

Committee on the Judiciary
U.S. House of Representatives
Subcommittee on Courts, Intellectual Property and the Internet

Howard Coble, Chairman
Majority Hearing Memo

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

Thursday, June 19, 2014
2141 Rayburn House Office Building
10:00 a.m.

"[It is estimated] ... the [Poff] project would take 218 years to pay for itself."

Balancing Poff Federal Building Bills, Benefits,
Laurence Hammack, Roanoke Times, October 8, 2010

"[I]t's just inexcusable that you wouldn't have done that kind of cost-benefit analysis first." ... This is an example of what people get so darn frustrated about. And when you try to get the answers, you've got a bunch of people in the federal government pointing fingers, saying, 'It's not me. It's somebody else.'"

Mark Warner, U.S. Senator, Democrat-Virginia, November 5, 2010

"GSA has an obligation to spend the taxpayers' money on sound, well-thought-out projects that make the best use of taxpayer dollars. Our reviews show that GSA does not always meet this obligation, and did not do so here, at the Poff Federal Building."

Brian Miller, GSA Inspector General, April 14, 2011

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

Courthouse Leak Turns Into \$3.4 Million Project
Mike Gallagher, Albuquerque Journal, February 10, 2013

PURPOSE

The Subcommittee on Courts, Intellectual Property and the Internet will conduct an oversight hearing on Thursday, June 19, 2014 at 10:00 a.m. in 2141 Rayburn House Office Building to begin a public examination of matters that relate to GSA's management of real property that houses federal court facilities.

The hearing, "GSA's Failure to Meet the Needs of the Judiciary: A Case Study of

Bureaucratic Negligence and Waste," will focus on specific instances where the General Services Administration (GSA) has squandered millions of scarce taxpayer funds without appropriately considering or in direct contravention of the concerns of Article III judges. The hearing will examine the impact of GSA's mismanagement on the ability of judges and employees of the judiciary to perform their essential Constitutionally-mandated and statutorily-required functions, the negative effects on the public of GSA's disregard for sound judgment and practices (and federal law in some cases), and public perceptions regarding GSA's conduct and priorities.

INVITED WITNESSES

- The Honorable William "Chip" Johnson, U.S. District Court Judge (New Mexico)
- The Honorable Glen E. Conrad, Chief Judge (WD-VA)
- Ms. Jennifer Smith, Project Manager & Court Architect, (WD-VA)
- Michael Gelber, Deputy Commissioner, GSA's Public Buildings Service (PBS)

BACKGROUND

The Subcommittee has jurisdiction over matters that affect the administration of justice in the federal courts. The Committee on Transportation and Infrastructure's Subcommittee on Economic Development, Public Buildings, and Emergency Management has jurisdiction over GSA's real property activity.

This hearing follows an April 14, 2011 oversight hearing entitled, "Richard H. Poff Federal Building Renovation: Is it Costing the Taxpayer Too Much?" that was conducted by the Subcommittee on Economic Development. That hearing focused on GSA's mismanagement of the planned renovation and modernization of the Richard H. Poff Federal Building in Roanoke, Virginia before ground was broken.

Now that GSA has declared its major renovation¹ of the Poff Federal Building substantially complete², it is appropriate for the Courts Subcommittee to examine GSA's performance in relation to the duties it owes the public in general and its tenant, the federal judiciary, in particular.

Over the past five years, GSA has spent an estimated \$65 million on questionable upgrades³ and renovation related expenses at the Poff Federal Building. Nevertheless,

¹ According to GSA, the purpose of the project was to update building systems as well as improve its energy efficiency by incorporating "greening" elements. More specifically, the project included replacement of the window curtain wall; installation of a HVAC system; renovations of bathrooms; upgrades to the lighting fixtures; and the installation of a new green roof with a solar system (photovoltaics).

² <http://www.wdbj7.com/news/local/employees-return-to-poff-federal-building-in-roanoke/26313144>

³For example, the Economic Development Subcommittee Chairman Jeff Denham emphasized the unlikely pay-back for installation of photovoltaic panels in April 2011 when he noted, "Certain features like solar panel roofs typically do not see any return until well after the useful life of the roof. In fact, the GSA inspector general has found in a number of cases pay-back periods well beyond reasonable return to the taxpayer. It is unclear whether this lack of reasonable return was taken into account before GSA proceeded with this project, and whether any such analysis guided GSA in which greening features made sense and which did not."

GSA has requested or is recommending an estimated \$17.2 million⁴ for additional work. This includes \$15,128,000 “to replace two collapsing exterior façade walls⁵ and to undertake” upgrades to the parking garage. In addition to these two projects, an important area GSA has not appropriately prioritized over the years⁶ is needed enhancements to the building’s security. In April, GSA’s Mid-Atlantic Region finally presented to the building’s tenants a proposal to improve security at the facility – providing that the Judiciary, the US Marshals Service and the Veterans Administration first agree to pay for the upgrades.

In brief, GSA’s management of the Poff Federal Building modernization project has been characterized by:

- A violation of federal contracting law and Federal Acquisition Regulations⁷; (see GSA’s Inspector General Report, which is available at http://ww2.roanoke.com/pdfs/1123_InspectorGeneralReport.pdf)
- A lack of advance consultation and inadequate coordination with major tenants, including the federal judiciary, before decisions are made;
- A lack of regard for the functional operations and concerns of the court;
- A failure to plan and properly execute the project in a manner that leverages the costs imposed on taxpayers;
- A lack of foresight, due diligence and planning in advance of obligating funds and setting priorities (there was no cost benefit analysis before deciding to proceed with the project and inadequate inspections and site surveys);
- Wasteful and questionable spending;
- Transference of costs and responsibilities to the courts and other tenant agencies;
- A persistent lack of transparency and accountability along with a pattern of stonewalling and continuing in their course rather than engaging in meaningful and responsible discussion with stakeholders and the public.

The Public Building's Service (PBS) is responsible for the construction, repair, maintenance, alteration, and operation of United States courthouses and public buildings of the Federal Government. Additionally, PBS leases privately owned space for

⁴ This amount includes \$15.1 million to demolish and replace two failing brick walls and repair/replace the parking garage and \$2.1 million to fund perimeter security improvements.

⁵ The failing walls are 14-stories tall and covered with brick veneer. A GSA study following incidents where brick was falling to the ground discovered that the walls were separating from the building and “determined that the cause of the failure was poor installation and inadequate design.” Given that GSA has been continually responsible for the design, engineering, installation and maintenance of the building since construction, this determination suggests GSA has failed to exercise due care in providing for tenant and public safety.

⁶ In testimony at the April 2011 Subcommittee hearing, Congressman Goodlatte emphasized the importance of GSA promptly prioritizing and attending to the security needs of the building. In an extended discussion with the GSA witness, he pointed out the irresponsibility and senselessness of putting “money into a building that has this kind of a problem and not have a plan to address these major security concerns which exist right now at the building.”

⁷ <http://ww2.roanoke.com/news/roanoke/wb/268500> Bidding Law Broken Over Poff Federal Building, Report Says, Laurence Hammack, Roanoke Times, November 24, 2010.

Federal use. GSA owns or leases 9,624 assets and maintains an inventory exceeding more than 370 million square feet of workspace. In effect, GSA acts as the "landlord" for the federal government, obtaining and managing space to meet the space needs of other federal civilian agencies. PBS is funded primarily through the Federal Buildings Fund, which is supported by rent from federal customer agencies.

According to GSA's website, the mission of the Public Buildings Service is "To provide superior workplaces for federal customer agencies at good economies to the American taxpayer." This hearing will show that PBS has not achieved "good economies" at either the Poff Federal Building or the Domenici Federal Courthouse and that it has also failed in its mission to provide a "superior workplace" for the court employees and judges assigned to the Western District of Virginia.

Richard H. Poff Federal Building

In the spring of 2009, GSA announced it selected the Poff Federal Building for renovations using newly authorized federal stimulus funds. In announcing its Spend Plan, GSA reported its selections were "based on two over-arching criteria: Ability of the project to put people back to work quickly, and transforming Federal buildings into high-performance green buildings."

GSA identified eight selection criteria, weighting "features concentrating on energy conservation and renewable energy generation" and "an emphasis on ... projects that could begin within 120 days" well ahead of "improving asset utilization" and "return on investment."⁸ Nevertheless, in overseeing these expenditures, GSA committed publicly that it was "ready to move forward with speed tempered by careful consideration of our responsibilities and accountability to the American taxpayer."

The inclusion of the Poff Federal Building in GSA's Spend Plan took many public officials and members of the public by surprise since GSA had not previously disclosed an interest in renovating the structure. Located in Roanoke, Virginia, the 14-story building was constructed in 1975 for a cost of \$14 million. It has approximately 316,000 gross square feet of space, 254,670 of which GSA deems rentable.

⁸ The view of GSA officials in executing similar projects was described by two officials from Region 4 (Southeast) who oversaw the expenditure of \$3.2 million for the design and installation of photovoltaic panels at the Terry Sanford Federal Building and Courthouse in Raleigh, North Carolina. Quoted in the May 2011 edition of Solar Today, a publication of the American Solar Energy Society, Inc., the officials explained that achieving savings for the taxpayer was not their primary goal.

GSA Project Manager Josh Lockwood stated, "[w]e have requirements to reduce our energy consumption each year, and those are more strict each year. So we are more focused on that than a payback." GSA Contracting Officer Cathal Duffy added that advancing low-energy technology was another priority, stating "[t]he GSA is pretty much the largest landlord in the country, and we kind of take the lead in these types of projects. So we can afford maybe a little less payback than a commercial building, and that allows us to push forward the technology."

Before breaking ground on the renovations, major tenants included the Department of Veterans Affairs Regional Office, the US District Court for the Western District of Virginia, the US Marshals Service and the GSA regional field office.

According to GSA, the project was intended to update building systems as well as improve energy efficiency by incorporating "greening" elements. More specifically, GSA determined to contract for the replacement of the window curtain wall; installation of a HVAC system; bathroom renovations; upgrades to the lighting fixtures; and the installation of a new green roof with a solar system (photovoltaics).

GSA listed the total cost of the project in its Spend Plan as \$50.968 million. GSA "estimated" the total construction costs to be \$43.9 million, design costs at \$4 million, and management and inspection services at \$3 million. GSA did not foresee or plan for the relocation of the Veterans Affairs Regional Office, which they later deemed necessary at an unbudgeted cost of more than \$10 million to move and rent temporary swing space in multiple buildings in downtown Roanoke.

In contrast to the decision to move the Veterans Affairs Regional Office employees, GSA decided the courts would have to continue their operations in the Poff Federal Building throughout the entirety of the three year renovation. Citing the absence of alternate court facilities in the area, this decision compelled the courts to maintain their Constitutionally-required essential operations in a structure that was continually undergoing major renovations.

Additionally, GSA did not include in its stimulus calculations other expenses they later incurred or identified as required. These expenses include an FY2015 Request for Major Work involving the Repair/Replacement of the Parking Garage; Exterior Construction; Demolition; and Sitework involving the replacement of the 14-story western façade brick wall of the building (removed in 2012 after the renovation project began) and removal and replacement of the eastern façade brick wall, which GSA recently determined "suffers from the same complications [as the western wall], i.e. both walls are susceptible to "failure [due to] poor installation and inadequate design." GSA estimates the costs of these projects to be \$1,076,000 for design, \$12,762,000 for construction and \$1,290,000 for management and inspection, which together total an additional \$15,128,000. In addition, GSA recently informed the federal courts and the Veterans Administration that they are finally prepared to upgrade certain security measures at the building at a cost that will exceed \$2 million but only if the tenants agree to pay for the work out of their own budgets.

Before breaking ground, GSA's Gina Blyther Gilliam assured the public and those associated with the court that, "[t]he federal court system, the building's second-largest tenant, will not be affected."

Despite Ms. Gilliam's representation, the project repeatedly and at great expense negatively impacted the ability of the Federal Judges, the Clerk of Court and the Probation Office in Roanoke to perform their constitutional and statutory duties. These negative impacts directly or indirectly extended to court operations in the other divisions of the Western District at various times. And they imposed direct costs on the courts as a result of GSA's inattention and inability to perform properly its basic duties.

For example, on Saturday, June 29, 2013, a subcontractor working on the project deliberately turned off the emergency circuit breaker to the U.S. District Court's server room. This action resulted in a complete failure of one server and damage to two others. The worker reported he was instructed to go ahead with the work by his supervisor, despite the fact it was not on the approved work-plan, "because nobody was in the building and it would be a good time to do it." The damage from this one incident was estimated at over \$27,000 to repair and replace servers and over \$3,400 in man hours of labor.

The shut off resulted in disruption to the court's public website, inoperable electronic filing capabilities for attorneys and the public throughout the district and interruptions to the court's telephone service. Additionally, the court's staff had to immediately respond to the crisis situation, devoting significant unanticipated man-hours to remedy the problem and to handle residual problems because of this unnecessary, damaging and thoughtless action. Court personnel were dedicated to correcting a problem that never would have occurred if GSA was doing its job properly and exercising appropriate oversight over its contractor and subcontractors.

As one court employee stated:

[A]n incident of this magnitude should never have occurred! ... GSA's on-site project management is too thin to prevent major problems like this one. ... GSA was well aware that this was the nerve center for our District, but they had no one watching the shop on Saturday.

In addition, the court had to hire at its own expense an in-house "Architect/Project Manager" to act as a liaison to GSA and its contractors. As a court official observed:

[T]his obviously shifts GSA's project management responsibility onto the court, which is necessary only because GSA has completely failed in their capacity as Landlord and Project Manager. How many courts can afford to provide this oversight?

A summary of other negative impacts from the GSA's management of the Poff renovation project on the operations of the federal court in the Western District of Virginia includes:

- Multiple security breaches;

- Risks to life and safety;
- Delays in previously approved and initiated court renovation projects that when completed would have significantly contributed to the improved operation of court functions;
- Destruction and demolition of recently constructed offices that were wholly renovated;
- Damage and wear to court facilities and property;
- Repeated flooding caused by water sprinklers and sewage lines that jeopardized court personnel and equipment including servers;
- Loss of workspace and repeated relocations of court personnel that caused persistent losses of productivity;
- Decrease in confidential work spaces to conduct sensitive court functions;
- Confusion and loss of access to the court by the public;
- Repeated and disruptive noise and air quality issues; and disruptions and discomfort caused by the breakdown or shutting off of electrical and mechanical (HVAC) systems.

Disruptions frequently affected all Court floors, and regularly affected judicial personnel who were working in the Judges' Chambers, the Probation Office and the Clerk's office.

These effects could have been avoided if GSA had altered course before breaking ground on the renovation project in the summer of 2011 or sought to coordinate and work more closely with the affected judges and court employees. Indeed, many of these harmful effects were foreseen in the testimony of Ms. Julia Dudley, the Clerk of the U.S. District Court for the Western District of Virginia, when she appeared before the House Transportation and Infrastructure Committee in April 2011. Anticipating the impact of GSA's renovation project on the operations of the court, Ms. Dudley stated:

Some of the direct impacts of this project will be: lost work time as we shuffle and relocate within our own spaces; additional work for our IT department; reduced courtroom capacity—we will lose the magistrate judge's courtroom for approximately 12 months to however long during one phase of this project. Also, work on the mechanical, electrical, and plumbing will go on every day on every floor throughout the project. Noise, dust, the presence of workmen will be a distraction to the staff.

There likely will be temporary loss of power, heating, air conditioning. There could be a disruption to our security system and our IT infrastructure. The cafeteria in the building closes during the project. Because the windows will be blocked by temporary walls, we will lose some of the natural lighting in our space. The employees who are now in offices along the perimeter of the building will be relocated to temporary cubicles constructed within the interior of our office. It is

like we are all squeezing together, and we will have to learn with inconvenient clutter for the next several years.

Gone will be the private office for where the computer terminal is located. Gone will be the appropriately sized and comfortable room for our jurors, grand jurors, and citizens-to-be. Additionally, the probation officers will have to move out of their offices into temporary structures that will afford little privacy to the officers and the clients who must visit them.

My staff, just as all Federal employees, have been asked to conserve materials and cut back on spending. Now, we are being told that we will have to endure much disruption and distraction for the next several years while at work. With GSA being unable to relocate the court to outside space, the court and its related agencies will be the only occupants coming to work in what essentially will be a largely empty 14-story construction zone. No doubt you can imagine the impact this will have on the morale of the staff.

Unanticipated by Ms. Dudley were a number of safety and security hazards that affected the building, the most dramatic of which was the falling of bricks from one of the 14-story brick veneer walls in the fall of 2012. In an article entitled, "Bricks Try Patience of Court Workers at Poff Federal Building", Laurence Hammack of The Roanoke Times reported on December 2, 2012 on the impact of GSA's renovation work and the effects of the "newly discovered" brick bulge on the west side of the building. Mr. Hammack wrote, in part:

The administration of justice in the Poff Federal Building, already disrupted by a \$51 million renovation that began [in 2011], came to a standstill recently when loose bricks were discovered on the building's west façade ...After being closed the week of Thanksgiving while most of the bricks were removed, the building reopened Monday – but with even more inconveniences before ...To Chief U.S. District Court Judge Glen Conrad, the roundabout route to Courtroom No. 1 was just the latest disruption posed by keeping the court system in the building while it undergoes the three-year renovation ... "One questions the wisdom of leaving the tenant in the building while the window work was being done," Conrad said, referring to the replacement of the building's glass walls, a major part of the project... "Losing the four days last week was a substantial blow to us," Conrad said in an interview last week. "It put people behind on projects; it just created a burden."

The article continued, addressing the threat from the bulging 14-story brick wall and GSA's lack of transparency in providing information on the potential damage to life and property:

A Nov. 14 letter to the [GSA], the federal agency in charge of the building's upkeep, stated that the west-facing brick façade "is in danger of collapse." Because the bricks that make up the exterior of the 14-story wall were tightly bonded with mortar, "there exists the possibility that the collapsing wall could come down in a single sheet which would create a collapse zone equal to the height of the building (216 feet)," wrote Carl Doebley, vice president of TranSystems Corp., one of the contractors working for GSA. "The brick portion of the west elevation should be demolished for purposes of life/safety." Doebley's letter, obtained ... through a Virginia Freedom of Information Act request, makes a more stark assessment of the building's condition than had previously been released by the GSA.

Elsewhere, the article noted:

It was unclear ... just when the loose bricks were first noticed, and whether it was by chance or part of a routine inspection. In response to emailed questions – a format the government required – [GSA's] Gilliam said only that the problem was discovered by a GSA contractor.

The article further described the conditions imposed on the court, its employees and the public, stating:

Remaining still are hassles for Poff Building tenants [and] ... "[e]ven when the brick work is completed, court staffers will still experience inconveniences from the ongoing renovations, which include noise and displaced offices...With the exception of courts, probation service and a few other offices, the building is mostly empty. Its largest tenant, the Veterans Affairs regional office, was moved to temporary locations during the renovations.

The article concluded:

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

In addition to the inconvenience to members of the public and the bar from having the court closed for a week, the court was compelled to grant a week of paid leave to its employees. These costs were paid out of the court's budget and are not reflected in GSA's 'budget' of costs associated with the renovation.

Perhaps the most frustrating aspect of the three years of disruptions and inconveniences that the employees and judges of the Western District of Virginia endured during GSA's renovation of the Poff Building is the knowledge that GSA's

expenditure of \$65 million to date⁹ resulted in “cosmetic” changes only and that the agency did not seek to improve either the functions or operations of the building’s tenant agencies.

In addition to GSA’s indifference to its imposition of unnecessary costs on its tenant agencies and its actions in not seeking to improve their operations, GSA violated federal law in awarding the initial construction contract on the Poff project to its prime contractor, Balfour Beatty.

GSA Violated Federal Law in Awarding the Construction Contract - Inspector General Report

You’ve got the tail wagging the dog here ... “If I saw that [GSA listed the guaranteed maximum price] as a potential bidder, I’m going to try to inflate my prices.

Theo Watson, a federal procurement consultant and government contract lawyer based in Denver¹⁰

On November 17, 2010, a Recovery Act report on the Poff Federal Building was issued by the GSA Inspector General (IG). The IG found that in awarding the construction contract to renovate the building, GSA failed to get an independent government estimate as required by section 36.203 of the Federal Acquisition Regulation (FAR). In addition, the IG concluded GSA violated the Competition in Contracting Act (CICA) by including the Guaranteed Maximum Price (GMP) in the Request for Proposals.

The IG recommended:

- (1) GSA not exercise additional options on the Poff Federal Building contract unless in compliance with CICA. The IG noted the Poff project had options for security improvements at \$7.6 million and building code and life safety improvements at \$4.6 million. [In other words, as a result of GSA’s failure to abide by the law and compete the contract, the IG recommended GSA not incorporate vital improvements that would have protected federal employees and the public into the project];
- (2) The IG further recommended that GSA establish management controls to ensure Construction Manager as Contractor (CMc) contracts, as used for the Poff Federal Building and another facility in Huntington, WV, meet competition requirements in the future.

In response to the IG report, GSA indicated that, should additional work be required under the options, GSA would award the work “in accordance with applicable laws.”

⁹ As noted elsewhere in this memo, GSA plans additional projects at the Poff Federal Building that are estimated to cost approximately \$17 million.

¹⁰ Bidding Law Broken Over Poff Building, Report Says, Laurence Hammack, The Roanoke Times, November 24, 2010.

GSA also noted it had developed and was then seeking to implement a corrective action plan in response to [“similar concerns raised about other projects.”]¹¹ GSA noted that their implementation of that plan, as approved by the IG, would address the IG’s second recommendation.

Specifically, the IG Report concluded “Construction Services Were Awarded Without Adequate Price Competition.” Regarding the \$42,000,000 “Guaranteed Maximum Price”, the audit noted the number “had limited support, as GSA did not get an independent government estimate for the construction of either project [Poff Federal Building or Huntington] as required by the Federal Acquisition Regulation (FAR) 36.203.

The Guaranteed Maximum Price was based on an internal budget estimate using the feasibility study of \$28.9 million. The report observed, “Pricing for the construction options was not based on competition.” The bids from ten bidders on the Poff modernization project were “identical” and the actual award was based on “pre-construction services” that “comprise less than one percent of each overall contract value.”

In the Poff case, the \$51,430,910 contract including all options was based on a firm-fixed-price of only \$225,000 for pre-construction services.” The IG noted, “achieving fair and reasonable pricing is an invariable requirement of Government contracting,” and continued, “[s]ince the Guaranteed Maximum Price was not set through price competition, GSA has no assurance that a fair and reasonable price was achieved.” Further, the IG wrote, “GSA eliminated cost or price as an evaluation factor for substantial portions of the contract. As a result, GSA violated the Competition in Contracting Act (CICA)” In addition, GSA violated FAR 36.204 by providing the “exact Guaranteed Maximum Price” rather than an “estimated price range.”

Despite GSA’s public acknowledgement of violations, the construction contractor GSA selected, Balfour Beatty, suggested there was nothing exceptional about GSA’s conduct in the Poff matter. In a November 24, 2010 article entitled, Bidding Law Broken Over Poff Building, Report Says, Laurence Hammack of The Roanoke Times reported:

As for the inspector general’s report, two officials with the construction company’s Washington division said it’s not unusual for a maximum guaranteed price to be disclosed during the bidding for projects such as the Poff Building, in which the construction and design phases are consolidated.

“We were a little surprised” by the report [OIG Audit], said Steve Smithgall, president of Balfour Beatty’s Washington division.”

¹¹ There are at least five other contracts, which include Huntington, WV, the Austin, TX Courthouse and San Francisco’s UN Plaza renovation where CICA violations apparently occurred – [see IG report and April 2011 testimony of Brian Miller before House T&I Committee].

Pete V. Domenici Federal Courthouse – Albuquerque, NM

In addition to examining GSA's conduct in relation to the Poff Federal Building renovation and its harmful impact on the federal judiciary, the Subcommittee will examine GSA's priorities in pursuing a so-called "sustainable" landscape project at the Domenici Federal Courthouse in Albuquerque, New Mexico. A summary of that project follows:

"It is a wonderful project. This is one of those projects that they're already talking about awards¹² for design."

Tina Jaegarman, GSA Spokesperson, Fort Worth, TX¹³

Completed in 1998, the seven-story Pete V. Domenici Federal Courthouse was constructed by GSA on time and under budget for \$41 million. The landscaping featured a fountain and Kentucky blue grass over an underground parking garage. The non-native blue grass required 300,000 gallons of water during the summer. Over time, leaks from the fountain and the constant watering began to seep into the garage. Concerned the leaks might damage the integrity of the structure, the district's judges asked GSA to consider replacing the blue grass with native Buffalo grass.

Without consulting the district's judges, GSA subsequently approved a plan to spend \$3.4 million to completely re-landscape the property. GSA's approved design included not only "native and adaptive plant[s]" but the installation of large underground cisterns and solar panels.

Opposing the project's magnitude and cost and dismayed by GSA's priorities at a time when the federal government was seeking to rein in unnecessary spending, the district's judges asked Judge William "Chip" Johnson, the representative for the judges in the 10th Circuit on the Judicial Conference's Committee on Space and Facilities, to approach GSA and ask them to reconsider this extraordinary project. Judge Johnson appealed to GSA noting, "whether this is a wise and efficient use of taxpayer dollars is an important public issue." GSA ignored the judges' opinions and proceeded with the project.

Apparently valuing the potential for a design award over the sensible expenditure of taxpayer funds, GSA's spokesperson proclaimed that the project was a "showcase for innovation in sustainability" and a "unique situation at a unique time." Not noting the irony, the spokesperson attempted to justify the project by stating that one of GSA's major goals "is to reduce resource waste in federal buildings." Judge Johnson concluded

¹² It appears GSA's visions may be realized as Judge Johnson reports that, "GSA is set to receive some kind of award this summer for the landscape plan."

¹³ Courthouse Leak Turns Into \$3.4M Project, Mike Gallagher, Albuquerque Journal, February 10, 2013, A1.

that, "[n]otwithstanding the concerns raised by judges of this district, GSA went full steam ahead."

In an editorial entitled, "Feds Go Over the Top in Fixing Courthouse Leak,"¹⁴ the Albuquerque Journal wrote, "The judges could holler "whoa", but the GSA is the landlord and as tenants the judiciary has no say." The paper also noted, "The GSA is notorious for its over-the-top largess with taxpayer money, and this is another example of it on steroids."

ISSUES

Poff Federal Building - Roanoke, VA

- Why didn't GSA exercise due diligence and conduct an appropriate site survey of the building before committing funds to its renovation?
- When did GSA first learn about the unsafe 14-story brick walls at the Poff Building? Was there a danger to court employees and the public if the wall(s) had collapsed?
- How did GSA's failure to obey federal law lead to federal employees and visitors to the Poff Federal Building not being protected from known security risks? How did GSA's failure to obey federal law lead to GSA's decision to not exercise the option of integrating life safety options improvements into the construction contract?
- Given the unique security requirements of federal courthouses, why has GSA failed to prioritize safety and security? What other courthouses may be negatively affected by GSA's neglect?
- Why hasn't anyone at GSA been held accountable for violating federal law in publishing the Guaranteed Maximum Price (GMP) that the government would pay for the renovation of the Poff Building? Is it standard operating procedure as one of GSA's contractors has claimed to publish the GMP? Besides Poff and Huntington, WV, how many other GSA courthouse projects have had the GMP published prior to contracting for construction?
- How were the judges, court employees and the public negatively impacted by having to continuously maintain operations in a building that was undergoing a major renovation? Has GSA fully compensated the judiciary for the costs imposed on their operations?

¹⁴ Feds Go Over The Top In Fixing Courthouse Leak, Albuquerque Journal, February 13, 2013, A6.

- How much was spent to renovate the offices of the WD-VA Court Clerk and the Chief Probation Officer in the three years prior to GSA seeking to renovate the building and rendering these upgrades unusable?
- Why is GSA now seeking to demolish paving, landscaping and irrigation systems that they just constructed as part of the renovation? Who is responsible for the failure to sequence work so that waste like this does not occur?
- What are the unique challenges associated with providing security to federal courthouses? Should federal courthouses continue to be located in large, multi-tenant buildings like the 14-story Poff Federal Building? Are such arrangements inherently insecure?
- Why didn't GSA conduct an appropriate cost-benefit analysis before committing taxpayer dollars to the Poff Building conversion into a high-performance green building?
- How much did GSA estimate it will save in energy costs upon completion? How much does GSA currently expect to save now that the renovation has been declared complete? When will GSA's "savings" be recognized in reduced rent payments by the federal judiciary?
- Wouldn't a proper inspection and site survey have determined that the brick veneer walls were in danger of collapse (assuming the danger wasn't caused by the renovation) and that the primary tenant, the Veterans Affairs Regional Office, would need to be removed from the building?
- How much will it cost to renovate the 13th floor for the Director of the Veterans Affairs Regional Office? When does GSA expect to be able to relocate the entire operations of the VA to the Poff Federal Building?

Domenici Courthouse - Albuquerque, NM

- Is it typical of GSA to make major decisions regarding federal courthouses without consulting the judges who are affected?
- How long did GSA take to consider options for addressing the judges' concerns regarding water leaks before deciding on the installation of this magnificent landscaping project?
- Who was responsible for initiating and approving this wasteful project?

- Wouldn't it have been a higher and better use for these funds to improve the safety and security of a courthouse somewhere else in the country?
- Will GSA assure the Members of the Committee that they will not seek to increase the rent charged to the district court in order to maintain or otherwise care for this project?

COMMITTEE CONTACT

Questions regarding this hearing may be directed to David Whitney of the majority staff at 5-5741.