departments, and functions creates significant and counter-productive operational and security problems. Design funding was provided in fiscal year 1997; the design phase is well underway.

*Eugene, OR (Site and Design)*

Space in the facility is so cramped that the district court has been forced to move all law clerks and the district court clerk's office out of the courthouse and into the adjacent Federal building complex. In addition, the bankruptcy court and probation office were forced to move out of the Federal Building in 1994-5, while pretrial services and grand jury proceedings continue in the distant wing of the Federal Building Complex. This has resulted in significant operational and security problems. Expansion space is desperately needed given these operational and security problems. The U.S. Marshals Service and GSA have confirmed that the security problems in the building pose a "life threatening situation. Frequent demonstrations at the existing building have resulted in violence and property destruction. The court lacks proper judicial officer and prisoner circulation—prisoner escape attempts have been reported.

*Laredo, TX (Construction)*

The existing courthouse was built in 1906. There is an immediate need for an additional courtroom and chambers for a new judge. The building has severe security deficiencies. It is critical that construction begin in 1999. Project design is scheduled for completion this summer.

The civil and criminal caseload in Laredo is increasing—and requires additional judicial resources. The next appointed district judge will sit in Laredo. A judge from Victoria must now travel to Laredo to handle the work. In addition, bankruptcy filings in Laredo have more than quadrupled, increasing from 202 in calendar year 1994 to 364 in 1995, 708 in 1996 and 884 in 1997 and show a similar trend this year. This expanded caseload will require the frequent presence of a bankruptcy judge—at least 1 or 2 weeks each month—to expeditiously dispose of the cases. In addition, the increased caseload places burdens on the facilities of the clerk's office. Because there is so much activity, the court is seeking temporary courtroom solutions for visiting judges. The court also must lease additional space for probation and pretrial services because of caseload growth.

From 1995 to 1997, petty offenses with maximum sentences not exceeding 6 months imprisonment or \$5,000 fines have more than doubled, increasing from 1,671 in 1995 to 1,770 in 1996 and 3,492 in 1997. The magistrate judge in Laredo must handle this increased burden, as well as preliminary matters in felony cases, the total of which increased from 1,448 in 1995 to 2,886 in 1997. In 1998, it is expected that the criminal caseload in Laredo will only increase: for the first 2 months of 1998 criminal case filings are three times the similar total for 1997 in Laredo.

The court is exploring the possibility of constructing interim space for bankruptcy functions and is seeking approval for an additional magistrate judge to handle the burgeoning immigration caseload. There is a major initiative by the Administration to enforce illegal immigration activity that is impacting the court's ability to handle its docket.

The security in the current building is described by the U.S. Marshal's headquarters as among the worst in the nation. The Mexican border is a short 1,200 yards from the courthouse and there is always a potentially serious risk of flight by prisoners and defendants in custody. These security concerns can only be addressed with a new building. Delaying construction leaves the court, the litigants and the public at risk.

Under the current schedule, the new courthouse will not be finished until the year 2001. Delaying construction prolongs the length of time this critical courtroom shortage and security problem exists in Laredo.

*Springfield, MA (Site and Design)*

The need for a new Federal courthouse in Springfield stems from the serious security, structural and operating deficiencies at the current court facility. Any delay in availability of the funds necessary for this project will intensify the risks of injury both to judicial employees and to the public.

Security risks became quite evident when in January 1997 bullets were fired into the windows of a courtroom from a parking garage located across the street from the building. Fortunately, no one was in the courtroom at the time the damage occurred. The district judges are increasingly confronted with gang-related, firearm and drug problems that many law enforcement agencies deem to be the worst in

the State. This situation further exacerbates such security deficiencies as the lack of a van discharge area for the secure loading and unloading of prisoners; the lack of secure and separate prisoner corridors on the upper floors (where the courtrooms are located) resulting in dangerous prisoners being moved through public corridors in the presence of family, witnesses and other Federal workers occupying this multi-tenant facility. Moreover, the lack of courtroom holding cells and dedicated prisoner elevators accentuates the severe risks for potentially violent consequences facing the court. This situation is substantiated further by the U.S. Marshals Service's active support for the initiative for the new facility, citing "egregious safety and security conditions inconsistent with safe court proceedings" in the current building.

*Jacksonville, FL (Construction)*

If this project is delayed, there will be several adverse consequences. First, GSA has already purchased the site. Part of the new site was obtained from the City of Jacksonville at a nominal cost because of its commitment to revitalize the downtown area. City Hall will be moving to an adjacent site in the near future. A skyway people mover has been built along the new site with a major stop located in front of the proposed courthouse. The commitment and investment made by the city warrant making funding available for this project immediately.

The security concerns of the old courthouse cannot be overstated. The location of a U.S. Post Office facility in the existing building significantly affects the level of security that can be obtained. The mixing of judges, prisoners, and the public in the elevators and hallways is an accident waiting to happen.

The inflation costs of delay will severely impact an already tight construction budget. Completion was previously scheduled for January 2000. Pushing this date out further would require an increase in the project budget. A reduction in the size and scope of the building is not possible due to tremendous workload growth in this district.

*Wheeling, WV (Construction)*

The present courthouse in Wheeling was constructed in the early 1900's and many of its systems are old. An original appropriation for an annex to the present courthouse was rescinded. A small portion of the original appropriation was preserved by Congress and this will permit some renovation of the existing courthouse and partial resolution of more serious existing security problems by some structural changes. However, it does not meet the future programmable space needs of the Court as outlined in the long range facilities plan for this district. Moreover, executive branch agencies, such as the U.S. Attorneys Office and the F.B.I., are located outside the courthouse in leased space. Long-term rent payments to a private sector landlord would no longer be necessary if an annex were built onto the Wheeling facility which could house these agencies. There is no space for additional judges or visiting judges. Finally, the current facility, in many ways, does not comply with the Americans with Disabilities Act.

*Little Rock, AR (Site and Design)*

The court projects several additional judges to be added over the next 10 years. There is no space for further expansion in the existing building. The security situation in the existing building requires prisoners to be transported on public elevators and through public hallways.

The project needs to proceed as currently scheduled so that space will be available as the new judges come on board.

*Cape Girardeau, MO (Design)*

There are six judges (one resident magistrate judge and five St. Louis-based judges) who currently hold court in the Southeastern Division of the Eastern District of Missouri, plus a bankruptcy judge who travels to Cape Girardeau every month to hold court. This is expected to be the judicial staffing in the division for the foreseeable future. The existing building was constructed with only one full size courtroom. While renovation of a small hearing room recently has been completed and that space is now used as a second jury courtroom for civil trials, it is terribly undersized for a courtroom and is not capable of accommodating criminal trials because the jury box only has seating for six jurors. The criminal caseload in the division has grown substantially in the past 3 years. Not only do those cases create pressure for additional courtrooms, but the higher volume of criminal cases highlights the substantial security deficiencies in the existing building.

*Greeneville, TN (Construction)*

Four courtrooms are needed immediately to handle the district, magistrate, bankruptcy and visiting judges because only one courtroom in the existing facilities has

a jury room or facilities for the jury. During breaks and deliberations, juries must be moved to other areas in the building. There are no witness rooms, attorney conference rooms, or any spaces available for any parties during trials. The recently acquired annex located three blocks from the courthouse can be used only for civil trials and has no security facilities whatsoever (sally port, holding cell, parking, etc.). Basement space in the courthouse has been utilized by the judiciary to a maximum, but the space is substandard and not acceptable as office space.

The operations of all court units and court-related agencies that use the courthouse are being driven by the limitations of the inadequate facilities at Greenville. It has become exceedingly difficult to make this 94-year-old structure meet the demands of the expanding judicial needs in this division of the court. The court is having to "shoehorn" its constitutional responsibility into a physically limited environment.

The site has been acquired and design will be completed well before the end of FY 1998. Delay severely handicaps and threatens this project as market forces will begin to erode the already limited budget.

*Savannah, GA (Construction)*

There is no room for expansion or growth of any court or court-related agency, in terms of either equipment or personnel. Given the ever-rising bankruptcy docket, this is a particular cause for concern. Most distressing to the court is the fact that prisoners are routinely paraded through hallways routinely interacting with courthouse personnel, the United States Marshals Service, and the public in general. With (1) the caseload expected to swell; (2) the anticipated addition of judgeships in the near future; and (3) current judges facing the prospect of taking senior status, the provision of construction funding is critical. The design is nearing completion; any delay will have negative impact on the overall cost to the government.

*San Diego, CA (Site)*

The proposed site is one of few remaining blocks of land in downtown San Diego which has not yet been renovated and is the only site for the proposed annex. If GSA does not acquire the site, operations for the courts and related agencies will be impacted and will be forced to function in separate areas throughout San Diego County in the future. This action will increase the annual operating costs to the judiciary and all other related agencies in the City of San Diego. With San Diego's strong economy, vacancy rates continue to fall, increasing the cost of space in the city. It is public knowledge that the Federal Government intends to acquire this property. Recent demolition and subsequent site improvements by the current property owner are under way. These improvements and trends are increasing the marketability of the site. It would be shortsighted to delay and then be faced with the monumental task of finding another site.

*San Jose, CA (Site)*

The largest concern in delaying site acquisition beyond 1999 is the disappearance of building sites in suitable areas of San Jose. This theme is stressed in courthouse planning documents prepared by GSA. The existing building is included in the area that has been designated for redevelopment by the city of San Jose's Redevelopment Agency. In recent years, downtown San Jose has experienced substantial new retail, office and hotel development. The city of San Jose's Redevelopment Agency has become active in selling desirable sites in the area surrounding the existing building, and plans are being made for their future development. This activity will limit the General Services Administration's ability to acquire a site in close proximity to the existing facility. Whether a site can be obtained in close proximity to the existing building impacts GSA's ability to recommend the continued use of the existing courtrooms. Because of this limited availability of sites and to allow co-location of court activities at the present location, a site should be acquired while vacant or undeveloped sites still remain.



## STATEMENT OF JUDGE MICHAEL A. PONSOR, U.S. DISTRICT COURT, DISTRICT OF MASSACHUSETTS

Dear Mr. Chairman: In response to your letter of September 11, 1998, Chief Judge Joseph L. Tauro has designated me to testify at a hearing before your committee on September 17, 1998 regarding, among other things, the FY99 courthouse construction requests of the Administrative Office. I want to thank you for giving me this opportunity to appear.

At the suggestion of Amy Dunathan, I am presenting, in thin written form, an outline of the remarks I intend to make at the September 17 hearing.

As I understand it, your committee wishes to hear, from someone with direct knowledge, the reasons supporting the authorization of funds for construction of a new courthouse in Springfield, Massachusetts. The justification for such an authorization can be briefly summarized: the current building housing court operations in western Massachusetts presents a clear and present danger to the physical safety of persons using it.

Over three and a half years ago the Marshals Service concluded that "the current Springfield Federal Building should not house the Federal courts" due to numerous, substantial security deficits in the building. In a letter of May 23, 1995, Wendell C. Shingler, Chief, Administrative Services Division of the United States Marshals Service concluded, in reference to the Springfield Federal Building, that "the longer the public, Judiciary, U.S. Marshals Service and other building tenants continue to operate under these conditions, the greater the continued risk for incident in loss of life at this location." See Attachment A appended, at page 3.

The building occupied by our court facility is not, properly speaking, a courthouse at all. It is a Federal office building featuring a large glass atrium with multiple entrances, and numerous other incompatible uses, to which our court operation has been awkwardly joined. Its problems include multiple unsecured entrances, the lack of any secure van sallyport for prisoners, the absence of any secure prisoner corridors, the inadequacy of secure prisoner/attorney interview rooms, a shortage of courtroom holding cells, the absence of any dedicated prisoner elevators or secure circulation systems, and the inadequacy of the U.S. Marshals central cellblock.

Springfield is located on a corridor leading north from New York City to New Haven and Hartford, Connecticut, through which the contagion of criminal gang-related activity has flowed to Western Massachusetts. A large number of my criminal cases now involve drug and gun-related gang prosecution involving acts of violence. I have tried cases where gang members have been convicted of drive-by shootings. Currently before me in a 3-month gang-related trial of charges brought under the RICO statute, containing allegations of both murder and conspiracy to murder. Gang-related violence has broken out in the immediate vicinity of my courthouse and flowed even into the Federal building courtyard as the attached incident report of February 5, 1997 attests. See Attachment B. appended.

Perhaps the most dramatic evidence of the court's vulnerability appeared on two occasions, in March 1994 and January 1997, when bullets or projectiles were shot into the windows of my courtroom from a nearby parking garage. See Report of March 28, 1994 and letter of April 3, 1997, appended as Attachments C and D.

The absence of any secure mechanism for moving prisoners into the building or within the building during court proceedings makes our court facility, in my view, a disaster waiting to happen. I had hoped, as recently as 1995, that the buildings deficiencies could be cured through renovation. However, a careful study of thin option by the Marshals Service resulted in the conclusion that this would be "literally impossible without the expenditure of millions of dollars. Even then, it is not clear that the problem would be solved.

The dedication of scores of people in the Springfield facility, particularly the U.S. Marshals Service and their contract staff, has bought our operation time. This hard work, along with good luck, has kept tragedy at bay, but even the best efforts cannot compensate for thin building's deficiencies, and good luck does not last forever. I request your committee's assistance in authorizing the funds to permit, as promptly as possible, the commencement of the construction of a adequately secure Court facility for Springfield.

Again, I thank you and your committee for the opportunity JO peas on these comments.

Very truly yours,

MICHAEL A. PONSOR, *U.S. District Judge,*  
*U.S. Department of Justice.*

UNITED STATES MARSHALS SERVICE,  
May 23, 1995.

Mr. DAVID BIBB, *Deputy Commissioner,  
Public Buildings Service,  
General Services Administration,  
GSA Central Office Building,  
18th & F Streets, Northwest,  
Washington, DC 20405.*

DEAR MR. BIBB: The United States Marshals Service is actively supporting a new United States Courthouse in Springfield, Massachusetts—due to egregious safety and security conditions inconsistent with safe court proceedings in the current Springfield Federal Office Building and Courthouse.

Intelligence available to the Marshals Service indicates, the City of Springfield is confronted with gang-related crime that has threatened to overcome the local resources. In addition to Federal and State gang task forces, the Governor recently dispatched uniformed State Troopers to the city streets to assist the Springfield Police Department in dealing with the explosive gang situation. At many law enforcement meetings, Springfield is targeted as having the worst organized gang problems in Massachusetts. The State District Attorney has reported to the State legislature that witness intimidation is a daily occurrence in the Springfield State Courts. As Federal prosecutive priorities focus on gang activities, similar threats can be expected in the less secure Federal court in Springfield.

The Springfield business district immediately adjacent to the Federal building housing the courts has evolved into a series of barroom and seedy establishments frequented by vagrants and criminal elements. The building has inadequate security for this location generally and specifically for high security court proceedings. Only costly extensive and intensive deployments of manpower can bring a measure of perimeter security to this very vulnerable building.

Neither the United States Marshals Service nor the GSA Federal Protective Service has the manpower or the funding to increase manpower to the appropriate security level needed. The number of criminal trials in this courthouse have escalated due to the increase in crime in the area and the increase in members of the Federal judiciary. In order to keep pace with the alarming rise in crime a U.S. Marshals Service review was conducted recently.

The U.S. Marshals Service Headquarters Chief of Space Management and Senior Architect performed an initial prisoner movement and security review of this facility on October 11, 1994, due to problems associated with Prisoner movement and security.

The results of this site review by my staff are alarming. The following are just a few of the security deficiencies and problems that exist with securing this facility:

The Federal Building in Springfield, that also houses the Courts is a bifurcated largely glass structure—with a open atrium in the middle;

The building has multiple unsecured entrances and was not designed to restrict public movement. Over 20 Federal organizations are housed in this facility, many requiring unrestricted and special handicapped access to the public; such as the Veterans Administration clinic, Social Security, Internal Revenue Service, etc.;

The facility does not have a secure van sallyport that will accommodate our vans or mini bus for loading and unloading of prisoners, due to the building settling during construction 13 years ago;

There are no secure prisoner corridors on the upper floors of this Federal building leading to the Courtrooms. Dangerous prisoners are moved in public corridors in the presence of family, friends, witnesses, court personnel, and other Federal tenants;

There are inadequate secure prisoner/attorney interview rooms;

There are no courtroom holding cells for each courtroom. Prisoners must be transported to the central cellblock at every recess or break in court proceedings, through public or judiciary corridors;

The courthouse: does not have dedicated prisoner elevators or secure circulation systems;

The U.S. Marshals central cellblock has inadequate prisoner detention cells. The prisoner traffic in these facilities indicates the need for at least an additional 3 to 5 cells. The present cellblock configuration creates a dangerous situation that does not even allow for the proper segregation of prisoners—male, female, juvenile, isolation, multi-defendant, which is critical given the increased gang activity in this regional area;

The public counters to separate U.S. Marshals staff from the general public or possible intruders are inadequate and not bullet resistant.

The Current U.S. Marshals office, support and cellblock space, at this location is seriously deficient by at least 4-5,000 square feet with no workable contiguous space available for expansion.

The above are just a few of the major security concerns that we have for this facility. After completion of this physical review, the Senior Architect prepared three concept drawings to determine if this facility could be reconfigured to meet the needs of the Judiciary and the U.S. Marshals. After review of these concept drawings, we determined that prisoner movement problems could not be corrected to current standards, a van sallyport could not be added for secure movement of prisoners, and separate circulation systems could not be incorporated to prevent prisoners, the public and Judges from using the same corridors. We further determined that adding prisoner elevators with secured vestibules and corridors, to ensure the safe and secure movement of the U.S. Marshals prisoners from the cellblock to the Courtrooms, would be literally impossible unless the General Services Administration was willing to fund millions of dollars to install these elevators in the existing facility.

This review determined that the current Springfield Federal building should not house the Federal courts and that a courthouse that will meet the safety and security needs of the public, Judiciary and U.S. Marshals should be constructed. We strongly encourage you to support a prospectus and fund a new United States Courthouse facility in Springfield, Massachusetts. The longer the public, Judiciary, U.S. Marshals Service, and other building tenants continue to operate under these conditions, the greater the continued risk for incident and loss at life at this location.

If your staff needs additional information from the U.S. Marshals Service, please have them contact Dave Barnes, Chief, Space Management on (703) 603-7614.

Sincerely,

WENDELL C. SHINGLER, *Chief,*  
*Administrative Services Division.*

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ATTACHMENT D

CHAMBERS OF JUDGE MICHAEL PONSOR,  
UNITED STATES DISTRICT COURT,  
DISTRICT OF MASSACHUSETTS,  
*Springfield, MA 01103, April 3, 1997.*

P. GERALD THACKER, *Assistant Director,*  
*Administrative Office of the U.S. Courts*  
*One Columbus Circle NE, Suite 7-334*  
*Washington, DC 20544.*

DEAR JERRY: I'm not sure I have previously reported to you an ominous incident that occurred at the Springfield courthouse some time during the first week of January.

Upon return from the New Years holiday, I found what appeared to be two large bullet holes in two of the windows in my courtroom. A later investigation suggested that the holes may have been caused by a pellet gun, or sling shot, or possibly some sort of firearm. Fortunately, no one was in the courtroom at the time the incident occurred.

This is the second time that my courtroom windows have suffered damages as a result of something being fired or thrown from an adjacent parking garage.

The incident highlights the very onerous security deficiencies at the Springfield courthouse. These have already been noted in detail by the U.S. Marshal's Service. With upcoming high profile gang trials, the security deficits here are becoming a matter of increasing concern.

I happened to be speaking to Doug Woodlock the other day and he suggested that I write this letter to you for consideration in connection with the ongoing discussions of courthouse building projects.

Please call if you have any questions.

Best regards,

MICHAEL A. PONSOR,  
*U.S. District Judge.*

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STATEMENT OF JUDGE B. AVANT EDENFIELD

Members of the committee: Please let me express to you my personal appreciation for your kind invitation to appear before the committee today for the purpose of dis-

cussing the proposed courthouse annex project to be located in Savannah, Georgia. I have served as a member of the United States District Court for the Southern District of Georgia for nearly 20 years including one 7 year tenure as chief judge. During this entire time my duty station has been Savannah, Georgia. Savannah is a unique and historic city founded in 1733 by British General and philanthropist, James Edward Oglethorpe, as the first city in Georgia, the thirteenth British Colony in America. As an original colony, Georgia ultimately joined in the formation of the Union of States as one of the 13 original States.

By way of historic accident, good luck, and industrious efforts on the part of private individuals, much of the original downtown district of Savannah was preserved through the centuries and is now designated as a National Historic Landmark District, the largest such district in the United States. It is a city of immense beauty and charm. The city plan is unique in that the original layout of the city envisioned by Oglethorpe survives to this day. The most prominent feature of his city plan is a series of squares or open-air parks which stand astride alternating north-south thoroughfares in the city. These squares initially were envisioned as public gathering places or places to which the residents could withdraw in the event of hostile action by the Spanish or by Indians in the vicinity. Over the years the squares evolved into a series of over 20 oases in the central business district which have accommodated an active and vibrant downtown residential population in a central business district of superior livability.

The United States District Court for the Southern District of Georgia is currently housed in the United States Post Office and Courthouse Building which faces Wright Square, one of the squares laid out in the original plan established by Oglethorpe. More importantly the Courthouse sits on the very plot of ground which was designated by Oglethorpe from the inception of his plan for the city as the site of a courthouse. The Southern District of Georgia is one of the original 13 courts created by the Judiciary Act of 1789 and its location on this site is of great historic significance. The building in which the court is housed was completed in 1899 and is listed on the National Register of historic places. At one time the building housed all, or essentially all, of the offices and agencies of the United States in Savannah and Chatham County, including the United States Post Office, the United States District Court, the United States Attorney's Office, Probation Office, the Office of the Clerk of the Court, the United States Bankruptcy Court, offices of our two Senators and district Congressman, General Services Administration, the Department of Labor, and others. Because of growth over the years non-court related agencies have gradually been relocated into other space in the Savannah area. In May 1993, after gradual relocation of numerous non-court related agencies from this building, the United States Attorney's Office required expansion and was relocated to leased space in a nearby building. At present the building houses a United States postal facility, three United States District Judges, two United States District Courtrooms, one United States Magistrate with a courtroom and one United States Bankruptcy Judge with a courtroom, together with the offices of the clerks of these courts. Two visiting District Judges and one visiting Bankruptcy Judge also hear cases in the present building. The United States District Courtrooms are slightly smaller than the United States Court and Design Guide minimum requirement. The magistrate and bankruptcy courtrooms are significantly below the design standard for magistrate and bankruptcy judges. In short the present building is inadequate for even our present needs.

The Administrative Office of the United States Courts wishes to retain the current United States Courthouse building because of its historic significance and prominence in the heart of the Savannah Historic District located on one of the most visible and centrally located squares in the historic district. The desire to retain this location is shared by the City of Savannah, Chatham County, the Historic Savannah Foundation and other local historic and preservation groups and individuals.

The prospectus for this project proposes construction of a 165,000 square foot courthouse annex adjacent to the existing Federal building. The annex would provide 5 new courtrooms—2 district, 1 magistrate, and 2 bankruptcy—in addition to offices for the United States Marshal's Service, United States Attorneys, United States Probation Service, and the General Services Administration. This project came about as a result of the Long Range Facility Plan of the Administrative Office of the United States Courts and will meet the 10-year requirements of the courts and court related agencies. The entire complex—including the Annex, the existing Courthouse, and the adjacent Corps of Engineers building will meet the Courts' 30-year program needs.

Because of the desire to retain the existing Courthouse and place the Annex in a location so as to permit the two buildings to operate as a single facility, and because of the sensitive nature of construction in a national historic district, consider-

able effort has been devoted to the planning process. Great care has been taken to receive input from the community and from historic preservation interests, to be responsive to those concerns and to produce a project which would enhance and not diminish the authenticity of the historic district. This process has resulted in obtaining the favorable consideration of all the constituent groups with concern over how a project of this magnitude could affect the quality of the historic district.

Through the efforts of the design team, an annex has been designed which will be visually similar to and compatible with the existing building. The relationship between the Annex and the present Courthouse is illustrated on the coversheet to the materials which have been provided to you. Two renderings of this building are found at pages 1 and 2 of the material. This site was selected after a review of numerous alternative sites and was determined to be the single best location for the courthouse annex. Selection of this site and construction on it will, by necessity, require the demolition of two smaller Federal buildings constructed during the mid-1980's. A photograph of these buildings is at page 3. A map of the area and a summary of how this particular site was chosen begins at page 4 of the materials. The justification for demolition of the two adjoining Federal structures concluded as follows:

The buildings were completed in 1986 at a cost of approximately \$1.8 million (not including acquisition cost of the property). The current values of these two buildings is estimated to be approximately \$1.6 million. Critics of these buildings generally agree that the architecture is inappropriate for the National Historic Landmark District ("COULD"). The tiles on the exterior of the buildings have been described as unsuitable for the exterior of an important public building in the historic district of one of America's most beautiful cities. This sentiment reflects the opinion of the majority of the citizens of Savannah . . .

In addition to the programmatic benefits of selecting the annex site . . . the selection of this site will create the added benefits and savings associated with not having to purchase a new site. This is especially important in light of the fact that the other sites under consideration contain multiple parcels under different ownership; would have required extensive environmental and historical/archeological investigation; in many cases would have severely impacted, or possibly required, the demolition of existing historic structures; and would have resulted in significant expenses to relocate existing individuals or businesses. Anticipated savings resulting from not purchasing the next best site are approximately \$3.2 million.

To illustrate the incompatibility of the buildings scheduled for demolition with neighboring structures on Telfair Square, you may compare page 3 with pages 10, 11 and 12. The full text of this discussion concerning the demolition of two of the three adjoining Federal buildings is in your materials at pages 8 and 9. I believe that this decision creates a "win/win situation" in that two existing Federal buildings, which are inefficient in size and layout and which are visually inappropriate for their location, can be replaced by a structure that will be visually compatible with the neighborhood surrounding Telfair Square. The building will be a credit to the United States Government, will meet the programmatic needs of the Federal Judiciary in the Savannah Division of the Southern District for the foreseeable future, and will save taxpayers' dollars in the process.

Construction of a building that achieves this most desirable result and which enjoys the approval which it has received from the Savannah Historic District Board of Review which concluded that the building meets the historic district guidelines for height and mass and visual compatibility is an accomplishment of which I am most proud. I extend credit for this to all individuals and agencies involved, including, but not limited to, the Congress which has appropriated funds for site selection and design, the Administrative Office, the General Services Administration, local elected officials, business leaders and the historic preservation community. While I recognize that achieving this consensus has not been without its costs, as for example, to adhere to the requirement that the exterior building materials be matched as nearly as possible to those of the existing building, nevertheless I am convinced that the records of the General Services Administration and the Administrative Office will illustrate that the project has undergone extensive review to insure that the maximum value is received for the Federal Government's investment in the continued vitality and revitalization of the Savannah Historic District, and in furtherance of the space needs of our Court.

At this time if there are any questions of a specific nature I'll be delighted to respond.

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## STATEMENT OF AMBASSADOR A. PETER BURLEIGH

I appreciate the opportunity to appear before you this morning to discuss the Department of State's position on the proposed new building for the United States Mission to the United Nations.

The Department is actively committed to the efforts of the United Nations to grapple with the complex international concerns inherent in the post Cold War era. The USUN Mission is a vital and visible part of this effort. The Mission Building—built on land which was a gift from John D. Rockefeller, Jr.—constitutes the platform for United States activities, and is located in a prime location, at 799 United Nations Plaza in New York City, right across from the United Nations Building.

The existing USUN Mission Building was constructed on a 1/3 acre site in 1959. The present structure limits the net occupiable floor space. Its 39-year-old mechanical and electrical systems are in need of replacement to avoid potentially hazardous conditions. The age, cost to maintain and repair these systems, and lack of energy efficiency would necessitate costly replacement of the equipment in a building that no longer serves the U.S. Government needs.

In an effort to determine the best solution to this problem, the General Services Administration studied the building and our program needs. They determined that the building was in a sufficient state of disrepair that could hinder our ability to protect our people and the vital mission they perform. There was no acceptable means of renovating the structure, or adding on to it that would meet our current and future requirements.

In June 1997, GSA proposed that the existing building be demolished, and a new building be constructed on the same site, with the USUN staff relocated to nearby temporary leased space. The new building will maximize use of the site to provide additional space, while improving the net to gross occupiable square footage by 29 percent. The new USUN-Mission building will provide increased space (an anticipated yield of 107,000 occupiable square feet compared to the existing 46,000) that will give us desperately needed staff offices and special purpose and support space for meetings, conferences, the U.N. General Assembly and other diplomatic functions. It will enhance the physical security of the building and provide essential protection to the information we manage. I cannot overemphasize the importance of protecting information which is integral to the diplomatic negotiations process.

Due to the lack of space in the existing building, much of the special purpose space has been converted to office use, resulting in staff being displaced for meetings, events and for use by visiting dignitaries. In addition to meeting the USUN Mission needs, the proposed building would allow us to provide consolidated office space for staff of the United States Information Agency and the Department's Office of Foreign Missions, currently housed in separate leased buildings. The resulting rent savings will offset some of the increased annual charges for the new building.

As stewards of this asset, GSA recommended the demolition of the existing building and construction of a new, larger building. Our desire to remain at this site is a sign of the U.S. commitment to the United Nations and a valuable symbol of our leadership in that organization. The Department approved of GSA's proposal and seeks your support and funding of this essential project. GSA stands ready to proceed with the A&E design of the new building in FY99. We are exploring options to lease temporary space for the USUN Mission in mid-1999, with planned occupancy in January 2000. If all funding is provided and the schedules are not changed, we would take occupancy of the new USUN Mission Building in late 2003 or early 2004.

We are aware of the financial constraints in this budget environment and we continually strive to be good stewards of public funds. We believe this is the appropriate time to undertake this project and request your support of the GSA budget of approximately \$55 million. The Department of State will have additional costs for this project, related to construction security, above standard construction, telecommunications, and other associated modifications. Funding for these items will be requested through our normal appropriations process.

Let me close by stressing that, with the end of the Cold War, U.S. multi-lateral diplomacy has become more critical and demanding than ever before as we strive to ensure global peace. A state-of-the-art facility that provides enhanced security and telecommunications technology as well as additional space to accomplish our mission, is key to continued U.S. leadership in the United Nations in the new millennium.

Mr. Chairman, I appreciate the opportunity to discuss this project with you and would be pleased to respond to any questions that you or members of the committee may have.

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STATEMENT OF BERNARD H. BERNE, M.D., PH.D. ON THE FISCAL YEAR 1999 CAPITAL INVESTMENT AND LEASING PROGRAM OF THE GENERAL SERVICES ADMINISTRATION; THE FISCAL YEAR 1999 COURTHOUSE CONSTRUCTION REQUESTS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES; AND S. 2481, THE PUBLIC BUILDINGS REFORM ACT OF 1998

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

In 1995, Congress rescinded all construction funds for FDA's consolidated facility, which the General Services Administration (GSA) was planning to build in Clarksburg, Montgomery County, Maryland. Following this rescission, in 1997, GSA selected the former Naval Surface Warfare Center (NSWC) in White Oak, Montgomery County, Maryland, as its preferred alternative for the major FDA consolidation. GSA has no funds available to construct this facility.

White Oak is a very poor location for the FDA facility. Metrorail is three miles away. Area roads are highly congested. Public transportation to the NSWC is infrequent. No other major Federal facility is nearby.

GSA and FDA are planning a country club in White Oak's affluent suburbs. FDA's 130-acre campus will have a visitor center and other amenities. Adjacent Federal property will contain a golf course and a woodland. Congress must stop this extravaganza.

The Southeast Federal Center in Washington, DC is now available for a major Federal headquarters. Adjacent to a Metro station and close to the Capitol, this site appears ideal for FDA's facility. The site has sufficient planned density to accommodate all of FDA's space requirements.

Executive Orders 12072 and 13006 and the policies of the National Capital Planning Commission (NCPC) require that GSA and FDA give the Southeast Federal Center preference over the White Oak site. However, GSA often disregards these policies and Executive Orders 12072 and 13006 in urban areas throughout the United States.

Executive Orders 12072 and 13006 require Federal space and Federal use of space to serve to strengthen the nation's central cities, to make them attractive places to live and work, and to encourage their development and redevelopment. It is essential that Federal agencies, including GSA, comply with these Executive Orders in order to help revitalize economically depressed areas in all cities within the United States, including Washington, DC.

On February 17, 1998, your committee held a Field Hearing in Helena, Montana, on the Federal Public Building Leasing Process. At that hearing, officials of the Cities of Helena, Billings, and Butte, Montana and of the National Trust for Historic Preservation testified that GSA had disregarded the requirements of Executive Orders 12072 and 13006 by locating new courthouses and other Federal facilities outside of the central business areas of the central cities of Helena, Billings, and Butte, Montana, and Clarksburg, West Virginia.

GSA has similarly disregarded these Executive Orders when leasing and constructing numerous Federal buildings in the Washington, DC, area. The FDA consolidation is just one of these examples of such disregard in the National Capital Region.

I presently work in an FDA building that GSA leases in an unincorporated suburb outside of Rockville, Maryland. This building is not within any city. Its leasing was a clear violation of Executive Orders 12072, since GSA did not advertise for space in Washington, DC, before it signed the lease for this building 6 years ago.

Your committee needs to address this serious problem in the Washington, DC area. To help restore the District's economy, Congress needs to assure that GSA and other Federal agencies comply with Executive Orders 12072 and 13006 in the National Capital Region when it reviews individual projects that are included within GSA's Fiscal Year 1999 Capital Investment and Leasing Program.

Because past actions and requests by conference committees on Appropriations have encouraged GSA to evaluate sites for the FDA consolidation that are in Montgomery County, Maryland, GSA has not evaluated any sites in the District of Columbia for the FDA consolidation. This is improper, since no legislation presently exists that requires FDA to consolidate in Montgomery County, Maryland, or in any other specific location.

The legislation authorizing FDA's consolidation (P.L. 101-635) does not specify any location for the consolidated facility.

The only legal provisions that have ever required FDA to locate any such facility in Montgomery County were contained in appropriation laws that have now been superseded.

In 1995, Congress rescinded all funds previously appropriated to construct the Montgomery County facility. The rescission therefore removed any legislative requirement that FDA consolidate in that County or in any other specific location.

Congress has not appropriated any funds to support property acquisition or construction for FDA's major consolidated facility since the 1995 rescission. No FY-1998 legislation or FY-1999 appropriation bill designate any funds to acquire property for or to construct any FDA building.

GSA's Fiscal Year 1999 Capital Investment Program contains no proposal to fund any part of the FDA consolidation. Despite this, GSA is continuing to support and promote a consolidation of FDA at White Oak.

Your committee needs to apply its jurisdiction under the Public Buildings Act of 1959 (P.L. 86-249) to this project. You need to enforce Section 7 of the Public Buildings Act, which requires your committee to "insure the equitable distribution of public buildings throughout the United States".

To accomplish this goal, members of your committee must require that a prospectus be approved for the entire FDA consolidation before Congress appropriates any funds for GSA to acquire the White Oak site or to award contracts for any decontamination or construction on this or any other site of any new FDA facility.

Members of your committee must assure that appropriations legislation does not contain provisions that exempt the FDA consolidation from the prospectus requirement. Past appropriations legislation, which were later rescinded, have contained such provisions.

Your committee must also assure that Congress does not appropriate any funds to GSA for any FDA consolidated facility before your committee approves a prospectus for the project. Some people incorrectly believe that authorizing legislation for this project somehow permits GSA to construct this facility without receiving your committee's approval of a prospectus.

It is important for your committee to recognize that the project's authorizing legislation (P.L. 101-635) contains no provisions that exempt any FDA consolidated facility from the requirements of the Public Buildings Act of 1959.

P.L. 101-635 authorizes the Secretary of Health and Human Services to acquire and construct a single consolidated facility. It authorizes GSA to do nothing except to consult with the Secretary.

It is possible that Congress can appropriate funds to the Secretary of HHS to build this facility in the absence of a prospectus. However, the project clearly requires prospectus approval before Congress can appropriate funds to GSA to begin construction.

Your committee has requested GSA to provide an 11(b) report to your committee for this project. To the best of my knowledge, GSA has not yet submitted this request. GSA is, however, now preparing to submit to Congress a "business plan" to support the funding of a public-private partnership that will construct and operate an FDA consolidation at White Oak.

The 11(b) report and/or "business plan" should contain all of the elements required for a prospectus. Your committee needs to treat the 11(b) report and/or business plan as a prospectus.

Your committee should allow public witnesses to testify on the 11(b) report and/or business plan. To assure compliance with the Public Buildings Act, your committee should vote on a resolution that considers the 11(b) report and/or business plan to be a prospectus and that proposes its approval or disapproval.

Your committee needs to assure that no funds are ever again appropriated in a manner that would allow GSA to construct this facility before your committee approves a prospectus.

In a related matter, GSA has informed the National Capital Planning Commission that it plans to begin construction in 1998 on an administrative and laboratory facility for FDA's Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM) in College Park, Prince George's County, Maryland.

The CFSAN/CVM facility will not be a component of the major FDA consolidated facility. It is therefore not authorized by the FDA Revitalization Act. Despite this, GSA has stated that this project is fully funded.

GSA is not correct. The FY-1996 Treasury Appropriations Act appropriated funds for an FDA facility in Prince George's County, Maryland. GSA plans to use these funds for the CFSAN/CVM project.

However, the Appropriations Act contained a provision that limited GSA's use of these funds to the preparation of a proposed prospectus for the project. Despite this

provision, GSA intends to use these funds for site acquisition and construction in the near future.

GSA has never submitted a prospectus for the Prince George's County CFSAN/CVM facility, and your committee has never approved one. This facility, which is not authorized by any legislation, would relocate about 800 FDA employees from downtown Washington, DC, to College Park, Maryland. Further, its construction would be inconsistent with the FDA Revitalization Act, which authorized only a single FDA consolidated facility.

A GSA official has informed me that GSA has submitted an 11(b) report to your committee that describes the College Park project. Your committee needs to consider this as a prospectus.

Your committee needs to take immediate action to prevent GSA from expending funds from the FY-1996 Treasury appropriation to construct this project and inform GSA that it cannot begin construction unless your committee approves a prospectus and GSA subsequently receives a new appropriation for the project. GSA apparently intends to violate the law and to use these funds in the absence of an approved prospectus. This will be a misuse of appropriated funds.

GSA and other agencies often evade their responsibilities to submit a prospectus as required by the Public Buildings Act by claiming that authorizing legislation, such as the FDA Revitalization Act, exempts them from the Public Buildings Act. I therefore request that you amend S. 2481 to eliminate such exemptions.

I ask the Committee on Transportation and Infrastructure to take the following actions:

1. Please oppose any future appropriation of funds for GSA to decontaminate, prepare, or acquire any site for any part of the FDA consolidation until your committee has approved a prospectus for the entire consolidation in accordance with the provisions of the Public Buildings Act of 1959 and assures that GSA and FDA consolidate FDA in only one facility.

2. Please amend S. 2481, the Public Buildings Reform Act of 1998, to prevent any appropriation and utilization of funds for the construction and acquisition of any public buildings (such as for the FDA consolidation) unless the projects fulfill all of the requirements of the Public Buildings Act of 1959. My statement below contains suggested bill language for such an amendment.

3. Please take actions that will assure that GSA will fully comply with Executive Orders 12072 and 13006 in all projects that will be funded by GSA's Fiscal Year 1999 Capital Investment and Leasing Programs throughout the United States and in various courthouse projects that may be contained within the Fiscal Year 1999 Courthouse Construction Requests of the Judicial Conference of the United States;

The above Executive Orders and NCPC regional policies presently require GSA to give preference for the FDA consolidation to a site in the District of Columbia, such as the Southeast Federal Center, rather than to sites in suburban Montgomery and Prince George's Counties, Maryland. The Executive Orders further require GSA and FDA to economize on their space requirements to assure compliance with their provisions. GSA is not presently doing this for the FDA consolidation and for many other projects in the Washington, DC Metropolitan Area.

4. Please consider GSA's 11(b) report and/or business plan on the FDA consolidation to be a prospectus, invite non-governmental public witnesses to testify on the report and/or business plan and take a vote on a resolution to approve or disapprove a project prospectus.

5. Please oppose any future appropriation of funds to support an FDA consolidation at the White Oak Naval Surface Warfare Center in Montgomery County, Maryland.

6. When Congress considers the FY-2000 appropriations to GSA, please ask the Treasury Subcommittee of the Senate Committee on Appropriations to appropriate \$4,000,000 to GSA's Federal Buildings Fund for the study of a major FDA consolidation in the District of Columbia, with an initial focus on the Southeast Federal Center and its vicinity.

7. Please ask GSA or the General Accounting Office to appraise the value of the White Oak site and to estimate the revenues that the Government can gain from a sale of the site. Such a sale can add additional resources to the Federal Buildings Fund and can help support the FY-1999 GSA Capital Investment and Leasing Programs.

8. Please take action to prevent GSA from expending Federal funds to construct FDA's CFSAN/CVM facility in College Park, Prince George's County, Maryland, until your committee has considered a resolution for approval or disapproval of a prospectus for the project and until Congress has appropriated funds following any approval of the prospectus. Please consider GSA's 11(b) report on the College Park

CFSAN/CFM project to be a prospectus, hold a public hearing concerning the report, and invite non-governmental witnesses to testify at the hearing.

#### EXPLANATION OF REQUESTS

1. Please oppose any future appropriation of funds for GSA to decontaminate, prepare, or acquire any site for any part of the FDA consolidation until your committee has approved a prospectus for the entire consolidation in accordance with the provisions of the Public Buildings Act of 1959.

The Public Buildings Act of 1959 requires the approval of a prospectus for all major GSA building projects before funds can be appropriated for construction and site acquisition.

Provisions in the 1992, 1993 and 1995 Treasury, Postal Service, and General Government Appropriations Acts (P.L. 102-141, P.L. 102-393, and P.L. 103-329) permitted GSA to use the funds made available in those Acts for the FDA consolidation and for certain other projects, even though no prospectuses for these projects had been approved. These provisions released GSA from its obligation to comply with the Public Buildings Act of 1959 when planning the early phases of the FDA consolidation.

However, the 1995 Rescission Act (P.L. 104-19) rescinded all construction and site acquisition funds for the Montgomery County, Maryland, phase of the FDA consolidation. Further, Congress did not appropriate sufficient funds in the appropriations acts prior to 1995 to allow GSA to complete FDA's CFSAN/CVM facility in Prince Georges County. Therefore, these provisions no longer affect the major FDA consolidation and the Prince George's County facility.

Members of your committee must assure that such provisions do not appear in any future Appropriations Acts. Such provisions make a mockery of the Public Buildings Act.

To the credit of Congress, the 1996 and 1997 Treasury Appropriations Acts (P.L. 104-52 and P.L. 104-208) contained no such exemptions. Provisions in these laws state that any appropriated funds shall not be available for the construction, repair, alteration, and acquisition of any large public buildings project if your committee had not approved a prospectus for the project before the Acts had taken effect. Members of your committee should assure that the FY-1999 Treasury Appropriations Act contains this provision.

In 1995, members of the House of Representatives debated the need for a prospectus for the FDA consolidation project when the 1996 Treasury, Postal Service, and General Government Appropriations bill came to the floor of the House (Congressional Record, July 19, 1995, p. H7200-H7206). Some members of Congress appear to believe that the consolidation's authorizing legislation (P.L. 101-635) may exempt the consolidation from the prospectus requirement.

This belief is incorrect. The FDA Revitalization Act (P.L. 101-635), which authorized the consolidation, contains no provision which exempts the project from the Federal Buildings Act.

Further, P.L. 101-635 amended the Federal Food, Drug, and Cosmetics Act. Because of this, P.L. 101-635 specifically authorized the Secretary of Health and Human Services (HHS) to acquire and construct the consolidated facility and to enter into contracts for such activities. P.L. 101-635 did not authorize the GSA Administrator to take any action on the project except to consult with the HHS Secretary.

Despite the language of P.L. 101-635, Treasury, Postal Services and General Government Appropriations Acts have in the past made funds available to the GSA's Federal Buildings Fund for the FDA consolidation. For this reason, GSA, and not HHS, is planning to conduct the consolidation.

However, P.L. 101-635 does not authorize the Administrator of GSA to construct any of FDA's consolidated facilities. GSA can only construct FDA's facility if your committee approves a project prospectus before Congress appropriates construction funds to GSA.

The project cannot be exempt from the prospectus requirements of the Public Buildings Act unless Congress appropriates funds to HHS to construct the facility or unless Congress specifically exempts a GSA appropriation from the requirements of the Public Buildings Act.

Members of your committee must oppose the enactment of any bills which appropriate funds for the FDA consolidation or for any other major project if your committee has not yet approved a prospectus for the project. Such bills give GSA blank checks to construct costly pork barrel projects without adequate oversight by your committee. They defeat the purpose of the Public Buildings Act of 1959.

Your committee needs to assure proper planning, site selection, and Congressional oversight of the FDA consolidation as required by the Public Buildings Act of 1959. Members of your committee should oppose any appropriations for any phase of the FDA consolidation until your committee has approved a prospectus that describes all phases of the FDA consolidation.

This prospectus needs to contain plans to consolidate all of FDA's components, including CFSAN and CVM, into a single facility at a single location. Such a project will comply with the FDA Revitalization Act (P.L. 101-635). GSA's present plans are not in compliance with this Act.

2. Please amend S. 2481, the Public Buildings Reform Act of 1998, to prevent any appropriation and utilization of funds for the construction and acquisition of any public buildings (such as for the FDA consolidation) unless the projects fulfill all of the requirements of the Public Buildings Act of 1959. My statement below contains suggested bill language for such an amendment.

Section 7(a) of the Public Buildings Act, as amended, requires the Administrator of the General Services Administration (GSA) to transmit a prospectus of each proposed project to Congress before Congress appropriates more than \$500,000 to construct or acquire Federal buildings.

However, Congress has appropriated funds to the Federal Buildings Fund for the FDA consolidation and for other building construction projects on a number of occasions without receiving any such prospectus. This practice needs to be stopped.

Avoidance of the requirements of the Public Buildings Act of 1959 permits Congress to appropriate funds for "pork barrel" projects without proper oversight and control and without distributing public building construction projects equitably throughout the United States. This is poor management. It produces conditions that are unfair to taxpayers in many areas throughout the nation.

Congress must properly manage the process used to appropriate funds for the construction of Federal buildings. Further, it must assure that such building projects are equitably distributed throughout the nation and in compliance with Federal Executive Orders, Federal regulations, and regional Federal policies, such as those developed by NCPC.

Despite the provisions of the Public Buildings Act, in certain instances, Congress appropriates large amounts of Federal funds for building construction projects that lack an approved prospectus. Congress has done this even where specific authorizing legislation, such as that for the FDA consolidation, contains no provision that exempts the project from the Public Buildings Act of 1959. This appears improper.

Section 2 of the Public Buildings Act requires the GSA Administrator to construct buildings "in accordance with this Act". Section 7(a) of the Act states that ". . . no appropriation shall be made to construct any public building" unless the requirements of the Section are met. However, Congress does not always follow this mandate when enacting Appropriations legislation.

Congress needs to use S. 2481, the Public Buildings Reform Act of 1998, to clarify the law to eliminate such legislative inconsistencies, to reduce ambiguity, and to promote good property management. The appropriation process for the FDA consolidation project provides an excellent example of the need for such a clarification.

I therefore request that your subcommittee and committee amend S. 2481, the Public Buildings Reform Act of 1998, so that it contains an amendment to Section 7 of the Public Buildings Act of 1959 (P.L. 86-249; 73 STAT. 478)(40 U.S.C. §606) that will add a new paragraph (e) that states:

"(e) Notwithstanding the enactment of any Act which authorizes the construction of any public building or the acquisition of any building to be used as a public building, all appropriations made for such purposes shall be made in accordance with the provisions of this section, unless such authorizing Act provides otherwise."

I further request that your subcommittee and committee amend S. 2481, the Public Buildings Reform Act of 1998, so that it contains an amendment to Section 210(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. §490(f)) (Federal Buildings Fund), that will add a new paragraph (f)(7) that states:

"(7) No moneys deposited into the fund shall be used for the construction of any public building or for the acquisition of any building to be used as a public building unless such funds have been appropriated in accordance with the provisions of Section 7 of the Public Buildings Act of 1959, as amended."

3. Please take actions that will assure that GSA will fully comply with Executive Orders 12072 and 13006 in all projects that will be funded by GSA's Fiscal Year 1999 Capital Investment and Leasing Programs throughout the United States and in various courthouse projects that may be contained within the Fiscal Year 1999 Courthouse Construction Requests of the Judicial Conference of the United States;

The above Executive Orders and NCPC regional policies presently require GSA to give preference for the FDA consolidation to a site in the District of Columbia, such as the Southeast Federal Center, rather than to sites in suburban Montgomery and Prince George's Counties, Maryland. The Executive Orders further require GSA and FDA to economize on their space requirements to assure compliance with their provisions. GSA is not presently doing this for the FDA consolidation and for many other projects in the Washington, DC Metropolitan Area.

It is the responsibility of your committee when reviewing prospectuses to assure that the projects are being conducted in accordance with all applicable laws and policies. To do this, you must assure that no funds are appropriated for any major project before a prospectus is approved.

Executive Orders 12072 and 13006 and the policies of the National Capital Planning Commission (NCPC) require that GSA and FDA give the Southeast Federal Center preference over the White Oak site. However, GSA often disregards these policies and Executive Orders 12072 and 13006 in urban areas throughout the United States.

Executive Orders 12072 and 13006 require Federal space and Federal use of space to serve to strengthen the nation's central cities, to make them attractive places to live and work, and to encourage their development and redevelopment. It is essential that Federal agencies, including GSA, comply with these Executive Orders in order to help revitalize economically depressed areas in all cities within the United States, including Washington, DC.

On February 17, 1998, your committee held a Field Hearing in Helena, Montana, on the Federal Public Building Leasing Process. At that hearing, officials of the Cities of Helena, Billings, and Butte, Montana and of the National Trust for Historic Preservation testified that GSA had disregarded the requirements of Executive Orders 12072 and 13006 by locating new courthouses and other Federal facilities outside of the central business areas of the central cities of Helena, Billings, and Butte, Montana, and Clarksburg, West Virginia.

GSA has similarly disregarded these Executive Orders when leasing and constructing numerous Federal buildings in the Washington, DC area. The FDA consolidation is just one of these examples of such disregard in the National Capital Region.

I presently work in an FDA building that GSA leases in an unincorporated suburb outside of Rockville, Maryland. This building is not within any city. Its leasing was a clear violation of Executive Orders 12072, since GSA did not advertise for space in Washington, DC, before it signed the lease for this building 6 years ago.

Your committee needs to address this serious problem in the Washington, DC area. To help restore the District's economy, Congress needs to assure that GSA and other Federal agencies comply with Executive Orders 12072 and 13006 in the National Capital Region when it reviews individual projects that are included within GSA's Fiscal Year 1999 Capital Investment and Leasing Program.

I am explaining the specific laws, Executive Orders, regulations and policies that apply to the FDA consolidation below.

4. Please consider GSA's 11(b) report and/or business plan on the FDA consolidation to be a prospectus, invite non-governmental public witnesses to testify on the report and/or business plan and take a vote on a resolution to approve or disapprove a project prospectus.

On September 27, 1996, the Committee on Transportation and Infrastructure of the U.S. House of Representatives passed a resolution pursuant to Section 11(b) of the Public Buildings Act of 1959 (P.L. 86-249) that requested GSA to provide report to Congress that will describe GSA's plans for the FDA consolidation. To the best of my knowledge, GSA has not yet submitted such a report for the White Oak project.

The 11(b) report and/or business plan should contain all of the elements required for a prospectus. Your committee needs to treat the 11(b) report as a prospectus. Your committee should invite public witnesses to testify on the issues raised in the report and should vote on a resolution to approve or disapprove GSA's proposal.

As noted above, the purpose of the prospectus is to allow your committee to assure the equitable distribution of public buildings throughout the United States. GSA is proposing to relocate over 800 Federal employees out of the District of Columbia at a time that DC is losing many Federal employees and Federal agencies.

Your committee needs to consider whether these relocations "assure the equitable distribution of public buildings" when it receives the 11(b) report. Your committee also needs to assure that adequate public transportation will be available to the site and that the project will comply with all provisions of the Public Buildings Act of 1959, as amended.

5. Please oppose any future appropriation of funds to support an FDA consolidation at the White Oak Naval Surface Warfare Center in Montgomery County, Maryland.

The present need for this project is questionable. The CFSAN/CVM buildings in Prince George's County will house those FDA Centers that now contain most or all of the FDA offices and laboratories that are reported to be in poor facilities.

Many FDA offices, including my own, are in excellent buildings. None of my coworkers complain about their present offices. Nevertheless, we would all relocate to the Montgomery County consolidated facility.

My coworkers and I rarely need to visit other FDA centers while reviewing medical device applications. The need to consolidate seems small.

White Oak is three miles from the closest Metrorail station. In contrast, FDA's largest office building is presently only half a mile from a Metro station. FDA will lose many experienced employees if it moves to White Oak.

The Naval Surface Warfare Center is in an affluent suburban residential neighborhood. The White Oak area does not require Federal aid to support its development.

The Congressional Concurrent Resolution on the Budget for Fiscal Year 1996–2002 assumes a 30 percent reduction in funds for Federal Buildings construction in its seven year plan to balance the Federal budget (Conference Report for H. Con. Res. 67: H. Rept. 104–59, June 26, 1995, p. 84). House and Senate Committees on Appropriations need to address this programmed reduction in discretionary spending.

President William J. Clinton urged Congress to further reduce spending on Federal building projects when he vetoed the first 1995 rescission bill (H.R. 1158). The President still does not appear to support costly Federal construction projects, as he has not included any funds for the FDA consolidation in his FY-1999 budget request.

There is no urgent need for a major FDA consolidation. Congress needs to implement its Budget Resolution and the President's policies by appropriating no new FY-1999 funds for FDA's Montgomery consolidation. It should, instead, appropriate a small amount of funds for GSA to study the feasibility of consolidating FDA at the Southeast Federal Center.

6. When Congress considers the FY-2000 appropriations to GSA, please ask the Treasury Subcommittee of the Senate Committee on Appropriations to appropriate \$4,000,000 to GSA's Federal Buildings Fund for the study of a major FDA consolidation in the District of Columbia, with an initial focus on the Southeast Federal Center and its vicinity.

Rescissions in P.L. 104–19 and P.L. 104–52 removed most or all of the funding for site preparation and construction at the Southeast Federal Center. GSA's FY-1999 Capital Investment Program and pending appropriations legislation propose that \$10,000,000 be made available for site remediation at the Federal Center. This Federal property is therefore available for the FDA consolidation.

The Southeast Federal Center is adjacent to the Washington, DC, Navy Yard. It is next to the Navy Yard Metro Station and is only a mile from the Capitol building.

GSA officials have refused my repeated requests to evaluate the Southeast Federal Center site as an alternative site for the consolidation. It appears that GSA will only consider this site if Congress appropriates funds for a study of an FDA consolidation at this site.

Without such an appropriation, GSA will continue to promote the division of FDA into separate facilities at White Oak and College Park. This will remove Federal workers from the District of Columbia and will place most at a suburban location (White Oak) that is miles away from Metrorail and from any city.

FDA did not evaluate any sites other than the White Oak NSWC when it issued its Final Environmental Impact Statement (FEIS) for the project. GSA's FEIS supported a selection of NSWC for the consolidation without evaluating any sites in Washington, DC Only Congress or a Federal court can change GSA's direction.

A National Capital Planning Commission (NCPC) plan has designated the Southeast Federal Center as an important site for new offices. NCPC expects this new economic development to "assist the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively urban waterfront of offices, restaurants, shops and marinas" ("Extending the Legacy", Plan for Washington's Monumental Core, NCPC, March 1996).

The goal of NCPC's plan is to preserve and enhance Washington's Monumental Core, which is centered at the U.S. Capitol building. An FDA consolidation at the Southeast Federal Center can revitalize a decaying DC neighborhood and help achieve NCPC's goal.

The Southeast Federal Center and its nearby depressed commercial area can hold buildings up to 14 stories high. A comparison of GSA's approved site plans for the Southeast Federal Center and of FDA's space requirements indicates that the Southeast Federal Center can accommodate the entire FDA consolidated facility, and can include the CFSAN and CVM components that GSA is planning to relocate to College Park.

The legislation that initiated the FDA consolidation (P.L. 101-635) authorizes only a single consolidated FDA administrative and laboratory facility. Indeed, Senate Report No. 101-242 (Feb. 1, 1990), which accompanied the authorizing legislation, states, "the FDA needs to be consolidated in a building." P.L. 101-635 did not anticipate or authorize a 130-acre FDA campus and two satellite facilities.

FDA does not require a 130-acre campus for its consolidation. Large high-rise buildings can readily house most or all of FDA's offices, laboratories, and ancillary facilities.

Cities throughout the Nation contain many such research and office centers. Over 2000 National Institutes of Health (NIH) research laboratories are located in a single 14-story building that the government constructed in 1981 in Bethesda, Maryland. A single 18-story building in Rockville, Maryland, now houses many of FDA's offices, including the Office of the Commissioner.

Congress and the Secretary of Health and Human Services (HHS) can efficiently oversee FDA's activities if FDA consolidates at the Southeast Federal Center. The Southeast Federal Center is close to both Maryland and Virginia. An FDA consolidation there will enhance the economies of three jurisdictions (DC, Maryland, and Virginia). In contrast, a consolidation at White Oak would benefit Maryland at the expense of the District and Virginia.

The median annual household income in the White Oak residential neighborhood exceeds affluent Montgomery County's median at \$65,000. Southeast Washington's median household income is much lower. Federally supported economic development is far more critical to Southeast DC than to White Oak.

Please recommend a survey of other sites in the District if GSA finds that FDA cannot feasibly consolidate at and near the Southeast Federal Center.

A redirection of planning funds to study sites in the District would place the project in compliance with Executive Orders Nos. 12072 and 13006. It would also be consistent with the purposes of the National Capital Planning Act of 1952 and the policies and recommendations that NCPC has developed to implement it.

Executive Order No. 12072 and its implementing regulations direct the locations of Federal facilities in urban areas, including the National Capital Region. They require Federal agencies to locate and use their space and facilities so that the facilities "shall serve to strengthen the Nation's cities" and "shall conserve existing urban resources, and encourage the development and redevelopment of cities."

President Clinton's Executive Order 13006, May 21, 1996, (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities) reaffirmed and extended Executive Order 12072, by stating:

"Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our nation's cities by encouraging the location of Federal facilities in our central cities."

The Executive Orders require GSA and FDA officials to "economize in their requirements for space". They require Federal agencies in urban areas, such as the Washington Metropolitan Area, to strengthen the nation's cities and to encourage the locations of such agencies in the urban areas' central cities, such as Washington, DC. The Orders discourage or prohibit the location of Federal facilities in outlying cities such as College Park and in unincorporated areas such as White Oak.

41 CFR 101-17.5 states in paragraph (h), ". . . these policies shall be applied in the National Capital Region in conjunction with regional policies on development and distribution of Federal employment in the National Capital Region established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1952, as amended".

GSA and FDA have long disregarded the Executive Order and NCPC's regional policies and recommendations when planning, leasing and constructing Federal buildings in the National Capital Region. To help resolve DC's financial crisis, Congress needs to correct this.

A long-standing NCPC policy presently encourages government agencies to redistribute Federal jobs in the National Capital Region. This redistribution is long overdue. Congress needs to address this in the Federal buildings appropriations process.

The redistribution would implement NCPC policies and recommendations that NCPC has developed in compliance with National Capital Planning Act. It would reverse recent trends and correct a growing imbalance of Federal employment in the National Capital Region.

In its Proposed Federal Capital Improvements Program (PFCIP), National Capital Region, Fiscal Years 1997-2001 (April, 1996)(p.9), NCPC reports that the District of Columbia will lose 889 Federal employees as a result of the FDA consolidation project. This would accelerate a continuing transfer of Federal employment from the District to the Maryland and Virginia suburbs.

According to NCPC's PFCIP (p. 10), the District's percentage of the total Federal employment in the National Capital Region has declined from 58.0 percent in 1969 to 52.4 percent in 1994.

Because of this trend, NCPC's PFCIP (p. 12) has a final recommendation that states, "The Commission encourages each agency to adhere to the policy in the Federal Employment element of the Comprehensive Plan adopted in 1983 which specifies that the historic relative distribution of Federal employment of approximately 60 percent in the District of Columbia, and 40 percent elsewhere in the Region should continue during the next two decades. This policy is used by the Commission to ensure the retention of the historic concentration of Federal employment in the District of Columbia, the seat of the national government."

A major FDA facility at the Southeast Federal Center is consistent with Executive Orders 12072 and 13006, their implementing regulations, and with NCPC policies and recommendations. A facility at White Oak is inconsistent with all of these.

FDA now plans to move about 800 Federal employees in its Center for Food and Applied Nutrition (CFSAN) from the District of Columbia to a new facility in College Park, Prince George's County, Maryland. To reverse the accelerating decline of the nation's capital city, Congress must mitigate such relocations by directing the major FDA consolidation to the District of Columbia by appropriating funds for GSA and FDA to consider the Southeast Federal Center as a site for the FDA consolidation.

7. Please ask GSA or the General Accounting Office to appraise the value of the White Oak site and to estimate the revenues that the Government can gain from a sale of the site. Such a sale can add additional resources to the Federal Buildings Fund and can help support the FY-1999 GSA Capital Investment and Leasing Programs.

Congress needs to receive an appraisal of the value of the former White Oak Naval Surface Warfare Center (NSWC), which GSA now controls. This could prepare the government for a sale of part or all of NSWC. It could also help Congress evaluate the real cost of an FDA consolidation at White Oak.

A sale would support the original purpose of the base closure. Many taxpayers expect such closures to help to balance the Federal budget rather than to make a base available for a costly new Federal facility.

GSA could contribute the proceeds from such a sale to the Federal Buildings Fund. Such proceeds could help resolve the shortfall in the Fund or could help support the redevelopment of the Southeast Federal Center for FDA or for another Federal agency.

8. Please take action to prevent GSA from expending Federal funds to construct FDA's CFSAN/CVM facility in College Park, Prince George's County, Maryland, until your committee has considered a resolution for approval or disapproval of a prospectus for the project and until Congress has appropriated funds following any approval of the prospectus. Please consider GSA's 11(b) report on the College Park project to be a prospectus, hold a public hearing concerning the report, and invite non-governmental witnesses to testify at the hearing.

The Treasury, Postal Service and General Government Appropriations Act, 1996 (P.L. 104-52) provided \$55,000,000 for GSA to develop an FDA facility in Prince Georges County, Maryland. GSA is planning use these funds to begin construction of this facility in College Park, Maryland, within the next few months.

However, no legislation has authorized construction of this facility at this time. The CFSAN/CVM facility is not a part of the major FDA consolidation authorized by P.L. 101-635.

P.L. 104-52 contains a provision that states:

"Provided further, That funds available to the General Services Administration shall not be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus."

A GSA official has informed me that GSA has submitted report to Congress under Section 11(b) of the Public Buildings Act of 1959 that describes the College Park CFSAN/CVM project. However, neither your committee nor the Committee on Transportation and Infrastructure of the U.S. House of Representatives have ever approved a prospectus for the project.

GSA can therefore only use the funds appropriated in P.L. 104-52 to develop a proposed prospectus for the project. GSA cannot legally use these funds to construct the facility or to acquire property for it.

Despite this restriction, GSA informed NCPC in a letter dated September 25, 1997, that the agency planned to begin excavation of the project's building foundations shortly after November 6, 1997. GSA's September 29, 1997, Schematic Site and Building Plan Submission to NCPC stated that the project is fully funded based on an all inclusive project budget of \$84,000,000. In a letter to NCPC dated January 5, 1998, GSA stated that its goal is to start the concrete foundations of the building on April 1, 1998, and to finalize the construction documents for the superstructure award scheduled for September, 1998.

GSA's statement that the project is fully funded in the amount of \$84,000,000 is incorrect. While some funds may be available from appropriations made prior to 1996, the agency cannot use any of the \$55,000,000 appropriated in P.L. 104-52 for construction purposes.

It is apparent that GSA incorrectly believes that this project is fully funded. However, your committee has not approved a prospectus for the project. Therefore, the \$55,000,000 is not available to help cover the \$84,000,000 project's cost.

Because the project is not part of the major FDA consolidation, the FDA Revitalization Act does not authorize it. This Act authorizes a only a single consolidated facility, and further authorizes the Secretary of HHS (and not the Administrator of GSA, to construct the facility.

The College Park project would remove 800 FDA employees from downtown Washington, DC, without your committee's approval. The project will separate CFSAN and CVM from the remaining FDA components, since these will consolidate in another location.

Additionally, the College Park project is inconsistent with the FDA Revitalization Act (P.L. 101-635), which authorizes only a single FDA consolidated facility. The College Park project will clearly decrease FDA's future efficiency.

Your committee needs to take action and investigate this matter immediately. GSA will be misappropriating Federal funds if it uses any funds from P.L. 105-52 to construct the CFSAN/CVM facility. Your committee needs to act to prevent this violation of Federal law before GSA begins construction or awards the construction contracts that its letters to NCPC describe.

Please therefore consider the 11(b) report to be a prospectus, hold a public hearing concerning the report, invite non-governmental witnesses to testify at the hearing, and take a vote on a resolution to approve or to disapprove the prospectus.

#### ADDITIONAL INFORMATION

The following observations further support my requests:

1. The government long ago designated its Southeast Federal Center as a site for a new Federal facility. However, nothing has been built there yet. An FDA facility would stimulate the revitalization of this DC area.

2. As noted above, the National Capital Planning Commission's new 1996 plan for Washington's Monumental Core states in the category of Economic Development, "Assist the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively urban waterfront of offices, restaurants, shops and marinas".

An FDA consolidation at the Center would help implement this Plan. The government could rent space in the ground floors of FDA's office buildings to operators of shops and restaurants.

3. Unlike White Oak, the Southeast Federal Center is near a Metro station. Development at this site would encourage the use of Metrorail. This would increase the use of the area's financially troubled public transit system and reduce air pollution and traffic congestion.

If the consolidation occurs at the Southeast Federal Center, many more FDA workers will likely choose to use Metrorail than presently do. This would benefit the Washington Metropolitan Transit Authority (WMATA) and local, State, and Federal governments.

In contrast, an FDA facility at White Oak would encourage the use of private automobiles. The roads near White Oak are already highly congested.

The sections of I-95 and the Capital Beltway that serve White Oak rank among the most congested highways in the National Capital Region. They are the sites of frequent accidents and traffic jams.

The White Oak area is principally residential. For this reason, few buses run from Metro stations to the White Oak Naval Surface Warfare Center in the morning and from it in the afternoon. Thus, most FDA employees would find it difficult to use public transportation to commute to and from work at White Oak.

New public transportation routes are costly. There can be no assurance that bus service will improve if FDA moves to White Oak.

If FDA consolidates at White Oak, WMATA will lose revenues from FDA employees who now use Metrorail and Metrobuses on a daily basis. Local, State and Federal governments will have to pay for this, since WMATA is heavily subsidized.

4. White Oak's distance from Metrorail and from the core of the National Capital Region will induce many employees to work at home under FLEXIPLACE. This will defeat the purpose of the consolidation.

5. The Southeast Federal Center is in a decaying urban commercial area that is in great need of the economic development that the FDA consolidation would bring.

Southeast Washington is one of the most economically distressed areas of the nation's capital city. As is well known, the District of Columbia is itself in great need of economic development.

According to a table in the March 1996 DEIS (p. 3-55), the District of Columbia had in 1994 the lowest average household income (\$30,727) of nine jurisdictions in the Washington, DC, Metropolitan Area.

In contrast, the White Oak site is in an affluent residential neighborhood that is not in great need of economic development. According to a March 29, 1996, Maryland-National Capital Park and Planning Commission staff report on the White Oak DEIS, the neighborhood's median household income exceeds the median income for Montgomery County at \$65,000 per year.

According to the Washington Post (April 3, 1996), the White Oak neighborhood already boasts a community swimming pool, tennis courts, and four tot lots. A map in the March 1996 DEIS shows that a neighborhood community center abuts the Naval Surface Warfare Center near the FDA site. The FDA consolidation would add a federally-owned golf course to these amenities.

The DEIS (p. 3-55) states that Montgomery County, Maryland, had in 1994 the second highest average household income (\$64,596) of nine listed Washington, DC Metropolitan Area jurisdictions. Montgomery County therefore does not appear to be in great need of large Federal employment centers that might otherwise be located in the District of Columbia.

There is a great economic contrast between Southeast Washington and White Oak. Federal development would serve a far better purpose at the Southeast Federal Center than it would at White Oak.

6. FDA can place its laboratories and offices in compact and efficient 14-story buildings at the Southeast Federal Center. In contrast, its buildings at White Oak would be only five to six stories high.

FDA's present headquarters are in a 18 story office building (the Parklawn Building in Rockville, MD). The Office of the Commissioner of Food and Drugs is in this building, which is half a mile from the Twinbrook Metro station.

The National Institutes of Health has a 14 story research laboratory building that was built in 1981 at its Warren Magnuson Clinical Center in Bethesda, Maryland. The National Cancer Institute has some of its nationally-renowned laboratories in the 13th floor of this building, which, according to an NIH brochure, holds 2000 separate laboratories.

It is therefore likely that FDA can consolidate its laboratories and offices in buildings up to 14 stories high in the Southeast Federal Center. If needed, GSA can purchase additional property nearby at low cost. Neighboring properties do not appear to be in good condition.

7. The Navy Yard Metrorail Station is on Metro's Green Line. The station is only three stops from Maryland's Southern Avenue Metrorail station and only two stops from Virginia's Pentagon Station. An FDA facility at the Southeast Federal Center will therefore benefit the economies of both Maryland and Virginia, as well as the District.

In contrast, an FDA facility at White Oak would benefit only Maryland. It is too far DC and from Virginia to provide any economic benefits to either of these jurisdictions. Instead, it would draw Federal employees and associated businesses away from Virginia and DC.

8. An FDA consolidation at suburban White Oak would violate former President Jimmy Carter's Executive Order No. 12072, 43 F.R. 36869, Aug. 16, 1978. The Executive Order requires Federal facilities and Federal use of space in urban areas to

serve to "strengthen the Nation's cities". It also orders Federal agencies to "economize on their use of space".

The Executive Order also mandates that the process for meeting Federal space needs in urban areas (such as the National Capital Region) "shall give first consideration to a centralized community business area and adjacent areas of similar character." The small White Oak commercial area is not within any city and is not within any centralized business district. Further, GSA is planning to construct FDA's facility in an area of the NSWC that is distant from the White Oak commercial area.

As noted above, Executive Order 13006 encourages Federal agencies to locate their facilities in central cities. Therefore, to be consistent with this Order, FDA should be consolidating in the Southeast Federal Center or at another site within Washington, DC.

The Executive Orders have provisions that make them especially applicable when the neighborhood of a potential urban site (Southeast Washington) is economically depressed while the suburban site is affluent, and when the urban site is adequately served by public transportation, while the suburban site is not. Because of its residential suburban location, the White Oak site is served only infrequently by buses that run from Metrorail stations in the morning and to the stations in the afternoon.

Appropriations legislation only makes funds available for Federal construction in a specified location. Appropriations laws should not supersede Executive Orders that require preference to be given to a different location.

FDA must therefore economize on its space requirements to a great enough extent to allow it to consolidate at the Southeast Federal Center, rather than at suburban White Oak. Congress should not support the appropriation of funds if such an appropriation would encourage GSA to violate the Executive Orders.

9. The March 1995 DEIS discusses a Federal report to the Secretary of HHS (Final Report of the Advisory Committee on the Food and Drug Administration, May 15, 1991) that assessed the need for new FDA facilities. According to the DEIS (p. 1-8), the Committee summarized its chapter on resources by recommending, "The FDA must now begin to correct the most urgent of its facility needs, particularly for food and veterinary medicine laboratories and field operations."

It is noteworthy that FDA is now planning to relocate its food and veterinary medicine laboratories to new facilities in Prince George's County, Maryland. Facilities for field operations would not be improved by an FDA headquarters consolidation. According to documentation cited in the DEIS, the FDA offices and centers that FDA plans to move to White Oak do not appear to be in great need of new facilities at this time.

While some FDA facilities may need renovation or replacement, many do not. Senate Report 101-242, which supports the consolidation, cites only one example of a facility that is antiquated. This is a laboratory in CFSAN, which FDA plans to relocate to Prince George's County and not to Montgomery County.

FDA and GSA officials may describe to you certain existing buildings that are inadequate. These descriptions may be correct; however, my personal observations indicate that the conditions of such buildings are not representative of most buildings that FDA now occupies.

One FDA laboratory building that may need repair is on the NIH campus in Bethesda, Maryland. This is a laboratory of the Center for Biologics Evaluation and Research (CBER), which would be relocated to White Oak. However, this building is owned by the Federal government.

The government will have to fund the CBER lab's renovation even if FDA leaves it. Further, if FDA leaves this facility, its personnel will lose valuable personal interactions with world-renowned personnel who work for NIH. They will also lose the ability to use valuable and unique NIH equipment. The government will gain nothing from this move.

Some of the CBER laboratories have recently moved into a new building on the NIH campus. Thus, even within CBER, not all laboratories are in poor condition.

In contrast to some FDA laboratories, many of the office buildings used by FDA are in good or excellent condition. Some are in leased buildings that are quite new. Some even contain amenities such as large atriums with palm trees.

Such superb facilities can be observed at the Center for Devices and Radiological Health (CDRH) offices at 9200 Corporate Blvd. in Rockville. Other excellent CDRH office facilities are located at 1350 Piccard Drive and 2094 and 2098 Gaither Road in Rockville. Still others can be seen at the offices of other Centers in the Metropark North buildings on Crabbs Branch Road in Rockville.

The adequacy of the CDRH office facilities is documented in an Interoffice Memorandum sent by Electronic Mail dated 01-Feb-1995, from Connie J. Wilhelm-Miller,

of the CDRH Office of Management Services, Division of Resource Management. This memo, whose primary subject is Smoking Policy (smokers were putting burns in the floors and walls of new buildings), states that "most of CDRH's office space is fairly new". My personal observations confirm the accuracy of this statement.

A Conference Committee Report (House Report 102-234) that supported the 1992 Appropriations legislation (P.L. 102-141) stated that there is no disagreement that FDA facilities are antiquated, inefficient and overcrowded. This is simply incorrect. It overstates a problem that is being experienced by only a small portion of FDA.

House and Senate Reports supporting the consolidation state that FDA's antiquated facilities are causing recruitment and retention problems. However, this is only true at very few places, and perhaps only in the CFSSAN laboratory that is relocating to Prince George's County.

I know of no FDA building housing an office or laboratory that will move to the White Oak campus that is in such disrepair that people will not work in it. Some buildings may need improvement, but none are that bad.

Most FDA workers work only in offices. Many of these are in fairly new buildings that are in good condition, such as the one in which I work. There is little reason to expect that many of these employees will be happier in a new facility at White Oak.

Limited replacement of facilities with local consolidations where needed may well be desirable. However, a massive consolidation of Montgomery County facilities is not.

10. FDA facilities are presently dispersed. However, this does not create great inefficiencies. Many FDA offices with related functions, such as those in CDRH in Rockville, are consolidated in buildings within one or two miles of each other. A large number are in and near a single building (the Parklawn Building) near the Twinbrook Metro Station in Rockville, MD.

Although there are a number of functions that involve different offices in different centers, most functions are carried out within one Center. More importantly, few interoffice functions require more than occasional face-to-face interactions which necessitate travel.

In addition, travel times between existing Centers that will consolidate in the Montgomery County campus not great. All are connected by Rockville Pike and I-270. The average trip between offices is probably less than 1/2 hour.

It is important not to overrate the need for consolidated facilities.

The U.S. Armed Forces won the Second World War operating from bases and headquarters throughout the U.S. and in much of the rest of the world. Only a tiny percentage of defense workers and military personnel were located in any single facility. Decentralized agencies can and do often work at least as efficiently as those that are consolidated.

Further, the great majority of product approvals require decision-making within only a single building. It is only unusual decisions that require conferences in separate buildings. Only a tiny minority require conferences among offices in widely scattered facilities.

Most FDA personnel therefore have no need to travel between different centers or offices on a regular basis. The need for consolidation is not great, despite the statements made in Congressional Committee Reports.

A number of present FDA centers are located near Metro stations, such as Medical Center, Shady Grove, and Twinbrook. The large Parklawn Building is an example of this. Many employees can therefore now travel quickly and easily from one Center to another, as well as to meetings at NIH and in downtown DC.

In contrast, White Oak is 3 miles from Metrorail. Few, if any, people will take Metro to commute or to go to meetings at NIH or in DC.

Most communications occur today by phone and by electronic mail. Electronic networks allow documents to be transmitted to anyone with a receiver. Indeed, many FDA personnel now regularly work at home using FLEXIPLACE. Using home computer modems, they can connect with FDA computer networks to perform most necessary functions.

The need for a costly consolidation is not great. It cannot be expected to greatly increase FDA's efficiency. By causing experienced workers to leave the agency, it may actually decrease FDA's effectiveness.

11. Congress should only appropriate funds for a consolidated FDA facility if the consolidation would help increase the use of mass transportation or would aid in the redevelopment of a depressed urban center such as Southeast Washington, DC. It is environmentally and economically unsound for Congress to fund the construction of a new facility at White Oak that is far from an urban center.

12. Most FDA employees need to work only at a single location. The approval of new drugs and medical devices usually takes place within a single FDA Center. A

major FDA consolidation, if it occurs, will primarily benefit a small cadre of FDA managers who often travel between centers and who are promoting the consolidation.

In actuality, a major consolidation is not likely to benefit many FDA employees. It is even less likely that a consolidation will significantly speed the approval of new drugs and medical devices.

13. During President George Bush's term in office, the Office of Management and Budget (OMB) opposed funding of the FDA consolidation because it was not worth the cost. The Administration considered it more cost/effective to renovate facilities as needed.

It was a Congressional Appropriations conference committee that first proposed the appropriation of funds for the FDA consolidation (Conference Report for P.L. 102-141; House Report 102-234, Oct. 3, 1991). The Conferees directed FDA, GSA, HHS, and OMB to work together to submit a funding plan for the project and urged OMB and the President to support the Conferees' concept of the "consolidation".

The Conferees introduced the concept of building separate FDA facilities in Prince George's and Montgomery County. They recommended the appropriation of \$200,000,000 in the Federal Buildings Fund to begin the process of dismantling the single-site consolidation that the FDA Revitalization Act (P.L. 101-635) had previously authorized.

P.L. 101-635 had amended the Federal Food, Drugs and Cosmetics Act. It had authorized the Secretary of HHS (not the Administrator of GSA) to construct a single consolidated FDA facility.

Despite this authorization, the Conferees recommended the appropriations of funds from the Federal Buildings Fund for the GSA Administrator to use to construct two FDA facilities in separate counties located in the State of Maryland. The Conferees also recommended that the appropriation for the FDA facilities be exempt from prospectus requirements of the Public Buildings Act of 1959.

Appropriations Conference Committees have therefore undermined the FDA Revitalization Act, the Public Buildings Act of 1959, Executive Order No. 12072, 41 CFR 101-17.000 et seq., and the National Capital Planning Act of 1952. They have made it difficult for government officials to follow procedures that assure compliance with Congressional oversight legislation and site selection requirements in the National Capital Region and elsewhere.

These Conference Committees have endorsed the appropriations of funds for more than one FDA "consolidated" facility, have designated the GSA Administrator (rather than the Secretary of HHS) as the planner and builder of the facilities. They have also allowed GSA to construct buildings without a prospectus.

Appropriations conferees have recommended that FDA build a campus rather than consolidate in a single building. Additionally, they have caused FDA to transfer Federal jobs out of the financially distressed District of Columbia and into more prosperous Maryland counties and neighborhoods.

This is not good planning. It is pork barrel politics at its worst. Congress must correct itself.

14. Senate Report No. 101-242, Feb. 1, 1990, which supported the FDA Revitalization Act (P.L. 101-635) estimated that the cost of the consolidation would approximate \$500,000,000.

FDA and GSA now estimate the total cost of the consolidation to be at least \$600,000,000. This would create a cost overrun exceeding the original \$500,000,000 estimate by \$100,000,000.

15. Despite the 1995 rescission of funds for the Clarksburg facility, FDA's and GSA's facility engineers continue to plan for a large FDA campus. They do not wish to seriously economize in the agency's use of space.

By creating unnecessarily large requirements for space, they are evading their responsibilities to consider locating the consolidated facility in a compact site in a central city. One such site is now available at the Southeast Federal Center.

Unless Congress intervenes as it did in 1995, GSA and FDA will likely violate major provisions of Executive Order No. 12072 and the National Capital Planning Act of 1952. As noted above, these now dictate a preference for the Southeast Federal Center.

16. Some reports on FDA have suggested that certain FDA facilities are overcrowded. This may no longer be true.

GSA has recently leased a number of new buildings for FDA. Overcrowding is therefore not as acute as it was several years ago.

17. The DEIS contains no information on the number of buildings that FDA will reuse at White Oak. FDA will not be able to use many of the existing buildings because they are contaminated, deteriorated, of unsatisfactory conformation, and poor-

ly located. FDA will clearly need to build a number of costly structures at White Oak.

18. Some of the planned excess capacity at the 130 acre White Oak facility is desired for future expansion. However, this amounts to nothing more than speculation.

Expectations of FDA expansions may well be unrealistic. FDA has not grown significantly in recent years, except in a few specific areas. Further, regulatory agencies often do not grow over long periods of time when there is an anti-regulatory climate, when there are budgetary problems, or when there are pressures to privatize Federal functions.

FDA's major growth occurred years ago in response to obvious and important needs. FDA can now meet most of these needs without any further growth. Although many agencies try to justify their own expansion, FDA may never be able to significantly increase its size or number of employees.

A compact site such as the Southeast Federal Center is more consistent with proposed FDA reform legislation than is a 130 acre site at White Oak. This reinforces the need for Congress to direct a study of the Southeast Federal Center.

19. Because FDA would acquire more land at White Oak than it presently needs, it will surely press for additional funding to construct more buildings in the future. This will increase future government expenditures.

As the FDA campus adds buildings at White Oak in the future, it will increase the urbanization of its surrounding residential neighborhood. This will eventually exceed the limits imposed by current zoning and land use plans and will create local controversies.

Bernard H. Berne, M.D., Ph.D.

#### ATTACHMENTS

##### *List of Attachments*

1. Draft Environmental Impact Statement for FDA Consolidation, Montgomery County (GSA, March 1996): Plan for 130 acre FDA campus at White Oak Naval Surface Warfare Center and golf course on adjacent Federal property.

2. Washington Post (April 3, 1996): Description of White Oak residential community amenities, including a swimming pool, tennis courts, five tot lots, and luxury apartments featuring individual washers, dryers, ceiling fans, and microwaves in kitchen.

3. Plan for Washington's Monumental Core ("Extending the Legacy," National Capital Planning Commission, March 1996): Plan to preserve, revitalize and extend Monumental Core of nation's capital. Includes recommendation for economic development to assist the transformation of the Southeast Federal Center into a lively waterfront of offices, restaurants, shops and marinas.

4. Executive Order No. 12072: Federal Space Management (President Jimmy Carter, Aug. 16, 1978; 43 F.R. 36869, U.S.C.A. 40 Sec. 490): Executive Order stating that the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and similar adjacent areas in the central city of the urban area, and requiring that the heads of Executive agencies shall economize on their use of space.

5. Executive Order 13006: Locating Federal Facilities on Historic Properties in our Nation's Central Cities (President William J. Clinton, May 21, 1996; Federal Register, Vol. 61, No. 102, May 24, 1996, pp. 26071-26072): Executive Order reaffirming the Administration's commitment to Executive Order 12072 and encouraging the location of Federal facilities in central cities.

6. Proposed Federal Capital Improvements Program, National Capital Region, Fiscal Years 1997-2001 (April 3, 1996): Illustration of percentage in District of Columbia of Federal employment in the National Capital Region declining from 58.0 percent in 1969 to 52.4 percent in 1994.

Illustration shows that Maryland's Federal employment has risen and DC's has fallen since 1969.

Program contains NCPC recommendation that agencies adhere to policy in Comprehensive Plan of 1983 which specifies that historic distribution of Federal employment in the National Capital Region of approximately 60 percent in DC and 40 percent elsewhere in Region should continue during next two decades.

7. Your Guide to the Clinical Center, National Institutes of Health, Bethesda, Maryland (Brochure distributed by National Institutes of Health, 1995): A description of the 14-story Warren Grant Magnuson Clinical Center, which houses more than 2000 NIH laboratories. The building opened in 1981.

8. The Food and Drug Administration Revitalization Act (P.L. 101-635, Nov. 30, 1996): The authorizing legislation for that authorized the Secretary of Health and Human Services to enter into contracts to design, construct and operate a single

consolidated FDA administrative and laboratory facility. The GSA Administrator was only authorized to consult with the Secretary of HHS.

9. Public Buildings Act of 1959 (P.L. 85-249, Sept. 9, 1959): The Public Buildings Act requires the GSA Administrator to transmit a prospectus for large building projects to Congress. Sec. 7 states that approval of the prospectus is required "in order to insure the equitable distribution of public buildings throughout the United States."

10. P.L. 104-19 (Rescissions Act, 1995). The 1995 Act that rescinded \$228,000,000 of the funds previously appropriated for the Montgomery County, Maryland, FDA consolidation. The Act rescinded all construction funds for the facility.

11. P.L. 104-52 (Treasury, Postal Services, and General Government Appropriations Act, 1996). The 1996 Act that appropriated \$55,000,000 for an FDA facility in Prince George's County, Maryland, restricted to the development of a proposed prospectus for the project in accordance with Public Buildings Act of 1959. The funds cannot be used for construction purposes because of this restriction.

12. Letter from GSA to National Capital Planning Commission concerning FDA's CFSAN/CVM Facility, College Park, Prince Georges County, Maryland, Sept. 25, 1997. Letter states that excavation of building foundations will begin shortly after Nov. 6, 1997.

13. Schematic Site and Building Plan Submission, CFSAN/CVM Facility, College Park, Prince Georges County, Maryland. Presented by GSA to National Capital Planning Commission, Sept. 29, 1997. Plan states that FDA's CFSAN/CVM facility is fully funded by GSA, that foundation will be excavated and constructed in 1977 and early 1998, and that work on building will be initiated in the fall of 1998.

14. "Clinton Proposes Package to Stimulate DC Economy" (David A. Vise), Washington Post, March 12, 1997, p. A1. Report of President Clinton's statement that, to stimulate DC's economy, he had directed his Cabinet secretaries to help the District of Columbia, beginning with keeping Federal agencies in the city.

15. "Keeping Federal Jobs in the District" (Letter to the Editor, Bernard H. Berne), Washington Post, July 14, 1997, p. A18. Letter to editor supporting consolidation of FDA at Southeast Federal Center.

#### ATTACHMENT 1

DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR FDA CONSOLIDATION, 1MONTGOMERY COUNTY, GENERAL SERVICES ADMINISTRATION, MARCH 1996

Plan for 130-acre FDA campus at White Oak Naval Surface Warfare Center and golf course on adjacent Federal property.

#### ATTACHMENT 2

WASHINGTON POST ADVERTISEMENT. APRIL 3, 1996

Description of White Oak Residential Community amenities, including a swimming pool, tennis courts, five tot lots, and luxury apartments featuring individual washers, dryers, ceiling fans, and microwaves in kitchen.

#### ATTACHMENT 3

PLAN FOR WASHINGTON'S MONUMENTAL CORE "EXTENDING THE LEGACY", NATIONAL CAPITAL PLANNING COMMISSION

MARCH 1996

Plan to preserve, revitalize and extend Monumental Core of nation's capital. Includes recommendation for economic development to assist the transformation of the Southeast Federal Center into a lively waterfront of offices, restaurants, shops and marinas.

#### ATTACHMENT 4

EXECUTIVE ORDER 12072: FEDERAL SPACE MANAGEMENT, PRESIDENT JIMMY CARTER, AUG. 16, 1978, 43 F.R. 36869; 40 U.S.C. §490; 3 CFR, 1979 COMP., P. 213

Executive Order stating that the process for meeting Federal space needs in urban areas shall serve to strengthen the Nation's cities, shall give first consideration to a centralized community business area and adjacent areas of similar character, and that the heads of Executive agencies shall economize on their use of space.

## ATTACHMENT 5

EXECUTIVE ORDER 13006: LOCATING FEDERAL FACILITIES ON HISTORIC, PROPERTIES IN OUR NATION'S CENTRAL CITIES, PRESIDENT WILLIAM J. CLINTON, MAY 21, 1996, FEDERAL REGISTER VOL. 61, NO. 102, MAY 24, 1996, PP. 26071-72)

Executive Order reaffirming the Administration's commitment to Executive Order 12072, defining the improvement of "central cities" as the purpose of Executive Order 12072, and encouraging the location of Federal facilities in historic buildings in central cities.

## ATTACHMENT 6

PROPOSED FEDERAL CAPITAL IMPROVEMENTS PROGRAM NATIONAL CAPITAL REGION, FISCAL YEARS 1997-2001, APRIL 3, 1996

Illustration of declining percentage in District of Columbia of Federal employment in the National Capital Region declining from 58.0 percent in 1969 to 52.4 percent in 1994.

Illustration shows that Maryland's Federal employment has risen and DC's has fallen since 1969.

Program contains NCPC recommendation that agencies adhere to policy in Comprehensive Plan of 1983 which specifies that historic distribution of Federal employment in the National Capital Region of approximately 60 percent in DC and 40 percent elsewhere in Region should continue during next two decades.

## ATTACHMENT 7

YOUR GUIDE TO THE CLINICAL CENTER, NATIONAL INSTITUTES OF HEALTH, BETHESDA, MARYLAND, DISTRIBUTED IN 1995

A description of the 14-story Warren Grant Magnuson Clinical Center, which houses more than 2000 NIH laboratories. The building opened in 1981.

## ATTACHMENT 8

THE FOOD AND DRUG ADMINISTRATION REVITALIZATION ACT, P.L. 101-635, NOVEMBER 30, 1990

The authorizing legislation for that authorized the Secretary of Health and Human Services to enter into contracts to design, construct and operate a single consolidated FDA administrative and laboratory facility. The GSA Administrator was only authorized to consult with the Secretary of HHS.

## ATTACHMENT 9

PUBLIC BUILDINGS ACT OF 1959, P.L. 85-249, SEPTEMBER 9, 1959

The Public Buildings Act requires the GSA Administrator to transmit a prospectus for large building projects to Congress. Sec. 7 states that approval of the prospectus is required "in order to insure the equitable distribution of public buildings throughout the United States."

## ATTACHMENT 10

RESCISSIONS ACT, 1995, P.L. 104-19 (109 STAT. 194), JULY 27, 1995

1995 Act that rescinded \$228,000,000 of the funds previously appropriated for the Montgomery County, Maryland, FDA consolidation.

## ATTACHMENT 11

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1996, P.L. 104-52 (109 STAT. 468), NOVEMBER 19, 1995

1996 Act that appropriated \$55,000,000 for an FDA facility in Prince George's County, Maryland, restricted to the development of a proposed prospectus for the project in accordance with Public Buildings Act of 1959.

ATTACHMENT 12

LETTER FROM GSA TO NATIONAL CAPITAL PLANNING COMMISSION CONCERNING FDA'S CFSAN/CVM FACILITY, COLLEGE PARK, PRINCE GEORGES COUNTY, MARYLAND, SEPT. 25, 1997

Letter states that excavation of building foundations will begin shortly after Nov. 6, 1997.

ATTACHMENT 13

SCHEMATIC SITE AND BUILDING PLAN SUBMISSION, CFSAN/CVM FACILITY, COLLEGE PARK, PRINCE GEORGES COUNTY, MARYLAND, PRESENTED BY GSA TO NATIONAL CAPITAL PLANNING COMMISSION, SEPT. 29, 1997

Plan states that FDA's CFSAN/CVM facility is fully funded by GSA, that foundation will be excavated and constructed in 1977 and early 1998, and that work on building will be initiated in the fall of 1998.

ATTACHMENT 14

"CLINTON PROPOSES PACKAGE TO STIMULATE DC ECONOMY", DAVID A. VICE, WASHINGTON POST, MARCH 12, 1997

Report of President Clinton's statement that, to stimulate DC's economy, he had directed his Cabinet secretaries to help the District of Columbia, beginning with keeping Federal agencies in the city.

ATTACHMENT 15

"KEEPING FEDERAL JOBS IN THE DISTRICT", LETTER TO THE EDITOR, BERNARD H. BERNE, WASHINGTON POST, JULY 14, 1997, P. A18.

Letter to editor supporting consolidation of FDA at Southeast Federal Center.

