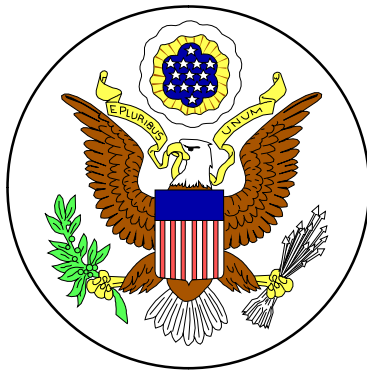


**JUDICIAL CONFERENCE OF THE UNITED STATES**

**STATEMENT OF**

**JUDGE MICHAEL A. PONSOR  
CHAIRMAN, COMMITTEE ON SPACE AND FACILITIES**



**BEFORE**

**THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**ON**

**“GAO REVIEW: ARE ADDITIONAL FEDERAL COURTHOUSES  
JUSTIFIED?”**

**APRIL 17, 2013**

*(Includes corrections made on May 22, 2013)*

Good morning, Mr. Chairman and members of the Committee. I am Michael A. Ponsor, a District Judge of the United States District Court in Massachusetts, and Chair of the Judicial Conference's Committee on Space and Facilities. I appreciate the opportunity to appear before the Committee today to discuss the April 2013 Government Accountability Office (GAO) report on the Judiciary's capital planning process. My comments will address two points. First, I will summarize the process by which the Judiciary manages its courthouse construction program in coordination with the General Services Administration (GSA). Second, I will try to convey to you how wasteful, unfair, and dangerous the implementation of one of the GAO's suggestions would be to the districts that currently have a courthouse construction project on the Judiciary's *Five-Year Courthouse Construction Plan (Five-Year Plan)*.

Before addressing these points, however, I want to extend the Judiciary's appreciation to this Committee for the courthouses that have been authorized and built over the years, including the courthouse in Springfield, where I work. These buildings are examples of secure, dignified, and efficient facilities that allow the Judiciary to perform its mission for the people of this country: the administration of justice in a safe and well-functioning physical environment.

As you know, much has changed in the way the Judiciary plans for space since you were Chairman of the Subcommittee on Economic Development, Public Buildings, and Emergency Management during the 109<sup>th</sup> Congress. In pursuit of its goal to reduce courthouse costs, the Judiciary implemented your suggestion that courtroom-sharing policies be adopted for senior district judges, magistrate judges, and bankruptcy judges. Another important change is the adoption of a GAO suggestion contained in its 2010 report *FEDERAL COURTHOUSE CONSTRUCTION: Better Planning, Oversight, and Courtroom Sharing Needed to Address*

*Future Costs*, that we not include in our courthouse planning space for projected new judgeships that have not actually been approved by the Judicial Conference of the United States. These changes have already resulted in a reduction in the number of courtrooms being designed in projects on the *Five-Year Plan*.

### **The Judiciary's Courthouse Planning Process**

The Judiciary was one of the first entities in government to establish a systematic and objective approach to identify and prioritize space and facilities needs. We have continued to improve and refine this process with an openness to suggestions and recommendations made by outside entities, including those made by this committee, those made by the GAO, and those contained in guidance that embodies applicable elements of leading industry practice, including OMB Circular No. A-11 (2011) titled *CAPITAL PROGRAMMING GUIDE: Supplement to Office of Management and Budget Circular A-11: Planning, Budgeting, and Acquisition of Capital Assets*.

In 1988, the Judicial Conference of the United States (JCUS) directed each of the 94 federal district courts to develop a long-range facilities plan to document space needs within each district. The Space and Facilities Division of the Administrative Office of the U.S. Courts (AOUSC) supported the districts in these planning efforts. The original long-range facilities planning program developed from this directive. The mission of the program was to assess the short- and long-term housing needs of each court. This assessment was performed by evaluating space shortages, security deficiencies, general facility condition, and future space needs for each court unit. These assessments and projections were published by each district in the form of a long-range facilities plan.

The Judiciary's long-range facilities planning process progressed through three distinct phases as it evolved into the current Asset Management Planning (AMP) Process. This evolution was based on the need for cost-containment in the Judiciary's space planning, and in part on recommendations made by the GAO. The first phase began in 1988 and lasted through 1995. During this phase, on-site workshops were conducted in each of the 94 federal district courts. The workshops were facilitated by AOUSC personnel and consultants under the direction of the district clerk of court. This resulted in a completed long-range facilities plan for each district.

The second phase extended from 1995 to 2001, during which time, the original long-range facilities plans were updated. By incorporating suggested changes made by GAO to the judiciary's long-range facilities planning process, this phase employed more rigorous statistical methods to analyze the growth trends presented by each court. Typically, planning workbooks containing court-related background and personnel and caseload statistics were sent to a district, feedback was provided to the AOUSC and discussed with the court, and an updated long-range facilities plan was produced for the court's final approval.

Beginning in FY 2001, the long-range planning process evolved into a third phase. This phase was designed to capitalize on the strengths of the prior phases: the on-site visits, the team approach, and the detailed facility assessments from the first phase, and the rigorous analytical approach from the second phase. The primary difference between the second and third phases was that the plans not only focused on identifying major new repair and alteration projects, but they also considered whether or not there was a need for a potential new courthouse construction project.

## **The Judiciary's Planning Process 2006 to Present**

The third phase of the planning process described above was halted in 2004 when the JCUS imposed a moratorium on all new space projects due to federal budget constraints. Between 2004 and 2006, the current AMP Process was developed, along with its formalized planning guidelines called the *AMP Business Rules*, which explored various housing solutions in a location, including building a new courthouse or renovation of an existing building. The process included: 1) the Facility Benefits Assessment (FBA) with 328 factors to measure a court's operational needs; 2) the FBA scoring methodology; and 3) the Urgency Evaluation rankings, updated annually and identifying space needs sequenced by degree of urgency. The AMP Process, *AMP Business Rules*, FBA factors and weights, and Urgency Evaluation methodology were all approved by the JCUS in 2008, and the first plans utilizing the new process were begun that same year.

The two processes – AMP and the earlier long-range planning approach – are virtually identical in substance and end result. The process subsequent to completion of a long-range facilities plan is also very similar: the JCUS requests that the GSA complete a feasibility study to further identify, analyze, and provide cost-estimates for options; the feasibility study concludes with a project recommendation; and, the JCUS must approve the feasibility study and placement of the resulting project on the *Five-Year Plan*.

The absence of any essential difference between the two planning protocols strongly supports the position of the JCUS that the current *Five-Year Plan* requires no re-consideration. Indeed, re-analysis of projects already justified through the long-range planning approach, by a time consuming overlay of the very similar AMP Process, would be a waste of taxpayer funds

and generate further delays for districts awaiting crucial new courthouse projects. The *Five-Year Plan* should remain in place, with new qualifying projects added to it as GSA Feasibility Studies are funded, completed, and approved by the JCUS.

### **Comparison of Outcomes for Projects Assessed Under Both Processes**

The table at Attachment 1 provides a comparison of the two processes and their key elements. It clearly shows that both are comprehensive and objective in their approach. Furthermore, the differences between the two are insignificant in terms of outcomes related to identification of needs.

To date, all U.S. district courts have been assessed under either the current AMP Process or the previous long-range planning process, including districts with projects on the current *Five-Year Plan*. Four of the 12 projects<sup>1</sup> on the current *Five-Year Plan* have been assessed using both the AMP and the previous process. I will now talk about four specific examples where project locations were assessed under both the previous long-range planning process and the current AMP Process with similar results.

By way of example, two projects – Chattanooga, Tennessee and Des Moines, Iowa – were placed on the *Five-Year Plan* by the JCUS as a result of assessments completed using the current AMP Process. They were also previously assessed using the earlier process. When they were recommended for completion of a GSA feasibility study, they were respectively ranked Number 1 and Number 3 among all locations on the Urgency Evaluation list with an AMP-recommended

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<sup>1</sup> The 12 projects on the current *Five-Year Plan* are: Mobile, AL; Nashville, TN; Savannah, GA; San Antonio, TX; Charlotte, NC; Greenville, SC; Harrisburg, PA; Norfolk, VA; Anniston, AL; Toledo, OH; Chattanooga, TN; and, Des Moines, IA. The current *Five-Year Plan* covers only four years; due to budget constraints, no new projects have been added since 2010.

housing strategy involving new construction.<sup>2</sup>

When Chattanooga was assessed using the older scoring methodology its score was 73.9. When Des Moines was originally assessed, its score was 58.5. In looking at the current *Five-Year Plan*, projects have scores that range from 54.4 on the low end, to 67.3 on the high end. Des Moines' original score of 58.5 is well within that range and Chattanooga's score actually exceeds it. The bottom line is this – under either scoring process, both Des Moines and Chattanooga qualify for placement on the *Five-Year Plan*.

Two more test examples are found among the other ten projects placed on the plan by the JCUS based on assessments performed using the previous planning process. The two locations – San Antonio, Texas (Western District of Texas), and Anniston, Alabama (the Northern District of Alabama) – have also been studied as part of new long-range facilities plans developed for their district using the AMP Process. Of particular significance is that even today – 15 years after its original placement on the *Five-Year Plan* – the San Antonio project ranks Number 2 among all projects on the current Urgency Evaluation list with an AMP-recommended housing strategy involving new construction. Anniston, Alabama, which has been on the *Five-Year Plan* for 14 years based on the prior process, ranks Number 5 on the current Urgency Evaluation list.

The four examples above demonstrate that the two scoring methodologies produce substantially identical assessments of space need urgency. The outcomes of this comparison for courthouses located in Des Moines, Chattanooga, San Antonio, and Anniston all conclusively

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<sup>2</sup> Number 2 was Greenbelt, MD, which was already on the *Five-Year Plan*; but has since been removed because the court's space needs changed and another tenant moved from the building, allowing reconfiguration of the existing structure and negating the need for new construction.

demonstrate the absence of any need to engage in further time-consuming, expensive urgency assessments for courthouse projects currently on the *Five-Year Plan*.

### **The Roles of the Judiciary and the GSA**

It is troubling that throughout the course of this engagement, the GAO has failed to understand the purpose of the Judiciary's *Five-Year Plan*, confusing it with what is known among facilities planning professionals as a long-term capital investment plan. The result is a GAO draft report recommendation that appears to suggest that the Judiciary should develop its own long-term capital investment plan, essentially replicating work already completed by the GSA. Furthermore, in multiple instances the GAO report erroneously states that the Judiciary uses the *Five-Year Plan* as a means to "document" and "transmit" courthouse construction project requests to the Congress, implying that the Judiciary utilizes the *Five-Year Plan* as a long-term capital investment plan, and that as a result, the process lacks transparency and omits key information. The GAO report appears to posit that the only information Congress receives prior to making a courthouse funding decision is the Judicial Conference's one-page *Five-Year Plan*. This assertion is unfounded. The GSA provides Congress with detailed justifications for all courthouse projects for which appropriation and authorization is requested. Indeed, the \$188.29 million already provided by Congress for projects on the current *Five-Year Plan* was thoroughly justified by extensive, detailed submissions to the pertinent Congressional committees and subcommittees by the appropriate Executive Branch agency – the GSA.

It is the responsibility of the GSA to seek authorization and funding from Congress for federal construction projects. In so doing, the GSA develops a comprehensive package for use by the Office of Management and Budget (OMB) and the Senate Appropriations



Committee, Subcommittee on Financial Services and General Government; the Senate Committee on Environment and Public Works, Subcommittee on Transportation and Infrastructure; the House Appropriations Committee, Subcommittee on Financial Services and General Government; and the House Transportation and Infrastructure Committee, Subcommittee on Economic Development, Public Buildings, and Emergency Management. Project-related analysis and materials that the GSA provides to decision-makers on behalf of and in coordination with the Judiciary include: 1) a detailed project feasibility study that assesses existing facility conditions and present and future space needs, identifies the range of alternatives to meet those needs, evaluates the costs of each alternative, and recommends a housing solution; 2) a Program Development Study (PDS) which updates and refines the feasibility study, and includes a more detailed development of alternatives and costs; 3) a Prospectus for site acquisition, design, and construction that contains the full project budget, authorization requested, prior authority and funding, project schedule, project scope, and project justification; and 4) a Congressional Justification document for a given year's appropriation request, which includes full disclosure of prior-year appropriations and additional funding required.

In sum, the GAO's recommendation appears to be that the Judiciary should expend its limited resources duplicating analyses already provided to the OMB and Congress by the GSA. If the report intends something else – if it is suggesting that there is specific information related to new courthouse construction not being provided to Congress by the GSA – then the report has failed to identify what that information is. The Judiciary, of course, stands ready as it has in the past to provide any information Congress desires to

justify courthouse projects, but it should not be required to replicate data already assembled and submitted by the GSA, or suffer criticism for declining to do so.

**A Further Moratorium on Congressionally-Approved Courthouse Projects Would be Unfair to the Communities Affected, Would Waste Taxpayer Funds, and Would Increase Risk to Court Staff and the Public.**

Of greatest concern in the draft report is the GAO's second recommendation stating that the Judiciary should impose a moratorium on projects on the current *Five-Year Plan* until AMP evaluations are completed for each of them, and then request GSA feasibility studies for courthouse projects with the highest urgency scores that qualify for new construction under the AMP Process.

In effect, this recommendation would mean that courts on the current plan that were analyzed under the planning process that preceded the AMP Process, and which Congress has supported by providing \$188.29 million in funding for site acquisition, design, and/or construction, would need to wait approximately two years at a minimum to determine if the project would again qualify for placement on the plan. Furthermore, based on current timelines, it would be approximately four more years beyond that for the GSA to complete feasibility studies (if funding for the study were available) for any new projects resulting from the updated Urgency Evaluation, and to secure the approval of the JCUS for placement on the revamped *Five-Year Plan*. GSA has not funded a feasibility study for the Judiciary since 2010. The end result could in effect be a six-year moratorium on all courthouse and annex/addition construction projects on the current plan that qualify to remain on the revamped plan, and even longer than that for any new projects because of the time it takes to secure funding for design,

site acquisition, and construction. Ten of the 12 projects have been on the *Five-Year Plan* since 1999 or earlier.

The *Five-Year Plan* document that the Judiciary sends to the GSA for consideration in its Capital Plan has in large part remained unchanged. Congress and the GSA have lauded the Judiciary's efforts to prioritize its courthouse priorities with its *Five-Year Plan*. Creating more data, completing more research, taking more time and spending more money for studies, will not alter the Judiciary's need for these projects. Alternatives have been considered, scopes have been adjusted for all projects in response to courtroom-sharing policies, and in eight cases, sites have been acquired. What has not changed is the declining condition of the courthouses, the aging building systems, the massive roof leaks, the large cost to house court components in leased space, the backlog of maintenance and repair projects, and the lack of secured circulation for prisoners, which puts the judges, their staff, and perhaps most egregious of all – the public and jurors – in harm's way.

It is disturbing that the GAO report appears to have completely ignored the security issues that exist at the courts on the *Five-Year Plan*. Courts are places where dangerous individuals are brought on a daily basis. They are places where civil litigants have in the past expressed violent and deadly disagreement with the outcomes of their cases. We know from tragic experience that the security concerns are real, not hypothetical; the GAO team itself saw first-hand the sub-standard courthouse conditions in districts awaiting new facilities. Budget constraints have already resulted in unfortunate, but understandable, delays and the Judiciary understands this may continue. But it is unfair, and dangerous, to expect these communities to endure further delays caused by needless additional analysis and data

collection, particularly as it was already pointed out that in at least two cases (San Antonio, Texas, and Anniston, Alabama) where the courts needs were reassessed under the AMP, the projects' priorities remained among the top five overall, warranting a place on the *Five-Year Plan* under either process.

In response to the GAO report, Chief Judge Lisa Godbey Wood of the Southern District of Georgia has written a letter (see Attachment 2) voicing her court's concerns about the conclusions of the GAO report and the impact that it might have on the Savannah courthouse, which was evaluated under the previous long-range facilities planning process and is listed on the *Five-Year Courthouse Construction Plan*. The courthouse has serious structural, security, and space issues as described in Judge Wood's letter. Photographs included in the Attachment vividly substantiate the unsafe conditions and disrepair plaguing the Savannah courthouse. These deficiencies are typical of shortcomings existing in various ways in all the courthouses currently on the *Five-Year Plan*.

**The GAO's Recommendations are Based on Incorrect or Incomplete Information and Erroneous Assumptions**

The rationale the GAO used to justify its recommendations is based on incorrect data and/or incomplete information. The report incorrectly states that ten out of 12 recommended courthouse construction projects do not qualify for placement on the *Five-Year Plan*. The GAO justified this statement by referencing data in the draft report's *Table 2. Courtroom Counts, Judiciary's 5-Year Courthouse Plan*, and citing the AMP Business Rule that establishes a baseline need for two or more additional courtrooms as a prerequisite for recommending construction of new courthouse. The report further states that these conditions call into question the extent to which the projects on the *Five-Year Plan* represent the Judiciary's most urgent

projects and whether proceeding with these projects represents the most fiscally responsible path.

First, there are a number of errors in the data presented in Table 2 of the draft report. Specifically, for seven of the twelve *Five-Year Plan* projects, the report includes inflated numbers for courtrooms present in the existing courthouse. The seven locations are: Mobile, Alabama; Nashville, Tennessee; San Antonio, Texas; Chattanooga, Tennessee; Des Moines, Iowa; Toledo, Ohio and Greenville, South Carolina. This is significant because the number of existing courtrooms is one of two metrics used to calculate the number of courtrooms needed in a new courthouse.<sup>3</sup> The cause of the inflated numbers appears to be the erroneous inclusion of courtrooms currently located in leased or federally-owned space that will remain in their current location after the proposed new courthouse or courthouse annex is constructed; or, the erroneous inclusion of courtrooms that will be relocated from their existing location, (e.g., a leased building, a separate federally-owned building, or a different city) to backfill vacated space in the existing courthouse. Such courtrooms that will not be housed in the new courthouse should not be included in the existing courtroom count that is used to calculate the additional number of new courtrooms needed.

Table 2 of the GAO draft report also under-counted the additional number of courtrooms needed to meet court needs after Judicial Conference courtroom sharing policies are applied. This occurred in three cases: Chattanooga, Des Moines, and Charlotte. Specifically, in the case of Chattanooga, the report states that no additional courtrooms are needed after Judiciary courtroom sharing policies are applied, when in fact, four more courtrooms are needed. The Judiciary is unable to determine how the GAO report calculated the incorrect number that is cited in Table 2. The other two errors pertain to the project in Des Moines, where the report's data

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<sup>3</sup> The second metric, which is subtracted from the first, is the number of courtrooms needed after Judiciary courtroom sharing policies are applied – a number that per JCUS policy, excludes courtrooms that may be required in the future to house projected judgeships.

was short by three courtrooms,<sup>4</sup> and the project in Charlotte, where the GAO count was short by one courtroom.<sup>5</sup>

The issue of erroneous numbers in Table 2 was previously identified in the Judiciary's response to the GAO's "Statement of Facts." In addition, the draft report's version of Table 2 raises additional questions regarding accuracy because it is unclear as to what time period is being used to calculate the figures – a 10-year planning window, current need, or some other benchmark. If not identified and consistently applied, this issue can create disparities and inaccuracies in the data provided. As was offered at the exit conference with the GAO team, the Judiciary remains willing to meet with team members to review Table 2 line-by-line to ensure its accuracy.

Second, the AMP Business Rule requiring a space need of two or more additional courtrooms in order to be recommended for a new courthouse pertains to the strategy recommendations contained in a given district's long-range facilities plan. This guideline is not a prerequisite to placement of a project on the *Five-Year Plan*.

To further explain, before the Judicial Conference considers placement of a project on the *Five-Year Plan*, two major steps must occur. First, a District-wide long-range facilities plan must be completed and approved. This was the case under the earlier planning process and it remains the case with AMP. The next step before a new project is added to the *Five-Year Plan* is completion of a GSA feasibility study. As already mentioned, the GSA feasibility study contains a more in-depth analysis of alternatives and their cost effectiveness. If the completed GSA feasibility study recommends new construction as the most viable and cost effective solution to a court's facility needs – whether those needs are related to space shortages, building condition, security, or any combination of the three – the feasibility study's recommendation

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<sup>4</sup> Table 2 cites the need for one additional courtroom; the correct number is four.

<sup>5</sup> Table 2 cites the need for three additional courtrooms; the correct number is four.

prevails. The recommendations contained in any given long-range plan serve as a starting point for discussion and further analysis; they are not the end-all conclusion. As cases in point, there are six projects on the current *Five-Year Plan* that have a shortfall of one courtroom as opposed to two – and one that has no shortfall at all; however, even after applying courtroom sharing, it has been concluded that replacement of the existing courthouse or construction of an annex/addition is the most cost-effective way to address existing space needs, security issues, operational inefficiencies, and systemic building condition issues. The GAO draft report clearly failed to articulate this important point despite it having been included in the Judiciary’s February 4, 2012, written response to the GAO’s “Statement of Facts,” and again in the Judiciary’s April 1, 2013, agency comments on the draft report.

The report also makes other erroneous assertions previously pointed out in the Judiciary’s agency comments. One example is on page 11, where the report indicates that the Judiciary removed two projects from the *Five-Year Plan* because their rankings dropped. This is not accurate. The two referenced projects – San Jose, California, and Greenbelt, Maryland – were removed from the *Five-Year Plan* because circumstances changed and the space needs of the two courts could be alternatively addressed by reconfiguring existing space and thus saving taxpayer money. In the case of Greenbelt, additional relief was realized when in combination with courtroom sharing, space in the existing courthouse became available when another tenant – the U.S. Attorney’s Office – moved out of the building. In the case of San Jose, courtroom-sharing alone facilitated the new approach.

Similar to the comments about Greenbelt and San Jose, the GAO report’s criticism of the Judiciary’s capital planning process also misconstrues basic facts. The report suggests that the Judiciary needs to align its capital planning with practices summarized in the OMB’s *Capital Programming Guides* and the GAO’s *Executive Guide* and that it should be doing a better job with cost-estimating. This criticism, as the Judiciary has repeatedly pointed out, misses the mark, because the Judiciary does not generate its own cost estimates, but rather, it

relies properly on cost estimates supplied to it by the GSA. Further clarification of this point should hardly be needed, but to insure no confusion, the Judiciary will include in all future renditions of the *Five-Year Plan* an explicit indication that all cost estimates for courthouse construction come from the GSA.

While criticizing the Judiciary for failing to develop cost estimates that are, in fact, the responsibility of the GSA, the GAO report compounds confusion by ignoring detailed planning documents the Judiciary has actually worked very hard to develop. The GAO team chose not to consider either the long-range facilities plans developed prior to 2004, nor the long-range plans generated by the AMP Process after 2008, despite the Judiciary's having brought these documents to the team's attention at the January 29, 2013, exit briefing. A review of these materials would have satisfied the GAO that planning documentation it has claimed is missing from the process in fact exists in abundance.

Other criticisms offered by the GAO are also anchored on misconceptions about the role of the GSA and ignorance of the Judiciary's basic planning documents. First, the claim that the AMP Process does not align snugly with "leading capital planning practices" lacks credence, since the GAO team appears never to have reviewed the Judiciary's long-range plans and continues to ascribe to the Judiciary responsibility for cost estimating that belongs to the GSA. Similarly, the contention that the Judiciary fails to evaluate alternatives to courthouse construction ignores the GSA feasibility Studies and the AMP Process, both of which examine lower-cost options scrupulously and at length.

The estimated project costs and estimated annual rent costs in *Table 1* on page 15 of the draft report are not only all incorrect (either too high or too low), they have also been further inflated from what was contained in the "Statement of Facts" without explanation. Corrected amounts were previously provided to the GAO in our February 2013 response to the "Statement of Facts" document. For example, the GAO originally reported that the estimated cost for the Mobile, Alabama, project is \$215.1 million, then the amount was escalated to \$218.0 million in



the draft report. At the time, GSA's cost estimate was \$131.7 million. A second example is the Savannah, Georgia, project, which in its "Statement of Facts," the GAO said the estimated project cost is \$110.4 million, and in the draft report, a figure of \$111.9 million was published. GSA's cost estimate is \$105.0 million. In other cases, the GAO's published cost estimates were much lower than the GSA's cost estimates. This is the situation with the Anniston, Alabama, project, which the "Statement of Facts" cited an estimated cost of \$25.5 million. The GSA's current estimate is \$45.3 million.

The project costs provided to the GAO by the Judiciary were based on information from the GSA and noted in the current *Five-Year Plan*. On March 14, 2013, the Judiciary received updated cost estimates in preparation for development of the draft *Five-Year Courthouse Construction Plan for FY's 2015-2019* to be considered by my Committee in June and the Judicial Conference in September 2013. To ensure consistency in the final report, it is suggested that the GAO put a date on its figures and tables and use only the project cost estimates provided by the GSA. The title of the table should also be corrected to state that the project cost estimates are developed by the GSA and the rent estimates are developed by the Judiciary.

### **The 2010 GAO Report**

The GAO has criticized the Judiciary for failing to adopt two recommendations contained in the 2010 GAO report: 1) that the Judiciary establish courtroom-sharing policies; and 2) that the Judiciary retain caseload projections to improve planning. These criticisms are neither fair nor accurate. The Judiciary, it is true, strongly believes that the 2010 GAO report was badly flawed; it has expressed this belief repeatedly, vigorously, and in detail. Nevertheless, the Judiciary took the recommendations in the 2010 report seriously and made great strides to adopt them, to the extent consistent with the Judiciary's mission.

First, I will address the issue of courtroom sharing. Courtroom-sharing policies are in effect nationwide for senior district judges, magistrate judges, and most recently, bankruptcy judges. Beginning in 2008, and based on your 2005 request as the Chairman of the

Subcommittee on Economic Development, Public Buildings and Emergency Management, the Judiciary developed courtroom-sharing policies that we believe balance the Judiciary's duty to be good stewards of the taxpayers' money with our primary responsibility to provide access to justice and ensure that cases are handled in an expeditious and effective manner. The Judiciary implemented courtroom-sharing policies for senior judges (one courtroom for every two senior judges) and magistrate judges (one courtroom for every two magistrate judges in courthouses with three or more magistrate judges, plus one courtroom for magistrate judge criminal duty proceedings).

More recently, in response to the 2010 GAO report, the Judiciary implemented courtroom-sharing in bankruptcy courts and subsequently plans to determine the feasibility of sharing courtrooms by active district judges in courthouses with 10 or more active district judges. In addition, the Judiciary has removed projected judgeship space needs (courtrooms and chambers) from the project requirements that the GSA refers to when programming and designing a new courthouse.

The GAO correctly refers to current courtroom-sharing policies and their implementation within the body of the draft report; yet a statement to the contrary was made in the letter transmitting the report to the chair of the Committee on Transportation and Infrastructure, the chair and ranking member of the Subcommittee, and Representative Denham. The Judiciary requests that the letter transmitting the final report contain the corrected information.

The draft report also incorrectly states that the Judiciary has not implemented a prior GAO recommendation to retain caseload projections to improve the accuracy of its 10-year judge planning.

In fact, the Judiciary completes caseload and personnel forecasting on an annual basis. All forecasts completed since 2004 are available in an AOUSC forecasting database. In response to the GAO's concerns in 2010, we modified the forecasting

process to include additional analyses of caseload forecasts. These analyses included:

1. Calculating the absolute percent error (APE), percent error (PE), and one-year mean absolute percent error (MAPE) for each forecast versus the actual value for all caseload forecasts completed since 2004;
2. Analyzing the MAPEs to determine trends, such as identifying districts and/or caseload series that are the most difficult to forecast (i.e., the ones with large MAPEs) and identifying trends by location, region, or court size; and,
3. Completing scenario testing to include population trends as a factor influencing forecasts for bankruptcy and weighted bankruptcy filings.

Also modified in response to the GAO recommendations was the inclusion of additional analyses of the district judge, senior district judge, magistrate judge, and bankruptcy judgeship projections. These analyses include calculating the absolute percent error (APE) and percent error (PE) for each forecast versus the actual value for all caseload forecasts completed since 2004.

As a result of these analyses, the forecasts are increasing in accuracy. We intend to continue calculating and analyzing the absolute percent error (APE), percent error (PE), and one-year mean absolute percent error (MAPE) as part of the annual forecasting task to monitor and further improve forecast accuracy.

To this end, the Judiciary asserts that the report should be amended and the record corrected to reflect that the Judiciary has complied with the GAO's recommendations as set forth above.

## Conclusion

Mr. Chairman and members of the Committee, thank you again for the opportunity to address these critical issues. If I could leave you with just three thoughts, they would be these.

First, the Judiciary is committed to providing Congress with any and all documentation or information it desires to support new courthouse construction initiatives. Our goal is complete transparency, both with regard to information and process. We recognize the Judiciary can only accomplish its goal of obtaining safe, efficient, economical facilities by working cooperatively with Congress. We are open to suggestions about how the Judiciary might do this better.

Second, the Judiciary takes very seriously its responsibility to plan for its facilities needs carefully. As my testimony has indicated, much of the criticism contained in the GAO report related to facilities planning is misdirected. On the one hand, it ignores the important role of the GSA in supplying the vast majority of data and analysis that the report says is absent from the Judiciary's planning process. On the other hand, the report fails to consider the enormous effort the Judiciary has put into developing the long-range planning and AMP processes that are objective, thorough, mindful of GAO's past criticisms, and cost conscience. I am personally proud that the Judiciary has taken the lead in developing truly objective planning criteria that insure that projects with the greatest urgency come first.

Finally, and perhaps most importantly, any delay in proceeding with the *Five-Year Plan* to require yet more expensive and time-consuming analysis – analysis that has already occurred – would be grossly unfair to the communities that have been waiting many years for desperately needed new courthouse facilities. The Judiciary does not believe that anything

would be gained by this re-processing. The Judiciary recognizes that delays have occurred due to financial constraints and that these constraints may only slowly loosen. But to add further delay for superfluous re-analysis would waste taxpayer money and work a heartbreaking injustice on communities that have already waited too long and often in unsafe conditions where judges, litigants, and the public may be at risk. When the fiscal environment permits, the Judiciary, in cooperation with Congress and the GSA, should be permitted to promptly resume construction of the projects on the *Five-Year Plan*.

## Guidelines for Long-Range Facilities Planning: Comparison of Current and Previous Processes

	Phase 2	Phase 3	AMP Process
<b>Planning Timeframe and General Points</b>			
Housing solution developed for the period beyond the projected point of design funding	•	•	•
Workload and personnel forecasts projected out 30 years	•	•	•
AOUSC was the facilitator of the planning effort	•	•	•
Plans required chief district or chief circuit judge approval	•	•	•
Planning results compiled into <i>Five-Year Courthouse Project Plan</i>	•	•	•
<b>Workload and Personnel Forecasting</b>			
Time series analysis used to forecast court workload	•	•	•
Statistical techniques used to group districts with similar trends	•	•	•
Assumed that district and circuit judges will elect senior status upon eligibility	•	•	•
Assumed that the retirement age of a district or circuit judge is 85	•	•	•
<b>Courthouse Assessment</b>			
Architects conducted on-site physical assessment of current building conditions based on facility assessment checklist		•	•
Space data for all court components included, whether in the courthouse or in a leased facility	•	•	•

Guidelines for Long-Range Facilities Planning: Comparison of Current and Previous Processes, cont.

Results of process identified both new capital construction and major renovation projects	•	•	•
Need for a project was identified when the courthouse could no longer house the space and operational needs of the court	•	•	•
District Court space should not be fragmented into multiple facilities in the same court city, unless by court policy	•	•	•
Bankruptcy Court space should not be fragmented into multiple facilities in the same city, unless by court policy	•	•	•
Circuit Court headquarters space should not be fragmented into multiple facilities in the same city, unless by court policy	•	•	•
<b>Courtroom and Chambers Allocation</b>			
Courtrooms and chambers allocated based on Judicial Conference policy	•	•	•
Circuit Court judges were allocated courtrooms at the headquarters location and both resident and non-resident chambers were allocated for each judge and senior judge	•	•	•
Circuit Court judges could hold court in more than one location throughout the circuit, according to court policy	•	•	•
Each roving judge was allocated a chambers at his/her resident location and a visiting chambers at his/her non-resident location	•	•	•
The need for a chambers for a senior district judge was allocated from the date of senior status eligibility until age 85, absent specific documented exceptions	•	•	•

<b>Trial Preparation Suite</b>			
When needed, the Federal Defender was allocated a trial preparation suite in the courthouse	•	•	•
When needed, the U.S. Attorney was allocated a trial preparation suite in the courthouse	•	•	•
<b>Housing Options</b>			
Existing space deficiencies were accounted for in the planning process using the U.S. Courts Design Guide	•	•	•
A housing statement that presented the current personnel and space was developed for each facility	•	•	•
When multiple facilities were present in the same city, each facility had an individual housing statement and all the facilities were combined into one housing statement for the city	•	•	•
Disparity between the existing space in the courthouse and in the <i>U.S. Courts' Design Guide</i> was used as justification for repair and alteration projects	•	•	
District-wide space options were developed to address specific needs that extended beyond a single court city	•	•	•





LISA GODBEY WOOD  
CHIEF JUDGE

United States District Court  
SOUTHERN DISTRICT OF GEORGIA

FRANK M. SCARLETT FEDERAL BUILDING  
801 GLOUCESTER STREET, ROOM 207  
BRUNSWICK, GEORGIA 31520

March 15, 2013

[REDACTED]

Mr. Mark Goldstein  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

[REDACTED]

Greetings:

I have been asked to review the draft report titled **Federal Courthouses: Proposed Construction Projects Should Be Evaluated Under New Capital Planning Process**. I have shared this draft report with Judges Moore and Edenfield in the Savannah Courthouse. Their observations are included in this response.

First let me thank the GAO for reviewing these projects. The report highlights the serious need to address space issues and properly allocate precious federal resources.

As you are aware, the Savannah Courthouse Project has been on the 5 year plan for 21 years. Everyone who visits the current structure recognizes the safety, security and space challenges that necessitate the long needed addition to this Historic and cherished building which many consider an architectural focus point of an architecturally focused city.

The main concern of the GAO team appears to be that on the day they visited in Savannah, there were only four Judges located in the Courthouse. They counted Judges and Courtrooms and, based on that count, recommended a complete change in process. I write to make dual points. First, a snapshot count is not necessarily accurate. Second, it is most assuredly incomplete. An active district judge in Savannah, Judge Moore, will most likely take senior status in the foreseeable future. Furthermore as I write, an additional Bankruptcy Judge is

undergoing background checks and, once completed, that Judge will join the others in the Savannah Courthouse as well. The point is, more Judges are most assuredly on the way. Second and moreover, the layout of the building and the security concerns of escorting judges in and around hostile parties present true security hazards. Indeed, the GAO team had to vacate the public hallway during the transfer of a prisoner from the public elevators to Judge Moore's courtroom. No one believes such dangerous conditions can hold.

We strongly believe that it is inappropriate to now subject the Savannah courthouse annex project to undergo an Asset Management Plan. Quite simply, we are out of space, we are already in the re-design phase, and we have replacement judges coming on board. Over \$6 million has been spent on design services, with the on-going Feasibility Study for redesign already in process. Our country is simply not in a position to waste that money.

In this regard please consider the following additional background facts not contained in the GAO report:

1. **Building Condition:** In 1989, the initial need to evaluate the courthouse was undertaken as a Long Range Facility Plan, prior to the Asset Management Plan process (AMP). It was obvious from the outset that the Savannah Courthouse had not been maintained over the years. Even today, GSA outlines in a recent memo that the courthouse has had several years of neglect in maintenance requirements in anticipation of a new courthouse annex and a renovation of the present facility. The same memo states that there is an "eminent danger" that exterior design elements such as corbels and balconies may fall off the building. Structural cracks are visible in several parts of the building. This is all part of a repair and alteration future prospectus of over \$4 million, and will include many more additional scope items once uncovered by the current contractor's investigations. The GAO was shown the effects of the deferred maintenance and structural repairs needed while touring the Savannah Courthouse. We were disappointed these observations were not mentioned within the report. Attached please find a few photos to illustrate these issues.

2. **Design Guide Standards and Building Codes:** This building was built in 1899. Over the years, building standards have changed to accommodate the business of the court. The U. S. Court Design Guide establishes building requirements for courtrooms and office space. In most cases we are materially deficient in this area, including the need for two additional fire egress stairways within multiple dead-ended public corridors. Three of the existing four courtrooms do not meet usable square footage or ceiling height requirements. Courtrooms should have space for witness rooms and holding areas for prisoners, which all Savannah Courtrooms currently lack. There is a need to segregate witness and prisoners for many reasons and there is no space to accommodate this need. Office space remains as designed over a century ago, without the same code compliance and standards which should be applied for the maximum efficiency of running court business. Again, these observations were made during the GAO tour of the building but were not mentioned within the report.

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3. Security: The need for better marshal, judicial, juror and public access and movement within the building is critical. There is no secure sally port and no restricted elevator. The public, jurors, judges and prisoners all share the same hallways. There are no courtroom holding cells adjacent to the three district courtrooms. The U.S. Marshal Service recognizes this danger and has characterized it as “a disaster waiting to happen.” This situation was explained to the members of the GAO tour, but the report also failed to mention this observation.

4. Space Requirements: The Court has exhausted all the usable square feet within the existing courthouse. The basement and attic, which are not suitable for anything other than storage and mechanical space, are charged at premium rental rates and are currently housing some of the court staff. This attic space is not ADA compliant. GSA has been tasked with accommodating not just the ten year space requirements of the court, but those for thirty years, as well. Only a new courthouse annex will address this need.

5. Money previously spent: Congress has authorized and appropriated \$10.5 million for site and design for a new courthouse annex. To get a building redesigned and completed within a city cited by The United Nations as a “World Heritage Site” is very costly and requires many approvals including two historical review committees. The selected site is the only viable alternative for an annex, with Congress authorizing the demolition of the current federal buildings upon the site. These two buildings, toured by the GAO, were noted by them to be inefficient and badly constructed in 1983. Nearly all federal offices that leased the two federal buildings have been moved, including a congressman who years ago left for better commercial leased space. In fact, one of the buildings was so ill conceived that nothing remains in it.

The Robert A.M. Stern designed courthouse annex has undergone serious scrutiny and has met all the approvals, both locally and with the GSA Public Buildings Service. Currently, the GSA and the courts are reviewing these plans and modifying them to meet new standards including courtroom sharing along with reduced space requirements, which have been revised, twice.

In conclusion, the Asset Management Planning process (AMP) was not in place, nor was courtroom sharing, when this project was approved by Congress for funding. The AMP process defines both current and future housing assumptions for the court, district wide. The AMP process identifies housing options, not new construction, for district locations that have either grown past the current usable square footage of the present facility, or have approved judgeships and new staffing formulas. Since the funding for the Savannah courthouse annex, there have been newly appointed judgeships for replacement judges in Savannah, Brunswick and Augusta. However, due to existing constraints of the present Savannah courthouse, only Brunswick and Augusta could accommodate these replacement judgeships, leaving Savannah without a replacement judge’s chambers and courtroom. Again, courtroom sharing for senior judges, post the 1999 design of the annex, will provide a senior courtroom.

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As a court, we have done, and will continue to do, our part as good stewards of our space. Ultimately this decision needs to be based on carrying out of our mission to the public and keeping a safe environment so that all parties can interact in the proper fashion. Judges, jurors and the public need to be separated from the dangers of prisoner movement. This is impossible under the current conditions.

After over one hundred years, this court is in need of a new, secure, modern facility, and the courthouse annex is our only hope. Anything done to change the rules for evaluating this need will, at this point, be wasteful, dangerous, and unfair. Thank you for considering our plight.

With kindest regards, I am

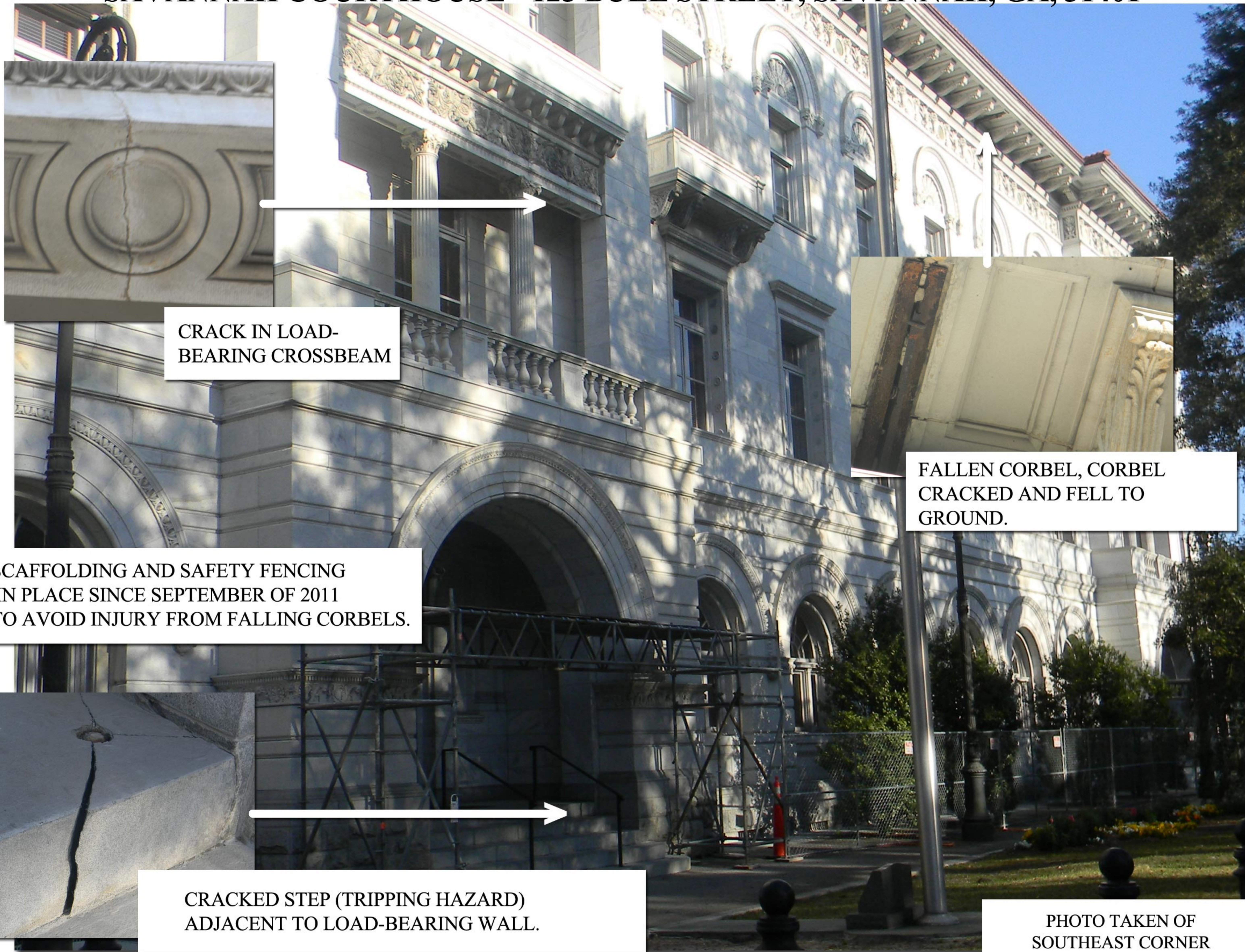
Sincerely,

A handwritten signature in black ink, appearing to read 'L. Wood', written in a cursive style.

Lisa Godbey Wood, Chief Judge  
United States District Court

cc: Honorable William T. Moore, Jr.  
Honorable B. Avant Edenfield  
John J. Myers

# SAVANNAH COURTHOUSE - 125 BULL STREET, SAVANNAH, GA, 31401

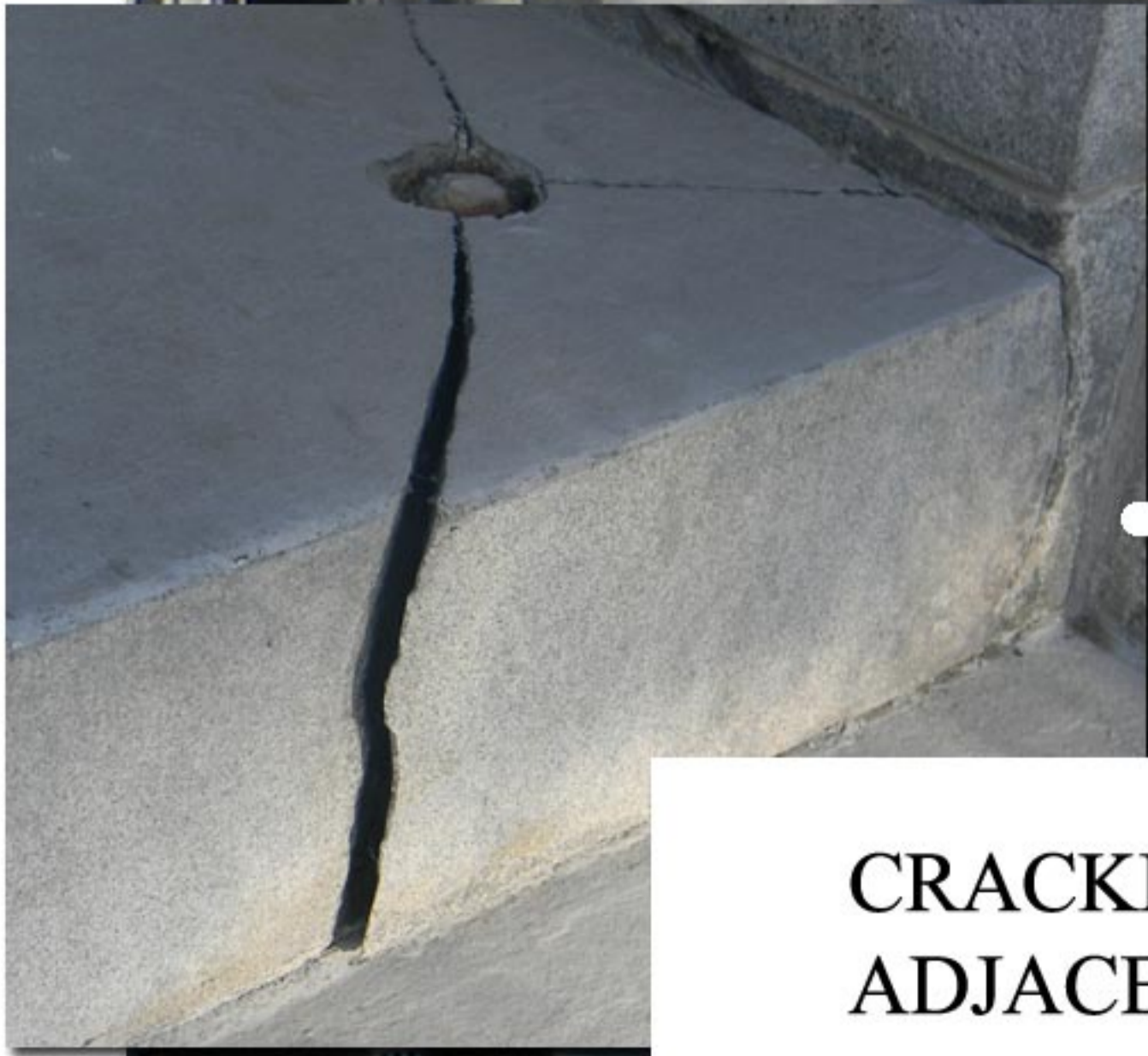


CRACK IN LOAD-BEARING CROSSBEAM



FALLEN CORBEL, CORBEL CRACKED AND FELL TO GROUND.

SCAFFOLDING AND SAFETY FENCING IN PLACE SINCE SEPTEMBER OF 2011 TO AVOID INJURY FROM FALLING CORBELS.



CRACKED STEP (TRIPPING HAZARD) ADJACENT TO LOAD-BEARING WALL.

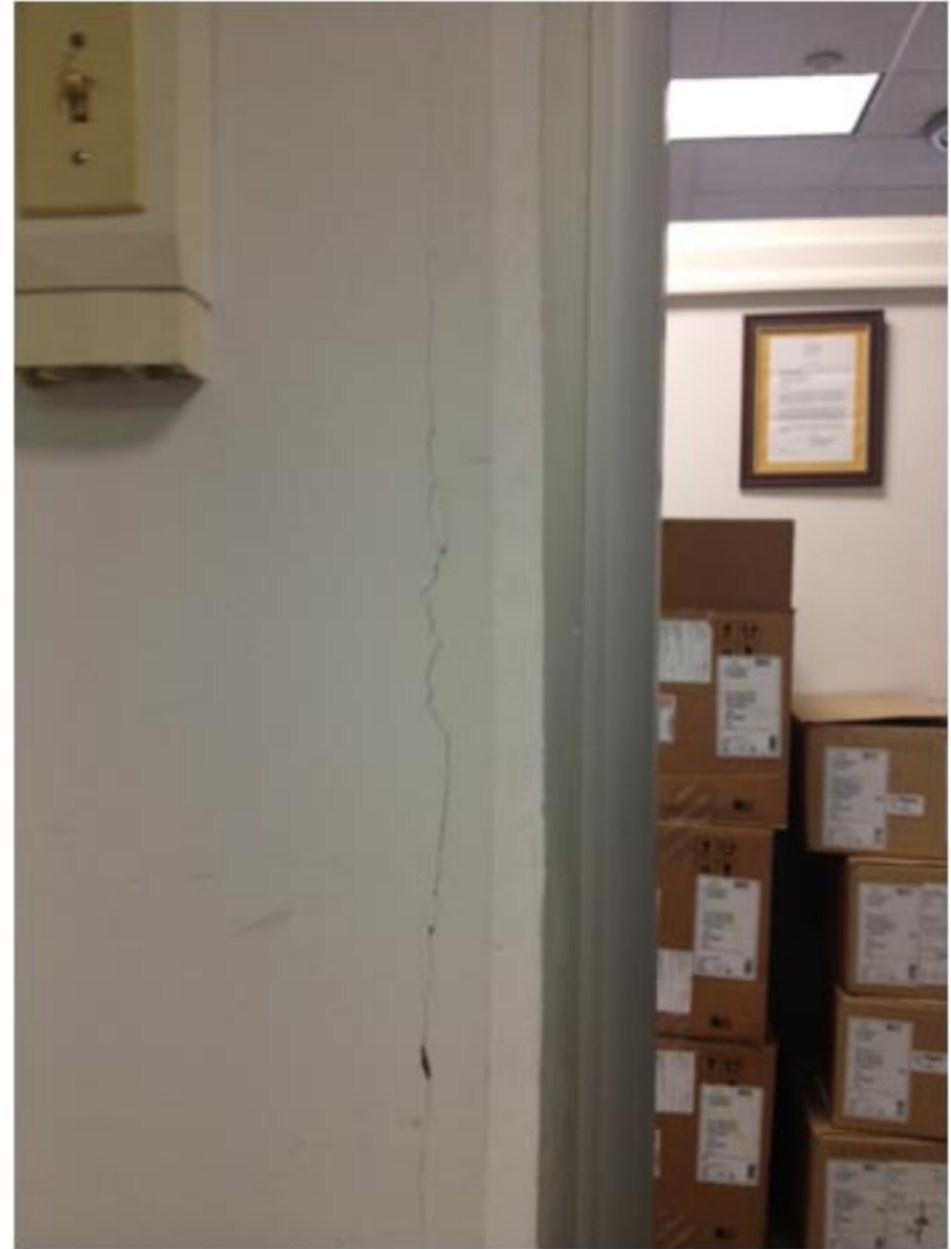
PHOTO TAKEN OF SOUTHEAST CORNER

**SAVANNAH COURTHOUSE, 125 BULL STREET, SAVANNAH, GA, 31401**

**INTERIOR**



Major floor crack which runs perpendicular to the support wall of the Bell Tower. The Bell Tower also has cracks.



Fourth floor in Computer Department. Photo shows stress crack in plaster around door frame.



Third floor bathroom, southside of building. Photo shows intrusive water damage.