ALLOTMENT OF SPACE IN FEDERAL COURTHOUSES OR IN FEDERAL BUILDINGS WHICH INCLUDE FEDERAL COURTS

(92-34)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
BLIC BUILDINGS AND GROUNDS

OF THE

MMITTEE ON PUBLIC WORKS
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

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ALLOTMENT OF SPACE IN FEDERAL COURTHOUSES OR IN FEDERAL BUILDINGS WHICH INCLUDE FEDERAL COURTS

TUESDAY, MAY 2, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS
OF THE COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2167, Rayburn House Office Building, Hon. Kenneth J. Gray, chairman, presiding.

Mr. GRAY. The Subcommittee on Public Buildings and Grounds will please come to order.

On behalf of all the members of the subcommittee, I would like to welcome all of our distinguished guests here this morning.

I apologize for my 15-minute tardiness. Had a reporter call, and you know how these newspaper people are. You never get off the line.

No, it was not Jack Anderson. [Laughter.]

The purpose of the open and public hearings this morning is to consider the allotment of space in Federal courthouses or in Federal buildings which include Federal courts.

This committee, over the past few years has approved many new Federal buildings.

Included in the 63 buildings are courtrooms. We previously authorized the construction of these buildings at a certain size we felt was adequate to meet the needs of the court system.

Since that time the Judicial Conference has met and made certain recommendations on cutting down on the size of the courtrooms.

This has disturbed a number of our sitting judges, a number of Members of Congress, and your Subcommittee on Public Buildings and Grounds is meeting this morning to air this problem to see what we can do with the General Services Administration to accommodate the needs of the judiciary.

With that brief opening statement, I would yield to any of my colleagues who might have a statement.

Mr. MIZELL. Mr. Chairman.

Mr. GRAY. Mr. Mizell.

STATEMENT OF HON. WILMER D. MIZELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. MIZELL. Mr. Chairman, at the time I was informed of this hearing, I contacted Hon. Eugene Gordon who is the U.S. district judge of

the middle district of North Carolina. In a conversation, on April 27, the judge quite adequately gave me his position on the proposal we are considering today for a change in courtroom construction. I would like at this time to give the committee his views on the proposed change.

As Judge Gordon stated, because of the adoption by the Judicial Conference of the United States of the report by the Committee on Court Facilities and Design, there has been widespread dissatisfaction shown and objections raised by district judges in areas where new courtrooms are either in the course of construction or are being planned.

At the present time, a new Federal building is being constructed in Winston-Salem. Included in the construction is a new Federal courtroom. As the proposal now stands, one 40- by 60-foot courtroom will be constructed, and plans for a 28- by 40-foot facility will be built when needed. Judge Gordon, however, believes that before the need arises for an additional courtroom in Winston-Salem, it will be proven beyond question that a 28- by 40-foot facility is unworkable and impractical. It is his judgment that such facilities will prove to be a gross mistake and will result in large expenditures of money to enlarge the facilities. It is also his opinion that the investment in what he calls inadequate facilities should never be made in the first instance.

Judge Gordon cited numerous examples of problems that arise when a courtroom does not contain sufficient space whether in terms of length, width, or seating capacity. Where counsel tables are close to the jury box, the jurors are able to see exhibits on the counsel table and counsel are unable to confer without being heard by the jury. Often, in order to expedite a hearing, the judge can call the attorneys to the bench for a conference out of the hearing of the jurors rather than inconveniencing the jurors by sending them out. This cannot be done where the jurors are in close proximity to the bench. When the bench is so close to the witness box, and there is a bench conference which should not be heard by the witness being examined, it is necessary to have the witness step down and go to another place in the courtroom. Also, it is necessary to have 40 plus jurors summoned in order to be assured of enough jurors to select a jury. The 28- by 40-foot courtroom will seat only 28 people. Thus, some of the jurors would have to remain in the halls or elsewhere.

His opinion is that a facility somewhere in between the "large courtroom" (40 by 60 feet) and the "small courtroom" (28 by 40 feet) would be workable and desirable, probably 35 by 55 feet which would give sufficient room. Further, it is also his opinion that in those cases where plans have already been drawn for courtroom construction, that those plans should proceed to completion in accordance with the plan. Investigation was revealed that the expense of changing the plans would exceed or equal the savings brought about by substantial changes, to say nothing of the delay inevitably caused by having to work up new plans.

As Judge Gordon quite emphatically states: If we are to expedite the disposition of cases, we must be furnished adequate facilities. Wall-to-wall carpet and leather furniture are not absolutely necessary, but room is essential.

Attorneys that I have consulted have similar views that Judge Gordon so ably expressed. From all the advisers that I have been privileged to consult, none have agreed with the report by the Committee on Court Facilities and Design.

Mr. GRAY. Are there any other statements from our colleagues?

(No response.)

Mr. GRAY. If not, we will call as our first witness Hon. Frederick Heebe, district judge of New Orleans, La.

Judge Heebe, we are delighted to see you. You are represented by our beloved majority leader, Hale Boggs, who cannot be here this morning, however he did speak to me personally about this matter.

He is delighted you could come.

Judge HEEBE. Thank you very much.

I want to thank you, Mr. Gray, and the members of the committee, for allowing me to be here this morning.

Mr. GRAY. Well, we are certainly glad to have you here and you may proceed.

STATEMENT OF HON. FREDERICK HEEBE, DISTRICT JUDGE OF NEW ORLEANS, U.S. COURTHOUSE, NEW ORLEANS, LA.

Judge HEEBE. I am going to touch on just one aspect of this problem dealing with the concept of what is now known as the minicourtroom, or the expanded courtrooms of 28 by 40 feet.

This court has been in "temporary quarters," leased from the State since March 16, 1963, 9 years. During most of that period the court has labored under monumental difficulties. Its courtrooms have been inadequate, acoustics have been poor; there have been no rooms to assemble jurors; no rooms for counsel to confer; no rooms to sequester witnesses. Jurors, witnesses, counsel, parties, and, in criminal cases, the accused, have used the same corridors for assembling, for access to courts and to await call during trials.[1] There are now nine district judges housed in this building.

And I might say we are one of the busiest Federal courts in this country.

I forget the district statistics and Mr. Kirks can supply them, surely, but roughly, on an annual basis, a judge receives about 470 civil cases a year, plus criminal cases, and we are in an area where we have a great amount of maritime litigation, where you not only have a plaintiff and defendant, but you have third and fourth parties, and fifth parties.

I might say that in the present courthouse some of our judges have to walk some 200 feet of public corridors to reach the courtroom.

We are not complaining about that, because we are not used to any luxury in the courtroom. We are there to do a job, and we want to do the job, and we say we cannot do the proper job in a courtroom where there is not enough room.

In participating in the design of the new courthouse, we have requested nothing monumental. We have worked closely with GSA and

[1] We permit such "minor" problems as lack of adequate elevators, extensive fire damage, poor building services from our landlord, the State of Louisiana, heating and cooling problems. We take such daily irritants in our stride.

the architects for almost 3 years. With the entire concurrence of GSA, the following courtrooms have been planned:

One ceremonial courtroom 3,600 square feet.

Eleven courtrooms 2,350 square feet each—note that these are all smaller than the then standard 40 by 60.

Three courtrooms, floor space available but no present layout planned.

This court is on an individual calendar system. The system of courtrooms and judges' chambers has been planned for the most efficient conduct of such a calendar. All courtrooms, other than the ceremonial one, are identical in size and shape, and, indeed, all judges' chambers are identical in size, but with allowance for some minor deviation with respect to layout.

The allowance of 2,350 square feet per courtroom is not sacramental. Courtrooms 35 by 55, of the type planned in Maryland, containing 1,925 square feet may be adequate. But we sincerely feel that a courtroom measuring 28 by 40 is not only inadequate, but detrimental to the proper administration of justice.

The number at random to be submitted by Baltimore, San Diego, and other jurisdictions will indicate many of the reasons for this.

Some of the other reasons I tried to set forth below, particularly in the memorandum presented by Judge Northrop, chief judge of Maryland, and the letters from several other chief judges, graphically portray the operating problems to be expected in the new standard courtrooms.

We repeat merely that our own experiences have been identical, and our problems would be the same.

All of the judges mention the problem of trials involving more than two parties. These are not merely exceptional or unique.

We have analyzed all of the cases filed in January 1971, and all of the cases filed in January 1970 as typical specimens.

I might say the figures for 1972 could not be used because pleadings are still being filed in those matters, and they are not closed.

Two hundred and sixty-four civil actions were filed in this court in January 1971. In 64 of these there were dismissals or defaults. In 104 cases, two parties entered appearances, but:

In 61 cases—three parties entered appearances.

In 19 cases—four parties entered appearances.

In six cases—five parties entered appearances.

In four cases—six parties entered appearances.

In four cases—seven parties entered appearances.

In two cases—eight parties entered appearances.

In 28 percent of the cases filed that month, there were three or more parties represented by counsel.

In the same month, 30 criminal cases were filed. Of these, four, or 13 percent involved three or more defendants.

In most cases, civil or criminal, each party wishes to seat at counsel's table one trial counsel, one assistant for trial counsel—for example, a junior lawyer—and the party litigant, or a representative of a corporate litigant. Frequently there are two trial counsels. This usually means seating for four persons per party.

The January 1970 data are similar. Two hundred and thirty-five civil cases were filed. In 39, there were dismissals or defaults. In 48 there were two parties, but:

In 60 cases there were three parties represented by counsel.
In 45 cases there were four parties represented by counsel.
In 21 cases there were five parties represented by counsel.
In nine cases there were six parties represented by counsel.
In four cases there were seven parties represented by counsel.
In four cases there were eight parties represented by counsel.
In one case there were nine parties represented by counsel.
In one case there were 11 parties represented by counsel.
In one case there were 14 parties represented by counsel.
In one case there were 15 parties represented by counsel.
In one case there were 23 parties represented by counsel.

In that same month 148 out of 235 civil cases filed involved three or more parties, and 88 cases involved four or more parties.

In that same month, 32 criminal cases were filed. Of these, seven, or 22 percent, involved three or more defendants.

These months are not unique. The data were selected at random. The result is, we think, likely to be the same whatever month is selected.

In addition, in many trials, cases are consolidated. These figures do not reflect the added space requirements in consolidated cases. In a substantial number of trials, space inside the rail, sufficiently separated from other participants to permit orderly trial conduct, must be provided for at least three tables each seating four or more persons, and in many cases the space demand is even greater. It is then not merely a matter of moving to a "big" courtroom for the exceptional case, for the little case is truly the exceptional case.

Now, we say no courtroom should belong to a judge. But if the judges must rotate courtrooms every day, there are many added problems. Most of our judges do not require their law clerks or crier clerks to remain in the courtroom during a trial.

However, they do have speakers connected to their chambers so that law clerks can follow proceedings, and buzzers so that they can summons a clerk, or clerk crier when needed. Such a system is practical only if the judge usually uses the same courtroom.

Many of the judges also permit the courtroom deputy to attend to other work at points in a trial when their presence in court is not needed. A buzzer connection from the courtroom to the deputy permits the judge to call the deputy immediately. The rotation of courtrooms renders this time saving device impractical.

Finally, many of our judges keep a half dozen books at bench side for ready reference—civil rules, criminal rules, the Bench Book, an elementary text on evidence, et cetera. The rotation of courtrooms would require that books be carted around easily, or that this work saving device be sacrificed.

Every courtroom should always be available to the court, and should not be the property of a judge. But there are many efficiencies in permitting a judge to occupy the same courtroom, in close proximity to his chambers, as a customary matter.

In many criminal cases we usually empanel one alternate juror. This means 13 jurors are required, plus 16 additional veniremen to

accommodate peremptory challenges, or a total of 29. Allowing six veniremen for challenges for cause, means a minimum seating requirement, exclusive of the public or witnesses or press, of 35.

Of course, jurors could be selected elsewhere, then moved to the courtroom. At a sacrifice of time and efficiency—which is of course also a sacrifice in money. One hour per day of a judge's time wasted would exceed the annual cost of the proposed courtrooms.

Assume a judge works 1,900 hours a year. His "direct cost"—exclusive of all benefits, secretarial cost, clerk's cost, and overhead—is $21 per hour, or $110 per week—or more than $5,000 per year.

It is appropriate to ask what savings can be effected by reducing the size of the courtrooms. It is estimated that building cost for the new structure will be approximately $30 per square foot. The difference in size between the planned courtrooms and the new standard courtrooms is 1,230 square feet per courtroom. If every foot of space saved is put to some other use, the gross reduction in initial cost will be $36,900 per courtroom.

The courthouse building will have a useful life of at least 50 years.

The Fifth Circuit Court of Appeals is preparing to occupy the space in a post office erected as a post office-courthouse in 1915, almost 60 years ago. Based on a 50-year useful life, the per annum cost of the saving by using the new standard courtroom would be at most $738—or $62 per month.

To impose such spartan measures to achieve this saving, appears to us to be pennywise and pound foolish.

I might say that the space in the building we are now in, in which we are now housed, is about 80 years old, and we are leasing it from the State of Louisiana.

May we repeat the statistic previously mentioned: It costs the United States over $5,000 in direct salary alone if we waste 1 hour a day for a Federal district judge. If the indirect cost (law clerks, pensions, secretaries, law books, telephone, etc.) is included, then it is apparent that it would be financially worthwhile to build the courtrooms as originally proposed if this would save only 15 minutes a day per judge.

It appears in order to inquire whether the new standard courtroom possesses—and I think this is most important, gentlemen—whether or not this new courtroom possesses the dignity which should be expected in a U.S. district court.

Formica walls are suitable in their place. Movable equipment may be suitable in hotel meeting rooms. Compactness may be a virtue in many instances. But in an age where there appears to be great resistance to all authority, and great efforts to demean the judicial system, a new courtroom should be appropriate in size and appearance.

Nor should we overlook the problem of finding personnel to move furniture: It is frequently impossible for us to get service for hours at a time for other GSA functions.

Finally, the cost of personnel to move furnishings reduces, and likely completely eliminates any saving in initial cost.

I will only be a minute or two, gentlemen.

I know you have a number of other speakers.

Last week the Circuit Judicial Conference met in Savannah, Ga., comprised of representatives from Georgia, Florida, and the Canal

Zone, and there was a resolution passed unanimously. I think there were roughly—I am not sure of the exact number—but either 75 or 80 U.S. district judges—passed a unanimous resolution, asking that the Judicial Conference refer back to the ad hoc committee on facilities, and the resolution to revoke the resolution passed in 1971 of approving of the standard courtroom size to be 28 by 40.

I might add that the type of cases we are getting these days are school desegregation cases, ecology cases, voting rights cases—all of these cases flood people into the courtroom, and with that, gentlemen, I merely ask your help, and I am confident that you will do the right thing.

Mr. GRAY. Thank you, Judge Heebe.

That was very good testimony.

Do you have any idea why Chief Justice Burger and the Judicial Conference voted originally to recommend cutting the size of these courtrooms down, knowing full well that these courtrooms built 28 by 40 would not be adequate?

This might be somewhat of an embarrassing question, but have you heard the Appropriations Committee had asked the Chief Justice to cut down the size because of the dollar-and-cents values involved?

Judge HEEBE. I have heard Chief Justice Burger make this statement—I heard him say that he thought that unless we cut the rooms down there were not going to be any courtrooms, or, in essence, that——

Mr. GRAY. You are stating categorically as a sitting, working judge, that these courtrooms would not be adequate to serve your needs or the needs of the taxpayers?

Judge HEEBE. Certainly, these courtrooms cannot meet our needs.

You see, the plans that we have—we do not say they are this sacramental. We can do this in our courtrooms, but the General Services Administration planned this with their architect.

Mr. GRAY. Well, you mentioned the $36,000 savings, and I am sure you did not take into account that if we had to go back and redraw these plans it would cost more money in the long run.

Judge HEEBE. I gave these figures as the most favorable view toward the minicourtroom position.

I did that throughout, and, frankly, I do not know what you can do with the space.

Some people said, "Well, maybe you can enlarge the walkway or the hallway. Take it away from the court—" and I just do not know.

Mr. GRAY. Just the fact that you have got to go back in and redraw it before it can be constructed is going to cost more than these affected savings.

Judge HEEBE. I do not know what savings in the cost will be, but I think it would be tremendous, and I would hate to see that within a year or 2, and I know that is going to happen; that we will find out that we are going to have to tear those out and enlarge the rooms.

Mr. GRAY. Well, inflation has catapulted these buildings into higher cost figures, and if the architect did nothing, I think inflation would eat up this $36,000 which is to be realized in savings, if the buildings are delayed because of this.

Mr. Harsha.

Mr. HARSHA. Thank you, Mr. Chairman.

Judge, this decision was apparently made by a committee of the Judicial Conference?

Judge HEEBE. Well, my understanding of it is this, sir.

It was made by a committee, appointed as of March 1971.

Judge Devitt heads up that committee.

At the following meeting of the Judicial Conference a resolution was passed by the Judicial Conference, approving, among other things, the standard courtroom size to be 28 by 40 feet, which we have referred to here as a minicourt, which cannot meet our needs.

Now, since that meeting, I have talked to any number of judges on the Judicial Conference who feel like they made a serious mistake.

There is no question about it. I have talked to Chief Judge Brown.

There are judges here who have talked to other judges on the Judicial Conference, Judge Haynsworth, and a number of other judges, and there was a resolution, as I understand it, passed at the last Judicial Conference, in April 1971, in which the matter was referred back to the ad hoc Committee on Court Design, ostensibly for the purpose of reconsidering the space requirement.

So the thing is really in limbo, although there is a resolution passed by the Judicial Conference, as I understand it, and I say this most sincerely to you, as I appreciate it, the majority of the members on that Judicial Conference certainly do not think the 28- by 40-foot courtroom will meet the ordinary courtroom size of a Federal court in this country.

Mr. HARSHA. Well, I am trying to get the background on how this originally came about.

Am I correct in assuming that the Judicial Conference is made up solely of judges?

Judge HEEBE. No, sir.

Well, judges; yes. It is made up of roughly 25 judges. The Chief Justice is the Chairman of the Judicial Conference.

Then you have the chief judge of each circuit.

Well, there are 10 circuits, and then there is one circuit judge from each circuit, and then I think one or two other judges from the Court of Claims.

Mr. HARSHA. And these are all Federal judges?

Judge HEEBE. Yes.

Mr. HARSHA. Now, the committee that made the recommendation to the Judicial Conference, was that committee comprised of judges?

Judge HEEBE. There was three or four judges, and that committee was appointed by Chief Justice Burger, with the chairman being Judge Devitt, and there were several trial attorneys on that committee, one, Mr. Ed Bennett Williams.

Mr. HARSHA. Well, there has, obviously, along the line, been input into this decision by judges; was there not?

Judge HEEBE. Well, the thing we object to, Congressman, is this:

There were roughly nine or 10 with pending courthouse construction and, to my knowledge, this particular committee—and I know they worked diligently at their jobs—none of the areas that had pending construction were in any way connected. We never had an opportunity to let them know what our requirements were.

It was only about several months after March that I wrote the Chief Justice on behalf of nine judges, and, in addition to that, the Chief Justice asked Judge Devitt to entertain the presentation of judges who had construction pending so we could present our views.

Mr. HARSHA. How did the judges ever make a decision like this to start with?

Judge HEEBE. Well, you are asking me how did the ad hoc committee of Judge Devitt make this——

Mr. HARSHA. Of the Judicial Conference.

Judge HEEBE. I really do not know how they did it. I wish I could understand it, so I could explain it.

Mr. HARSHA. Well, I have never been in a Federal court, Judge, and if I ever get there, I do not want justice. I just want out. [Laughter.]

How many people are usually in attendance in a Federal courtroom? If you have a clerk, and any security officers, a bailiff, or anything like that?

Judge HEEBE. Well, generally we have—I cannot specifically answer your question. I can say this, we are making a survey right now of that very question, as to how many lawyers on each case that we tried during the past 2 or 3 years, and I will be glad to furnish this committee with the results of that survey.[1]

That, I think, is interesting information, and I think it is relevant information.

I can tell you this; I have had many trials where I have had 10, 15, 25 lawyers, and I have had many cases where I have had packed courtrooms, and I have a courtroom right now that measures 1,776 square feet.

Mr. HARSHA. Well, in addition to the lawyers, you have other people in attendance.

You alluded to the 35 veniremen you needed.

Judge HEEBE. In addition to myself, there would be a court stenographer. Generally there would be a clerk, someone who swears the witnesses in, and takes charge of the exhibits. Generally we have a bailiff, and we let him go elsewhere to do other things.

In addition to that there will be a U.S. marshal there, and in addition to that there will be the litigants, and their lawyers, of whatever number, and, in addition to that, there will be the spectators.

Some cases draw spectators, and sometimes will not.

Mr. HARSHA. And you have the witnesses.

Judge HEEBE. Yes. We usually keep them out in the hallway.

Mr. HARSHA. Taking this one step further, to find the procedure that we are confronted with, this decision was made by the Judicial Conference, and then a recommendation made to the General Services Administration?

Judge HEEBE. I believe I have a copy of the Judicial Conference report which was made last year, sir, which answers those questions.

Mr. HARSHA. Could we have that submitted for the record, Mr. Chairman?

Mr. GRAY. Without objection, it will be submitted at this point.

(The information referred to follows:)

* * * * * * *

[1] See page 4.

COMMITTEE ON COURT FACILITIES AND DESIGN

Judge Edward J. Devitt, Chairman, presented the report of the Committee on Court Facilities and Design.

The Conference was advised that the Committee, which was created as a result of Conference action at the March 1971 session (Conf. Rept., p. 3), had visited court facilities in the United States and abroad and had worked closely with Mr. Robert L. Kunzig, Administrator of General Services, and his staff.

The Conference was advised that, after extended discussion at the first meeting, the Committee arrived at three basic conclusions which would govern the deliberations of the Committee. First, better efficiency must be built into new facilities embracing the latest developments in science and technology so as to satisfy both operational and aesthetic needs compatible with the best traditions of our judicial system. Second, the size of courtrooms should be reduced to achieve greater efficiency and curtail the cost of construction. Thirdly, more attention must be given to the security of court facilities.

The GSA presented a series of plans and several models of courtrooms for the consideration of the Committee. These fell into two general schemes: a courtroom in the round and a rectangular courtroom. These were a distillation of all the material in their hands and their best judgment as to what appeared to embrace the latest and best thinking on the subject.

The GSA constructed two full-scale models for the examination and consideration of the Committee, one in the round and one rectangular, thereby affording a real life opportunity to evaluate new designs and concepts. After careful consideration the Committee concluded that the rectangular design was preferable to the courtroom in the round.

The Committee decided that in all new courtroom construction each court facility shall be equipped with one large (40′ x 60′) courtroom and such additional standard (28′ x 40′) courtrooms "as may be required." Where the need is shown, the Director of the Administrative Office may authorize additional large (40′ x 60′) courtrooms in such number as may be required.

The Conference, after visiting a model facility of a standard courtroom constructed by GSA and conferring with Administrator Kunzig and Chief Architect Walter Meissen, voted its agreement with these conclusions. The Conference further agreed that each courtroom must be available on a case assignment basis to any judge. No judge of a multiple judge court should have the exclusive use of any particular courtroom. The availability of courtrooms, when not otherwise committed, should also be open to other appropriate government usage.

The Conference further agreed to the following conclusions prepared by the Committee:

1. The module of a standard courtroom should be 28′ by 40′.
2. The module of a large courtroom should be 40′ by 60′.
3. The ceiling of the standard courtroom should be approximately 12′ high over the activity area with dropped area approximately 10′ high.
4. The ceiling of the large courtroom should be approximately 16′ high.
5. The principal participants in a trial should be on different floor levels. Court personnel on the lower level; counsel, the witness, jury and spectators on the next level; and the judge should be on a higher level.
6. Movability should be built into the fixtures so that there may be maximum flexibility in arrangement of the furniture consistent with the needs in a particular case. Selected fixed positions to facilitate use of electronic recording will be a limiting factor on complete freedom of movement of fixtures. By way of example—the witness box should be movable so that it can be easily relocated and locked next to the judge or opposite the jury as required.
7. All rails should be movable so as to accommodate varying requirements.
8. Attention has been given to color, light, sound and communication facilities in the courtroom so that the end result will embrace the latest in esthetic and technological features.
9. Access to the courtroom should be provided the participants so as to maintain appropriate separation. By way of example—a separate entrance for the judge, for the jury, for the witness, for the public, counsel and supporting personnel.
10. Approval of the Administrative Office and GSA must be obtained prior to permitting variations from these basic floor plans and dimensions.

Mr. HARSHA. Does this committee have any jurisdiction to make this determination, or should this be a matter for the Judicial Conference to make?

Judge HEEBE. Well, the Chief Justice appointed this committee, you see, on behalf of the Judicial Conference. This is a committee of the Judicial Conference.

Mr. HARSHA. I mean, "by this committee," I mean the Public Works Committee.

Do we have the jurisdiction to measure the determination to determine whether or not the rooms will be 40 by 60, et cetera——

Mr. GRAY. Well, we had a recommendation from the General Services Administration, and the General Services Administration submitted the request to us, and we approved that request after the committee authorized these buildings to be built at a certain size, the Appropriations Committee had gotten onto the Chief Justice saying the buildings are too large.

The Appropriations Committee has taken on the responsibility to be the ruling committee in the House, and I take exception to that. We had authorized the larger Federal courtrooms, and now we are here defending our actions, which I think is unnecessary.

Mr. HARSHA. Well, let me say, Judge, I certainly concur in your judgment that 28- by 40-foot rooms is certainly not a sumptuous or a very spacious place in which to convene a jury, depending upon the amount of people, depending upon what type of case it is.

Thank you very much.

Mr. GRAY. Thank you, Judge Heebe.

Judge HEEBE. Thank you, Mr. Gray.

Mr. GRAY. Our next very distinguished witness is accompanied by our long-time friend, the chairman of the House Committee on Merchant Marine and Fisheries, Hon. Edward A. Garmatz.

Would you come forward and introduce Judge Northrop?

Mr. GARMATZ. Thank you, Mr. Chairman. I am highly pleased to present the Honorable Edward S. Northrop, Chief U.S. District Judge for the District of Baltimore, Md.

Mr. GRAY. Judge Edward Northrop.

We appreciate your coming, and you may proceed in your own fashion.

We will be happy to hear from you.

STATEMENT OF HON. EDWARD S. NORTHROP, CHIEF U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, U.S. COURTHOUSE AND POST OFFICE BUILDING, BALTIMORE, MD.; ACCOMPANIED BY PAUL R. SCHLITZ

Judge NORTHROP. Thank you, Mr. Chairman.

I am going to attempt to answer Congressman Harsha's questions. In the very near future, our plans will be revised by order of the General Services in accordance with the Judicial Conference resolution of October 1971.

And, quite obviously, as you pointed out, Mr. Chairman, every day that we are delayed in getting these buildings up means that the cost of them will be affected by inflation.

Mr. GRAY. This is true.

Judge NORTHROP. And, furthermore, our particular plans are preliminary plans; obviously, working drawings must now be made.

I will give a little history of this, and then say a few words in reference to your question, Congressman.

The plans of our buildings are set, the module set, and the only advantage we get from the minicourtrooms is that there are more courtrooms.

Originally, our building was planned as a courthouse with an office wing. The building is L-shaped. We were getting 12 courtrooms of approximately 55 by 35 as of 1971. We have spent an enormous amount of time going into that type of courtroom. We have studied the courtroom design with the architects which the General Services Administration hired to do this courthouse. We took into consideration the total concept of the courthouse and its function.

All papers in the Federal courthouse must ultimately be passed upon by a judge. We settle roughly 85 percent of all cases filed. To accomplish this requires a great many conferences between counsel and the court.

Mr. GRAY. Did you say 25 percent?

Judge NORTHROP. No; 85 percent.

Mr. GRAY. I am sorry.

Judge NORTHROP. And for efficient operation—that necessitates a close interrelationship of the courtrooms and the chambers, and a number of other things which Judge Heebe has referred to.

I have passed around a copy of my statement.

In the interest of time, and some of it being repetitious of what Judge Heebe said, I think I will not read it in detail. But to get back to this total concept, so to speak, in addition to taking a look at it from the architectural standpoint, and our own standpoint, in reference to the use of the courtroom, and the interrelation of the courtrooms and the chambers, Dr. A. Benjamin Handler, of the University of Michigan, who was employed by the American Bar Association on a previous courthouse study, came down to go over our plans. He instructed our architects about technics to raise the acoustical qualities of the courtrooms. I might say here the American Bar Association plans for courtrooms, particularly in reference to the so-called controversial trial, calls for a much larger seating arrangement than the so-called minicourtrooms.

(The full prepared statement of Judge Northrop follows:)

STATEMENT OF HON. EDWARD S. NORTHROP, CHIEF U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, BALTIMORE, MD.

DESIGN OF THE PROPOSED BALTIMORE COURTHOUSE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

The present Federal Courthouse building in Baltimore was constructed in 1930 as a combination main Post Office and Courthouse building. At that time, there were only two federal district judges in the District of Maryland. Several years ago, it became known that a new, main Federal Post Office building in downtown Baltimore would be erected. At the same time, G.S.A. engaged architects to study the feasibility of converting our present building for use principally, if not entirely, as a Federal Courthouse. That study was made in the light of the fact that this Court was expected to expand to at least seven active district

judges.[1] As a result of the study, G.S.A. determined that the cost of converting our present building was much too great in the light of the facilities which would result. There followed discussions with Members of the Congress and with officials in the General Services Administration and the Office of the Director of the Administrative Office of the United States Courts, and also with officials of the City of Baltimore. As a result thereof, the decision was made to erect a new federal building in the Inner Harbor West renewal area, directly across the street from the present Federal Building which is located at the south end of the Charles Center renewal area. The new building is to be erected in an "L" shape. One wing of the "L" is to house the Federal Courthouse. The design of the building and its outer perimeters have long since been approved by all federal and Baltimore City officials.

Last summer or early fall, preliminary plans were submitted to G.S.A. with the approval of this Court and of the Administrative Office of the United States Courts. Those plans called for the use of three of the nine floors in the Courthouse wing of the new building to be occupied by twelve courtrooms and twelve chambers for judges, the latter being designed on a completely interrelated basis with the courtrooms so as to enable the most efficient utilization of space and the most efficient utilization of the time of each judge and of the members of his staff. On each of the three floors, the plan called for four courtrooms and four interrelated groups of chambers. The judges of this Court did not ask for twelve courtrooms and twelve interrelated groups of chambers; rather they asked only for eight of the same, to be located on two floors. The G.S.A. officials and the architects recommended the provision of the third floor so that the latter would be available for use if, as expected, the size of this Court expands at the same time or not long after the new building is erected. As far as the judges of this Court were, and are presently, concerned, whether the third floor should be originally constructed for other use, with an eye to conversion if and when expansion is needed, or should be constructed originally as a court floor, is entirely up to G.S.A. and the Director of the Administrative Office of the United States Courts.

Each of the new courtrooms was designed to be 55′ x 35′, thus occupying 1,925 sq. ft. each. The request for courtrooms of that size was specifically made by all of the members of this Court because the members of this Court do not believe that larger courtrooms are necessary to try 95% to 99% of our cases. We presently have two non-ceremonial courtrooms which are 2,700 sq. ft. in size. They are too large for efficient use. On the other hand, we have several small courtrooms, including one which is 27½′ x 48½′, and thus occupying approximately 1,334 sq. ft. The latter has proven too small for efficient use as a jury courtroom because the jury box is too close to one of counsel's tables, bench conferences cannot be held without requiring the witness to move from the witness chair, and usually the jury to retire to the jury room, and, in addition, there are security problems because of the crowded situation which results from the smallness of the facilities.

Against the background of that experience, this Court asked more than a year ago for courtrooms 1,925 sq. ft. in size. There is nothing sacrosanct about that size, but that size, in the opinion of the architects and all concerned, made sense in view of the already decided upon design of the building.

After the submission of preliminary plans in the late summer or early fall of 1971, this Court learned, for the first time, after the October, 1971 meeting of the Judicial Conference of the United States, that all federal courtroom sizes, in the future, would be required to be 40′ x 28′, or a total of 1120 sq. ft., or 60′ x 40′, or a total of 2400 sq. ft. This Court has now been advised that an alternate plan has been suggested pursuant to which this Court would be provided, on two floors of one wing of the new building, with three courtrooms 40′ x 28′ and two courtrooms 60′ x 40′. The detailed plan for the same has not been presented to this Court. In a meeting with General Roland W. Kirks and one of his assistants, Colonel Gilbert Bates, and the chief G.S.A. architect, Mr. Walter Meisen, held on April 20, 1972, the members of this Court stated that they would be quite willing to examine the new plan and to consider it along with our own pre-

[1] At this time, there are, in fact, seven active judges and two senior judges sitting in this Court. Our expanding caseload would indicate the requirement for additional judges in the not too distant future.

liminary plans agreed upon last spring.[2] However, this Court continues to hope that it can be permitted to have the facilities shown in the preliminary plans and that those plans can be put in final form without delay. This Court is informed by the Baltimore City authorities that the site upon which the new building is to be erected will be available for construction to start on approximately March 1, 1973.[3] There is urgent need, therefore, to finalize the plans for the building and to get them out to bid.

The plans proposed by this Court take into account the complex interrelationship of this Court's function, viewed as a whole, with careful consideration to work space and movement of personnel. No judge can or should compress his work into a forty-hour week, but the utmost productivity of the judge, his staff, court personnel and lawyers is required with the present loaded calendar situation existing in this district, and in most other districts in this country.

Our experience in our present building with a mix of large courtrooms (45′ x 60′) and small ones (27½′ x 48½′ and 31′ x 43′) makes the following abundantly clear:

1. Large courtrooms waste space and present acoustical problems.
2. Small courtrooms can be too small and create serious trial problems which waste time and cause delays. Acoustics are generally good.
3. Two sizes of courtrooms, requiring judges to move from courtroom to courtroom and to other floors, away from chambers, destroy judicial efficiency, and waste judicial time.

The plans which we proposed for our new Federal Courthouse building will avoid those defects and will provide courtrooms of a size in between the two sizes authorized by the Judicial Conference in October, 1971. Courtrooms of the in-between size—1925 sq. ft.—taken together with a ceremonial courtroom on the first floor of the new Federal Courthouse building (there is no disagreement with regard to the provision of that facility)[4] will, it is believed, fully, adequately and efficiently serve the needs of this Court and permit the trial in them of 95% to 99% of our cases.[5] All of those courtrooms[6] will also be available for use by all federal agencies located in Baltimore at any time when they are not needed for use as courtrooms.

Accordingly, this Court urges that, without further delay, the preliminary design agreed upon in the summer or fall of 1971 be approved. We do not, and cannot, say we cannot make do with courtrooms of a different size, nor that we cannot perform our duties on two floors which contain a mix of courtrooms along the lines suggested to us in our recent conference on April 20, 1971 with General Kirks and the others. We simply say that we believe that the design which we have proposed is both economical and efficient and fits flexibly into the design of the propose new building.

I am authorized to state that all nine judges of this Court concur without reservation in all statements and views stated in this memorandum.

For the Court:

Dated: May 1, 1972.

EDWARD S. NORTHROP,
Chief Judge.

MEMORANDUM, RE: NEW FEDERAL COURTHOUSE, BALTIMORE, MARYLAND

1. *Purpose.* The purpose of this memorandum is to review planning to date with regard to the provision of courtrooms and judges' chambers in the new Baltimore Federal Courthouse Building.

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[2] On April 20, 1971, General Kirks stated he would have that new plan sent over to us from Washington within a few days. It has not yet been received by us. We did learn, however, on April 27, 1972, that officials of Baltimore City had been informed that a revised design calling for three courtrooms 40′ x 28′ and two courtrooms 60′ x 40′ had been established by G.S.A. It had been and is our understanding that no changes will be made in our preliminary design as agreed upon last summer or last fall until after General Kirks and his staff and Mr. Meisen and his staff thoroughly review that design and discuss its efficacy with us.

[3] By utilizing a "quick-take" procedure, we have been informed that it might be possible to have the property available by November 1, 1972.

[4] The chambers attached to the ceremonial courtroom can be used by a senior judge or indeed by an active judge if the occasion should require.

[5] For the remaining cases, the ceremonial courtroom will be available.

[6] And of course the ceremonial courtroom.

2. *History.* In July, 1969, after the appropriate congressional committees had approved the construction of a new courthouse and federal office building in Baltimore, site studies were commenced and the architects who conducted that study were chosen to design a new building. In January, 1971, the General Services Administration made arrangements for those architects, RTKL, Inc., of Baltimore, to make, along with certain GSA officials, an initial presentation to this Court. Thereafter, for about nine months, at the joint suggestion of GSA and the architects, several Judges and the Clerk of this Court worked closely with GSA and the architects; and on one occasion the GSA officials, the architects and several Judges, and the Clerk of this Court spent the better part of a day with a consultant retained by the architects, Professor A. Benjamin Handler, Professor of Planning of the University of Michigan, Department of College of Arts and Architecture, and a member of the AIA–ABA Task Force on Judicial Facilities. In the fall of 1971, preliminary plans were submitted by the architects to GSA for their final approval. However, before that final approval was obtained, the Judicial Conference of the United States approved a report of its Ad Hoc Committee on Court Facilities. On December 20, 1971, the Director of the Administrative Office of the United States Courts, in a letter addressed to all courts, stated that the new Judicial Conference standards were effective and applied to all new projects. Since that date, several Judges and the Clerk of this Court have conferred at length with General Kirks and his assistant, Colonel Bates, and have also had the opportunity to visit the model courtroom at the Washington Naval Gun Factory and to discuss that facility with representatives of GSA and the Administrative Office including Mr. Walter Meisen, Chief Architect, and Mr. Carroll Hefner.

3. *Judicial Conference Plan.* It is our understanding that the Judicial Conference plan calls for a court of our size to have courtrooms of two sizes: (1) 40′ x 60′ or 2400 square feet, and (2) 28′ x 40′ or 1120 square feet. In discussions with General Kirks and Colonel Bates, we have been informed that more than 50% of our courtrooms would be of the 28′ x 40′ size. We have not been informed whether we would also have a large ceremonial courtroom.

4. *Existing Baltimore Facilities.* The present U.S. Post Office and Courthouse was built in 1930. It originally contained three jury courtrooms, as follows:

Courtroom	Size	Area
No. 1, Court of appeals and ceremonial	48×54 ft	2,592 sq. ft.
Nos. 2 and 3	45×60 ft	2,700 sq. ft. each.

In the last decade, three additional smaller courtrooms have been added as the Court grew from two Judges in 1961 to seven active and two senior Judges in 1971. Those three new courtrooms have the following dimensions:

Courtroom	Size	Area
No. 4	27½×48½ ft	1,334 sq. ft.
No. 5	31×43 ft	1,333 sq. ft.
No. 6	23½×29 ft	681 sq. ft.

5. *The Proposed New Courtrooms as Designed by RTKL, Inc., and Included in the Submission of Preliminary Plans to GSA.* Those plans call for 13 courtrooms, as follows:

Courtroom	Size	Area
Nos. 1–12	35×55 ft.[1]	1,925 sq. ft. each.
Ceremonial	50×60 ft	3,000 sq. ft.

[1] The average width is about 35 feet. The courtroom is as wide as 38 feet in the area between the wall behind the bench and the railing; but only 33 feet behind the railing.

The ceremonial courtroom is designed to seat 150 persons. Our present ceremonial courtroom seats only 130 persons. At the present, we are holding at least

one naturalization ceremony per month. At every such ceremony for a number of years, we have had large overflow crowds. We have also had the same experience when we have had other ceremonies such as a memorial service or an induction.

The ceremonial courtroom would also be used for trials when large *voir dire* panels are required or when there are a great number of spectators who desire to attend the trial. In terms of our present experience with a courtroom containing 2592 square feet, we would think that our new ceremonial courtroom should contain approximately 3000 square feet. In that connection we note that it is contemplated that all federal agencies in Baltimore which are expected to be housed in a separate wing of the new Federal Courthouse Building or which are already located directly across the street therefrom in the federal building erected within the last decade, will use the ceremonial courtroom as an auditorium.

We are on the individual calendar system which, provided it is subject to central control and supervision by the Chief Judge is, we believe, by far the most efficient way to handle our caseload.

The cornerstone of our plans for both courtrooms and judges' chambers has been their integration and coordination. They have been designed for use by our court in the individual calendar system, and for the most expeditious handling of cases. To that end *all courtrooms*, other than the ceremonial courtroom, and *all chambers* other than for the Chief Judge are *identical*. We have provided for additional space in the chambers of the Chief Judge because he has an extra secretary and because the performance of his administrative duties requires him to hold more frequent and often larger conferences.

We were informed by GSA when they and the architects began discussions with us more than a year ago that the standard federal courtroom, at least in terms of thinking and planning at that time, contained a minimum of 2242 square feet. After a great deal of study and discussion which involved every member of our Court, we came to the conclusion that each us would prefer courtrooms containing less square footage than 2242 square feet. Because of the differences in the size of the courtrooms in our present building, the Judges of this Court have had an opportunity to learn how much better the acoustics are and how much more pleasant it is to try a case in a room which is not over-large—a room which does not have the height of our three largest courtrooms, namely 24 feet—a room which does not contain many more seats and great deal more space than is needed for the number of people who are in it during more than 95% of trial time—a room which does not call for the bench, the clerk's desk, the law clerk's desk, the witness stand, the jury box and counsel tables, to be as far apart as those objects are in our larger courtrooms. At the same time, we have learned from the use of our three smaller courtrooms that a number of operating problems do arise when the courtroom does not contain sufficient space either in terms of length, width, or seating capacity. Our courtroom No. 6 is usable only when there are involved not more than a handful of persons. In courtrooms Nos. 4 and 5, one of the counsel tables is so close to the jury box that it is most difficult for persons seated at that table to hold any conferences without being overheard by the jury; and in one of those courtrooms, No. 4, at least several of the jurors not only can see papers which lie on the counsel table closest to the jury box, but find it difficult to avoid looking at those papers. In both courtrooms Nos. 4 and 5, the bench is so close to the witness box that every time there is a bench conference which should not be overheard by the witness, it is necessary to have the witness step down and go to another place in the room. In addition, the benches and jury boxes in both those courtrooms are so close together that it is only by whispering at bench conferences, which causes problems for court reporters, that is is possible to hold such conferences without requiring the jury to return to the jury room.

In all of our courtrooms, the space between the bench and the clerk's desk is so small that if more than one or two counsel come to the bench for a conference, it is necessary for them to string out along the bench and even then, they are pretty tightly wedged in between the bench and the clerk's chair and desk.

Our present courtrooms are also designed without very much attention to sight lines between bench, clerk's desk, law clerk's desk, court reporter's location, jury box, and counsel tables; and with even less thought to the location of the marshal's quarters and the juryroom. We have only one set of elevators and corridors which are used by all, including the marshal, jurors, and Judges. We have no rooms for attorneys to confer in; in most cases, we have no conference rooms for use by anyone, including Judges, which are situated close to court-

rooms. Also, the court reporters are located in most instances, either on different floors or at considerable distance from the courtrooms.

By far, the *most serious defect* in our present arrangement is that there are only two courtrooms adjoining judges' chambers. The Judges who occupy these two chambers, in the past had their use almost exclusively. At the present time, however, on a daily basis, it is necessary for the Clerk to work with each Judge and to schedule the use of the courtrooms, to ascertain who can operate in a small courtroom and who needs a large courtroom. On many occasions Judges must shift around during the day. In some instances a Judge will wait to use a courtroom until another Judge has concluded a proceeding. On several occasions, it has been necessary for us to borrow courtrooms in the state courthouse across the street. During each day that a Judge of this Court sits in trial which occupies most of that day, he finds that he loses more than thirty minutes of working time in terms of shuffling books, papers, messages, minimal contact with his secretary and law clerks, walking back and forth, and inability to utilize recesses in his chambers because in many instances by the time the Judge goes from the courtroom he is using to his chambers (often two floors apart) and back, he has used up a considerable portion of the recess.

It was against the above background of our current situation, as well as in the light of the conferences and studies referred to above, that this Court requested the courtrooms and chambers *and their interrelation*, which are included in the preliminary plans submitted by RTKL to GSA in the fall of 1971. It is those plans which we discuss in the next section of this memorandum.

6. *Courtrooms in the Proposed New Building*—A. *Number of Courtroom-Chambers Units.* At the present time, we have seven active Judges and two senior Judges. At the present time, our two senior Judges are carrying full workloads. In the future, our expanding criminal caseload would indicate that this Court will require more than seven full-time Judges. On that basis, our preliminary plans call for 12 courtrooms, 12 adjoining chambers. The number 12 is purely a guess. If it is thought desirable to provide less, say, nine for instance, our courtrooms at this time plus a ceremonial courtroom, and to set aside expansion space to be used for other purposes until needed for additional courtrooms and additional chambers, we would have no objection. It has been our understanding that both GSA and RTKL have advised that, in the long run, it would be better to provide at the beginning, the additional courtrooms and chambers which we do not now require. But we would think it might be better to use the space allocated for these extra courtrooms for other purposes, until that space is needed for courtrooms.

B. *Ceremonial Courtroom.* There is little to add to what has been stated above, except that, of course there is nothing magic about the 3000 square foot figure.

C. *Other Courtrooms—we strongly urge that we be permitted to have standard courtrooms of one size.* We have asked for courtrooms 35′ x 55′ containing a total of 1925 square feet. The two standards proposed by the Judicial Conference contain, in the case of the smaller, 1120 square feet, and the larger contains 2400 square feet. The average of the two is 1760 square feet, or 165 square feet less than the 1925 square foot standard courtrooms provided for in our preliminary plans. In designing our standard courtrooms, the architects and GSA began by taking into account the outside dimensions of the new building and the modular breakdown within the building. It is our present understanding that there is no intention to alter the outer contours of our building or the modular breakdown within it. On that basis, taking into account square footage on each floor and the space occupied by elevators, stairways, bearing walls, electrical and other installations, GSA and the architects suggested the balance between the amounts of space which should be occupied by courtrooms, chambers, hallways and other areas.

The proposed height of each floor in our new building is 12 feet. However, the proposed height of each courtroom (except the ceremonial courtroom) is 15 feet. The remaining 9 feet in the space above each such courtroom is used to house air-conditioning and mechanical equipment. The height in the two model Judicial Conference courtrooms ranges from 10 to 12 feet in the smaller courtroom and 16 feet in the larger of the two courtrooms. Our own experience with acoustics in our older courtrooms with high ceilings places us completely in accord with regard to the desirability for lower ceilings. We can certainly be flexible, however, with regard to the exact height.

Insofar as the length of the courtroom, we honestly believe that it is just about minimum. We believe that the area between the railing behind counsel chairs and the wall behind the bench should not be smaller for reasons which we will more fully develop later in this memorandum. We do not see how we can operate with less than 52 seats behind the railing. In a criminal trial—and about half of our total courtroom use involves criminal trials—each defendant has ten strikes and the government, six. Thus, each criminal jury trial requires that we have on hand for *voir dire* at a minimum, between 35 and 40 jurors. We operate on a random, statewide basis. During the winter months, we find that there are often members of a *voir dire* panel who do not appear; so to guard against that possibility, we must always at least in those months, call a few extra jurors.

In criminal trials in which there are because of pretrial publicity, or otherwise, difficulties in picking a jury, or in criminal trials involving more than a single defendant, we sometimes require *voir dire* panels of 50 or more. We honestly believe that when we suggested to GSA and the architects that we be given 52 seats behind the railing, we were picking a minimum figure, one which will necessitate, from time to time, the utilization of folding chairs.

On the other hand, we do not believe there is any great requirement that we have a courtroom exactly 35 feet wide. However, if we cut down the width of that portion of the courtroom, in the area behind the railing, it will be necessary to increase the length of the room in order to provide room for as many as 52 seats. Despite that problem, we would not object to a redesign of the courtroom which would reduce the requested 1925 square feet to somewhere close, if not equal to, the 1760 square foot average between the two courtrooms which are called for by the Judicial Conference resolution. In that connection it perhaps bears repeating, however, that this Court asked for its standard courtroom to be less than the size set forth in the GSA standards prevailing prior to the Judicial Conference resolution. Thus, we have been and are completely in favor of smaller courtrooms than have been constructed in most federal courthouses in this country throughout history.

D. *The Courtroom Area Between the Wall Behind the Bench and Railing.* We are perfectly certain that persons who are expert in the field of design of courtrooms will be able to make suggestions for improvement of the courtrooms designed in our preliminary plans. However, it would seem pertinent at this time to review the reasons why the area between the wall behind the bench and the railing has been designed as set forth in the preliminary plans.

A number of features which we desired to include in the new building plans have already been discussed in terms of defects in some of our present courtrooms. To begin with, we do not want any more space than necessary because of the acoustical problems and lack of general operating efficiency. In the second place, we desire the best possible sight lines between key personnel. If we had had only sight lines to deal with, we could have come up with a better design. However, certain of the structural and modular limitations involved caused us to settle for less than the most desirable sight lines in order to provide for more appropriate relationship of the marshal's detention area outside the courtroom; the security elevator for use by the marshal; the handling of prisoners as they come into the courtroom and their proximity to jurors and court staff, witnesses, and spectators; the jury box and jury room; the desirability of jurors going between jury box and jury room without encountering others; the provision of a room for witnesses who are sequestered; space for attorneys to confer with clients, witnesses and among themselves; the location near a courtroom of a room for the court reporter who works usually for the Judge assigned to that courtroom so that she can keep her equipment as well as her tapes of the present trial and of past trials which she has recorded, close by the courtroom; and the availability of storage space for view boxes, cups, chalk and other supplies.

We require room in or adjoining the courtroom for bulky exhibits used in patent and sometimes in other cases, and for the boxes or file cabinets for use by counsel in which large numbers of documents or objects are involved. We have, at the present time, off of one of our smaller courtrooms such space. The use of that space by counsel in just the last month greatly speeded the trial of one long criminal income-tax case which involved thousands of documents. In another patent case held in the recent past, the availability of that area made it possible for a large number of automobile engine parts to be kept immediately available for use during direct and cross-examination.

The courtroom design included in the preliminary plans provides for an area in front of the bench in which counsel can assemble without squeezing in behind the clerk's desk. At the same time, counsel are far enough away from the jury box, in terms of sound and sight, for bench conferences to take place without the jury overhearing them. The same is true insofar as the witness box is concerned.

The length of the front part of the courtroom is sufficiently large we believe, so that if additional counsel tables are needed in multi-party cases, it will be possible to install them temporarily, though moving furniture of any size around a courtroom causes difficulty, we have found, in view of the shortage if not the complete unavailability, of GSA or other governmental personnel to help in connection with such moving. When we have needed to move furniture around, it has usually been necessary for members of the Clerk's office, law clerks, and sometimes Judges, to take part in connection therewith. In some instances, we have just not been equipped to move certain heavy items. Of course, we recognize that more modern furniture and possible use of movable items could help a great deal in that connection. We had that in mind when we designed the proposed new courtrooms in terms of the possible movement of counsel tables to add additional counsel tables when needed; and when we provided for the witness box to be on casters.

Our plan calls for one level in the entire courtroom. We believe that it is most advisable to have only one level especially in the area in front of the railing. There is a great deal of movement in that area. Thus, one step poses, we suggest, dangers of falls as well as impediments in terms of movement of persons and objects. We have found that the step in each of the courtrooms we are currently using, which is built around the Clerk's desk, has caused both clerks and lawyers, from time to time, to stumble or fall.

7. *Chambers in the New Courthouse.* We understand that the Ad Hoc Committee under the chairmanship of Chief Judge Devitt will be meeting shortly in connection with the design of chambers. We would like to have the opportunity of presenting to that committee the results of our work and study to date. The chambers which we propose are keyed into and related to the adjacent standard courtrooms. The Judge is able to pass back and forth between chambers and coutroom by going across a narrow private Judges' hall. At the same time because each courtroom is separated by that hall from the judge's chambers, the courtroom is *not exclusively* provided or earmarked for the Judge who occupies those chambers. It is expected that that Judge would try his cases in that courtroom unless there should be a reason to the contrary, thus permitting efficient interrelationship of the Judge's activities in the two areas in which he spends almost all of his time—chambers and courtroom. However, *each courtroom would be under the control of the Chief Judge*, would not "belong to" any one Judge, and *would be subject to assignment by him* and for use by any Judge or by any government agency. In that connection it should be noted that each courtroom in our proposed plan can be reached and used without access to the private judge's chambers.

General Kirks has advised us that it is contemplated that judges' chambers in the future will not include showers. In our preliminary plans, there is no provision for showers. The Judges of this Court agreed that they would prefer to utilize available chambers space for more important purposes. Also, our plans do not call for a separate robing room. The Judge would robe in his own private office, located in relation to his chambers very close to the passage to his courtroom.

The secretary's room is designed so that she can be in control of the entrance from the waiting room. The waiting room is quite small. The secretary's desk is located in terms of sight lines to the Judge's private office, and to separate small rooms for the law clerks and the crier-law clerk. We have found that the provision of such small separate areas for those clerks adds to their productive capacity.

Each judge's chambers also includes a library, a conference room, a storage room, and a small pantry. The storage room is small; but is large enough so that it is believed, most supplies would not have to be ordered more than twice a year.

The walls of the chambers, not only in the library but in other areas, are designed to hold book shelves. We are told that it is necessary to provide seven lineal feet per year for expansion space for additional books.

Each judge's chambers provides for a small pantry. No equipment or installations other than small closets, shelves, electrical outlets, and a sink is called for

in the pantry. If a Judge wants an icebox—and two of our Judges do have iceboxes at the present time—they are to be provided, as at present, at the Judge's own expense. We have found from our experience that at least some of our Judges prefer on many occasions, to eat lunch in chambers. Further, it has been the practice of this Court for all of the Judges to meet at least once a week (and sometimes twice) en banc for lunch in the chambers of one of the Judges; and for committees of Judges of this Court to have chambers luncheon meetings on other days.

9. *Conclusion.* At this time, *we have only one basic request*—that we be given every opportunity to try to convince those who have the final word—that except for the ceremonial courtroom and a slight amount of additional space in the chambers of the Chief Judge, all other courtrooms and chambers be standardized. We urge that the Conference amend its plan to permit district courts having the number of Judges we have, to be given one large ceremonial courtroom; and all other courtrooms of a single size, roughly halfway between the two sizes authorized by the Conference. While we recognize the desirability of establishing the fewest number of national standards, we believe that the amendment we suggest will provide an alternative which will fit the need of district courts in a number of cities.

In connection with the design of chambers, we request as indicated above, that we be given the opportunity to appear before Judge Devitt's committee. We recognize that the committee is designed for efficient operation in terms of numbers, efficiency of operation and continuity of discussion. We have no desire to inject ourselves into the proceedings of that committee, other than to have the opportunity to discuss, and breathe life, into the chambers design which appears in the preliminary plans submitted by our architects to GSA last fall.

I am authorized to state that all nine Judges of this Court completely concur in the views expressed in this memorandum.

For the Court:

EDWARD S. NORTHROP,
Chief Judge.

February 8, 1972.

CRITIQUE OF THE MINI COURTROOM, 28′ x 40′

1. Since many cases cannot be tried in this small courtroom, a mix of large and small courtrooms will be required. In a multi-judge court this means that judges must move from courtroom to courtroom, depending on the type and size case to be tried. As a result, a judge using a courtroom removed from his chambers is effectively separated from his secretary, law clerks and office. This greatly reduces his efficiency and is a great waste of judicial time and effort.

2. Public seating for persons is entirely inadequate. For the empaneling of a jury in a one-defendant criminal case, there must be seating for the jury panel of thirty-five to forty jurors *plus* the public, family and witnesses.

3. The jurors are so close to the bench that they can hear bench conferences. If the jury has to be excused whenever there is a bench conference, that will cause more delay and waste of judge and jury time.

4. Jurors are so close to counsel tables that they can hear counsel-client conversations. This can result in a mistrial—a very costly problem in time and money.

5. The space between counsel tables and witness chairs is so limited that marshals escorting prisoners will do so at a considerable risk. The marshal should always be within arm's reach of the prisoner. With dangerous prisoners, two marshals should be next to the prisoner.

6. The well in the center of the floor, one step down, is an unnecessary safety hazard. It will cause falls and injuries.

7. The proposed furniture is too small. The clerk's 2′ x 4′ table will be inadequate to hold files, exhibits, and provide a place to write. The court reporter's 2′ x 2′ table will not accommodate a tape-recorder, spare tape, supplies, etc. If the reporter is a shorthand writer, she will need another table to write on.

8. Counsel tables, 2′ x 9′, are too shallow and are inadequate. Legal files are 8½″ x 13″. Counsel have their files, books and other materials with them and need space to write and take notes also.

9. If alternate jurors are seated in front of the jury box, they will have to turn their heads continually to look at the judge, and then at counsel. They will, at the same time, have to look up since they will be seated in the well of the room.

Judge NORTHROP. The American Bar Association proposed plan to handle a controversial trial calls for a 1,500-square-foot courtroom as a very minimum, and the action of the trial being viewed via closed circuit television in another public area.

Now, that, of course, is manifestly quite expensive.

Our courtroom was designed to take care of 95 percent of the cases that go to trial.

As Judge Heebe pointed out, that other courtrooms require a great deal of time in switching, and we insist that the minicourtroom is not going to cost any less than our courtroom that was approved.

As you remember, Mr. Chairman, your former chairman, Congressman Fallon, was instrumental in working with us in designing this new building because we could not stay in the old Post Office Building. The new location is in the Inner Harbor area of Baltimore, and is a keystone of the redevelopment of that city, and that is another reason we do not wish to hold up construction of our building.

Now, to get to your question, we were quite shocked when our plans—the preliminary plans that had been approved by the General Services Administration were held up. The General Services Administration had worked on them, indeed, and as recently as a couple of months ago, the architect sitting back here said they were excellent plans.

Now, of course, he feels, as General Kirks does, that they are obligated to sell the minicourtroom, and the Devitt committee has come up with the idea that the courtroom should not be designed for maximum use, but for 60 percent use.

It is true we can try nonjury cases and six-man jury civil cases in a courtroom 40 by 28.

It is true that we are using such space now. But it is extremely inefficient and uneconomical, and the loss of time for the court and court personnel is costly.

When we learned of the minicourtrooms I wrote the Chief Justice, after talking with the Chief Judge of the Fourth Circuit, Judge Clement Haynsworth. I said, "Did you see this notice that came out from the Chief Justice in the Bulletin?"

He said:

Yes, but it does not apply to those courthouses that have their preliminary plans approved.

And I said:

Well, I think we better get this straight, because we have heard nothing from the General Services Administration for a long time. The Inner Harbor people and our people are upset because they have not been told to proceed with the work drawings as planned.

After that conversation I wrote a letter to the Chief Justice, with Judge Haynsworth's approval and said substantially what I have told you. I received back an answer that said, absolutely the then standard courtroom of 28 by 40 did apply, and our plans would have to be redrawn and redesigned.

We then, of course, found ourselves in the same position as a number of people around the country.

I do not know where the idea of the 28 by 40 courtroom started. I understand that at one point it was even smaller than that, and possibly it might have been the result of the Chief Justice's visit to England. We had a revolution back in 1776, and some of the things that were and are done in England do not particularly appeal to us.

It is very rare in England to have a jury trial in a civil case. I do not think that we in this country will do away with the 12-man jury in criminal cases.

I do say this: That I do think it was the impression of most members of the Judicial Conference at the October meeting of 1971, that the minicourtroom was not going to be inserted in those buildings where the plans had already been drawn. Again at the meeting in April 1972 there was some question as to whether or not a resolution had passed, referring the matter back to the Devitt committee for reappraisal.

We were told, as recently as 3 or 4 weeks ago, that no resolution passed, and no resolution was offered to that effect, and we were surprised, because we had been told by members of the Judicial Conference that quite the contrary was true.

I understand from Judge Heebe that when the Fifth Circuit met, that the Chief Justice did say a resolution had been passed for reappraising the minicourtroom.

Now, have I answered the question, Congressman Harsha?

Mr. HARSHA. Yes, sir.

Judge NORTHROP. Our courtrooms are designed, as I say, so we can take care of about 90 percent of the cases we try.

We had a meeting with General Kirks and Mr. Meisen, the General Services Administration architect, a couple of weeks ago.

It was my understanding at that time that we would receive a drawing of the proposal that they have made as far as Baltimore is concerned of the four large courtrooms and six minicourtrooms.

And that they, in turn, would reappraise and reevaluate the plans and preliminary plans which we worked on, and that the Inner Harbor people worked on, and the General Services Administration had approved, at one time. However, we understand, from the people in charge of our project over there, the Inner Harbor project, that General Services Administration has directed the architects to redraw our plans, with four large courtrooms and six minicourtrooms. This is quite alarming, because we were under the impression that the matter was left where we could at least negotiate.

We do feel that our plans are by far superior to the plans which have been submitted by the General Services Administration, and we respectfully feel, and respectfully urge that they be allowed to remain the same as they were when Congressman Fallon was here.

I might say that our situation is somewhat similar to the situation as outlined by Judge Heebe, but I will mention one other thing; that because of the class action cases we are getting, particularly in the ecology field, we have a great number of people coming into the courthouse every day, and we have need for a larger courtroom than the mini.

Furthermore, I think that with the criticism of the Federal courts today, it seems to me we should certainly have sufficient room for the

public to come into court, and not attempt to cut them off. We are accused of enough things, without running a star chamber proceeding, and it seems to me that such a charge could be made if we hold court in a 40 by 28 courtroom not big enough to accommodate a reasonable audience.

There will be testimony, I am sure, by the architect, that the same "operating space" is available in the minicourtroom, but it is done with minifurniture, as well. In a case in such a courtroom, where there are a number of documents or exhibits, there is not even room to mark those exhibits in evidence. It can hardly be used for even a trial where there is but a single defendant and a single plaintiff in the case.

In Chicago where a courtroom of the minisize is being used for civil cases only, we have heard great criticism. The criminal cases are tried across the city in another courthouse, in the old county courthouse. The 68 small courtrooms, 38 by 25, used there for a single plaintiff and a single defendant jury case, even there they feel it is not a usable facility, and we respectfully ask you gentlemen to do all that you can to aid us in this situation.

Mr. GRAY. Thank you, Judge, for your very enlightening testimony.

Where is Judge Devitt from?

Judge NORTHROP. Minnesota.

Mr. GRAY. In other words, he is not going to be affected by his recommendations.

Judge NORTHROP. No, sir.

Mr. GRAY. So it is easy for him to come in from the standpoint of saving money, and saying that the judges in these 63 buildings go to a minisized courtroom, because he and his subcommittee would not be affected in any way.

Judge NORTHROP. That is correct. Judge McMahon, however, comes from the southern district of New York, and he is circumscribed by the fact that his court is going to take over space in an old building that was formerly occupied by the U.S. attorney. And they must fit everything in there. He is 100 percent for these minicourtrooms, and that is the only thing he can do, he is making do.

Mr. GRAY. Did anyone on that subcommittee call you, or any judge in Baltimore concerning the resolution adopted in 1971, knowing full well that your courtrooms will be affected, you have to work there day by day, did anyone ask for your comments concerning size?

Judge NORTHROP. Not a single word.

Mr. GRAY. Did anyone ask you, Judge Heebe, for your comments, knowing that you had to work in this building?

Judge HEEBE. No one. I wrote a letter to Judge Devitt, and I wrote a letter——

Mr. GRAY. So this has been an arbitrary decision made for people who will be working in these locations.

Judge HEEBE. We had no communication beforehand.

Mr. GRAY. Wouldn't you be surprised if a lawyer in your court went out and said "we are going to do such and such without getting permission of the court?"

Judge HEEBE. Well, we run the courtroom by the rules.

Mr. GRAY. Here you have a Judicial Conference, which makes a decision which affects you directly without any input on your part. Is that correct?

Judge HEEBE. We were disappointed; yes, sir.

Mr. GRAY. Thank you very much.

Are there any comments?

Mr. SCHWENGEL. Yes, sir.

Mr. GRAY. Mr. Schwengel.

Mr. SCHWENGEL. I am sorry this has developed to this point.

The question I am raising is this: What will this do to the meting out of justice? The courts are clogged and jammed, and there is great criticism.

Have you heard of the long time it takes to mete out justice?

This is not justice at all.

Will this handicap you more?

Judge NORTHROP. I do not think that there is any question but that it will.

For example, if you have to switch around between courtrooms. In a criminal case, in empaneling a jury, you cannot do it unless you use the jury box. Our criminal case load has doubled. We have a Strike Force and a Drug Abuse Force over in Baltimore. Forty percent of our time is taken up in trying criminal cases; we try to dispose of them as quickly as possible. We have multiple defendants in many cases, necessitating more room than the minicourtroom provides.

Almost all of the bank robbers make a try in Washington, and then come over and take a second shot in Baltimore. The Strike Force is engaged in attempting to stop organized crime. Switching courtrooms, and switching facilities, is inefficient. It is the same as if a mechanic was not supplied with either a place to work, or the tools of his trade.

Mr. SCHWENGEL. There are places in the United States where you do have adequate facilities?

Judge NORTHROP. Of course. There are any number of them. We are making do with the small courtrooms in Baltimore now, but we are aware of the inefficiency that results from having to work with them. There are many places where they have adequate facilities.

Mr. SCHWENGEL. Are there figures to show that the court operates more efficiently and effectively where you have adequate facilities?

Judge NORTHROP. I do not know that, Mr. Congressman, but I am sure there are.

Mr. SCHWENGEL. I think that would be very valuable information, because it behooves us to help you as much as we can, to help you in the meting out of justice today.

Judge NORTHROP. Now, there are places where the courtroom lies idle. The courtrooms in South Carolina, Virginia—we have only one courthouse in Baltimore. We had a courtroom in Cumberland, in western Maryland, which was abandoned because it was used so seldom. I think the Administrative Office is doing an excellent job in trying to get those unused court facilities closed down, and I think everybody is aware that the courtrooms should not be built in areas where they are seldom used.

In New York, apparently, they would find themselves very, very comfortable with the minicourtroom because of the fact that this is the only courtroom facility they can get in their available space.

We want a courtroom that we can use 90 to 95 percent of the time, that is interrelated, not solely used by one judge, but which is interre-

lated to his chambers, so that in 2 seconds he can get back there, confer, and do his other work. And that is all that we are asking for.

We want the space and the tools to work with, and we know we have a burden, and we do think, unquestionably, that this minicourtroom would be utterly inefficient and uneconomical insofar as we are concerned.

Mr. GRAY. Have you concluded?

Mr. SCHWENGEL. Yes, sir.

Mr. GRAY. The gentleman from New York, Mr. Grover.

Mr. GROVER. In reading this synopsis on design, I notice they make three basic conclusions; one, better efficiency can be achieved by utilizing advancements in technology, et cetera, and two, the size of the courtroom should be reduced to curtail costs, and give more attention to security and court facilities.

Addressing ourselves to the second of these, that the size of the courtroom should be reduced to reduce the costs and obtain more efficiency, I think you and Judge Heebe have made very persuasive arguments in that regard.

I am in league with you on your views that a judge should not own a particular courtroom, but a judge should have access to the courtroom as much as possible, so that it serves the purposes of efficiency and economy set forth in prior testimony.

And this would save money in the end, but one of the other paragraphs in this report has me a little bit confused, because it seems to qualify this recommendation that the size of the courtroom should be reduced to achieve greater efficiency and curtail costs of construction, because it says that the committee decided that in all new courthouse construction, each courtroom facility will be equipped with one large 40 by 60 courtroom, and as many smaller courtrooms as is desired, but the General Services Administration may organize more large courtrooms in as many cases as may be necessary.

And you get one large one, and as many minicourtrooms as you desire, and if they are not adequate, they can authorize another large one.

Is that correct?

Judge NORTHROP. No; you are not. That was the topic of our conversation with General Kirks a while back, a couple of weeks ago. He came over with the proposal, at this time they would build us four of the large ones, and six minis. Two large ones, and three minis on a floor.

At the same time it has been decided to reduce the judges' chambers, conference rooms, and libraries, and other court facilities. General Kirks was going to submit the proposal, and we were going to give it a conscientious look. We subsequently learned from the Inner Harbor people that the architect has been told to go ahead with four large courtrooms and six minicourtrooms.

Now, we feel that the proposed plan is not feasible. Our courtroom design is one in between large and small standards proposed by the Devitt committee.

Mr. GROVER. Well, I think the language here—the key language is "As may be required."

Judge NORTHROP. Yes, sir.

Mr. GROVER. Now, who makes the determination of "as is required?"

Quite obviously, it is not you, who have the expertise, but the General Services Administration's architects, and other people?

Judge NORTHROP. Yes.

The Administrative Office and the General Services Administration, and they have taken the fiscal figures for 1971, which we feel are grossly unrealistic, to determine what our workload is.

We know what our workload is, and between October 1, 1971, and March 31, 1972, there were 421 trial days held in our present facilities, for example. Jury and nonjury trials.

Mr. GRAY. While we are on the subject of figures, Judge, let us take the past 10 years.

Can you give me a rough estimate of whether the caseload has been going up, or staying pretty level, or what?

Judge NORTHROP. Our caseload is drastically increased in both civil and criminal.

Criminal has almost doubled in the last 3 years, has it not, Paul?

Mr. GRAY. So if it has doubled in the last 3 years, we are talking about a building with the life use of 50 to 100 years, how could anyone possibly feel that we should only build the smaller courtrooms when the caseload is going up, and base it on the grounds that your caseload does not justify more room?

I do not get the reasoning at all.

Judge NORTHROP. I do not, either.

In Baltimore, where we had three large courtrooms, and they would erect four large and six minis on two courtroom floors and leave a third floor vacant for the time being, and then make a determination to see whether the minicourtrooms worked out.

Mr. GRAY. Do you have any courtrooms over there which are 28 by 40?

Judge NORTHROP. We have two courtrooms which are 28 by 48, and we find them inadequate for a number of trials.

Mr. GRAY. They are——

Judge NORTHROP. They are 8 feet longer.

Mr. GRAY. Eight feet longer than proposed by the Judicial Conference?

Judge NORTHROP. Yes; and the width is really the test of the working space, because the counsel tables are up against the jury box. The jury can overhear counsel and client talking, and you cannot hold a bench conference without the jury hearing, and some people have said—and they do not know what they are talking about—when they say we can do without the bench conference; if you wish to have any evidence submitted in a bench conference, and if you submit evidence, and it goes up on appeal, we have to send the jury out every 15 or 20 minutes.

Mr. GRAY. And you are saying the courtrooms today are smaller than they should be at this time?

Judge NORTHROP. Yes, sir.

Mr. BAKER. Will the gentleman yield?

Mr. GRAY. I yield.

Mr. BAKER. How many judges are there in Baltimore?

Judge NORTHROP. Well, we have two senior judges, working full-time, carrying their loads, and seven active judges, and five court-

rooms. Two of these are inadequate, the type I just mentioned—one is—and I will say that it was our mistake to have had it constructed. We put it in as a nonjury courtroom, and when we had to put the jury box in, we found out it was wrong. We found out that we could not have been more wrong in doing that.

The other one is similar to the first mentioned, and we moved the jury box back a little, it is behind counsel. We have one other nonjury courtroom. And upon occasion we have had to go across the street, to the State court building, to borrow a courtroom to use for a jury trial.

Mr. BAKER. Well, there are judges serving in the districts of Tennessee with one courtroom, and you are saying, I think, very simply, that the determination should be made individually to accommodate the needs of these various courthouses which are being served, and it is inappropriate for us to say one certain sized courtroom would be proper for the particular situation.

However, I am inclined to agree with the gentleman from New York. It seems that the language of the report—as I read it a moment ago—indicates that this is the case, and that we ought to be certain that they do not act arbitrarily.

I think it behooves the committee in its deliberations that we not operate arbitrarily in things that affect the public interest, no more than to say that the General Services Administration will be able to say: "We will determine the size of the courtrooms throughout the United States."

Thank you, Mr. Chairman.

Mr. GRAY. Well, I agree with my friend from Tennessee. This is what I am complaining about. Someone made the decision that they will be all uniform 28 by 40, without asking the judges present whether or not the new size would be adequate.

Mr. BAKER. I agree with the chairman.

Judge NORTHROP. May I answer that, too?

Where you have a courtroom of that size in your area, you have the proposition of bringing in at one time, when the court sits there, 60 to 70 jurors who will sit on the panels as a jury in the cases. You cannot instruct that many jurors at once in that size courtroom, because it will only seat 28 people.

Mr. GRAY. Thank you, Judge Northrop.

I want the record to show you were accompanied by Mr. Paul Schlitz.

I would like to ask Mr. Kirks if he would mind if we deviate from the announced schedule to accommodate some of our colleagues in the House.

Mr. KIRKS. I would be very glad to.

Mr. GRAY. I would like to call our colleague, Mr. Van Deerlin.

However, I want to state first that we are privileged to have on this committee a very great Californian, and I would yield at this time to Mr. Anderson of California.

Mr. ANDERSON. Thank you, Mr. Chairman.

I just want to very briefly say that we have had two distinguished Members of the House from California with us today, Congressman Van Deerlin and Congressman Wilson, to present the third member of the group of judges the Honorable Edward Schwartz also from California, and Congressman Wilson had to leave a moment ago.

At this time I would like to present to the committee, the Honorable Congressman Van Deerlin.

Mr. VAN DEERLIN. Thank you, Mr. Anderson.

My colleague Mr. Wilson, had to go to a vote in the Armed Services Committee, and asked me to seek unanimous consent that his statement be included in the record.

Mr. GRAY. Without objection, it will be included in the record at this point.

(The statement referred to follows:)

STATEMENT OF HON. BOB WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I appreciate this opportunity to testify on the problems that will result from the U.S. Judicial Conference's proposed standards for the size of courtrooms in new Federal buildings.

The proposed courtroom size of 28 by 40 feet may be satisfactory for some areas, but it would be inadequate for the types of cases handled by the Southern District of California in the San Diego area.

It is clear that the new standard was adopted by the Conference with little or no consideration of the special needs of the Southern District and others like it. In the San Diego area, many of the criminal cases in Federal Court involve multiple defendants, requiring substantial space for defendants, counsels and U.S. Marshals inside the courtroom bar. San Diego's proximity to the Mexican border also results in a large number of cases involving Mexican defendants and material witnesses, requiring the use of one or more interpreters. These are just two examples of why the smaller courtroom as proposed by the Conference will not work and I am sure you will hear even more reasons today with the testimony of Chief Judge Edward J. Schwartz of the Southern District.

Also, it is my understanding that the General Services Administration is willing to allow the larger courtrooms as proposed by Judge Schwartz and others if consent is given by the Judicial Conference. Hopefully, these hearings will encourage the Conference to review its proposal and permit the construction of larger courtrooms whenever it is shown they are absolutely necessary to achieve orderly conduct of courtroom business.

Mr. GRAY. Mr. Van Deerlin.

Mr. VAN DEERLIN. And Mr. Wilson also asked me to describe these courtrooms, rather than minicourts, as maxi phone booths.

Never, in my 10 years, have I seen congressional colleagues move into action so fast as this subcommittee has done. It was only 2 weeks ago that Congressman Matsunaga, Mr. Garmatz, and I requested that the subcommittee look into this matter, and the chairman agreed to do it.

Mr. GRAY. You gentlemen are all persuasive.

Mr. VAN DEERLIN. I think Congressman Harsha asked an excellent question: Was it not a number of judges that decreed the new, smaller size for the new courtrooms?

I think it is very likely what the judges on the Judicial Conference did was to rubberstamp a suggestion from on high.

Now, the Pope may be infallible in matters of faith and morals, but he does not seek to dictate the design of every church around the world.

No one reveres the independence of the courts more than I, in dealing with purely Judicial matters. But I do not think the members of the Judicial Conference can prescribe the architecture for every court in the country, even when sitting under the chairmanship of Chief Justice Burger.

I was interested in the state of the Union message by the President in January of last year. He made a plea for leaving as much decision-

making as possible to the local communities in local matters, no matter whether Federal funds are used or not. Here, surely, is a matter where the imprimatur of the decisions made in Washington is being forced upon innumerable local communities across the land.

You are going to hear from our presiding judge in the southern district of California. I can tell you a little something about this man. He was the first appointee to the new southern district which we achieved about 5 years ago.

I have heard something about judges being on an "ego trip" in the matter of courtroom size.

Well, let me tell you that Judge Schwartz did not want to be a Federal judge, had no desire to be a Federal judge. He was a superior court judge in San Diego County, and it was not until the third time around, when the pressure became very heavy upon him that he agreed to leave a life he was satisfied with, and take over what was then a very lonely job. We have five judges now on that court, and he was alone the first year.

I would like to add that Judge Schwartz is not alone in the views that he is going to present to you. He talked to me 2 or 3 months ago, and I believed him when he told me he was speaking for the entire court, but upon my last trip home to the district, I made a point of talking with other members of the court, without the presence of Judge Schwartz.

It happens that these are four Republican appointees to the court—and what they told me was that Judge Schwartz not only speaks for them, but they are the radicals in this matter, and he is the more restrained member of the group. They told me that if they are going to be compelled to operate in these small courtrooms, without adequate chambers alongside the courtroom, and with their offices some distance removed, they would rather stay in the 58-year-old courthouse they occupy now. That courthouse has been there since 1913, when San Diego was a city of less than 100,000 persons. But the judges would rather stay than go into the new courthouse, which is scheduled for construction immediately.

Now, Mr. Chairman, I have already severely taxed the 5-minute rule, but I did want you to have a picture of the situation as we find it in the district that Bob Wilson and I are privileged to represent.

I feel great confidence that you are going to get a true picture when I present to you the Honorable Edward Schwartz, chief judge for the southern district of California.

Mr. GRAY. Yes.

Judge SCHWARTZ, we are very delighted to have you here.

Before you come forward, I have the sad duty to announce that our very outstanding and distinguished Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover, just passed away.

Will you please come forward, Judge Schwartz?

You may proceed in your own fashion.

STATEMENT OF HON. EDWARD J. SCHWARTZ, CHIEF JUDGE, U.S. DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SAN DIEGO, CALIF.

Judge SCHWARTZ. Honorable Chairman Gray, and honorable Members of the committee, this is my third trip to Washington directly

connected to the problems of trying to get a courthouse built in the southern district of California, which is located in San Diego.

Actually, I made a fourth trip, which was partially for other purposes, and in effect, I have been here four times, including this appearance.

Now, this is an election year. I am not running for any office, however.

Mr. GRAY. Congratulations. [Laughter.]

Judge SCHWARTZ. I would like to state for the record a little of my background so that you gentlemen will know the depth of concern with which I speak in this matter.

I have been on the judicial road now for 13 years. And I am the only judge in the history of San Diego who has sat on all of the local trial courts.

I served for approximately 4 years on our municipal court.

I served for a little more than 4 years on our State superior court.

I have now been on the Federal court for approximately 4 years.

I have served the last 2½ years as the chief judge of that court.

During the time that I was a State court judge I was appointed to the State Judicial Council of California, which is presided over by by the chief justice of the California Supreme Court.

This is a body consisting primarily of 12 judges, a few legislators, and some lawyers that set the judicial policy and the rules of the court for the State of California.

I served for 2 years on that body. I also attended the National College of State Trial Judges, which was then being held in Boulder, Colo., and was a student judge for the 30-day judicial courts.

I returned a few years later as a member of the faculty of the State Trial Judge College.

Since being a Federal judge I have appeared at the Federal Judicial Center here at Washington as a lecturer in the seminar for newly appointed U.S. judges.

I come here with the unanimous support of all of the judges of my district.

The southern district of California was actually organized in 1966. It was a piece cut out of the old southern district which had its headquarters in Los Angeles.

In 1967, 1968, 1969, and 1970 our district had the heaviest rated caseload per judge of any district in the United States.

In 1971 we slipped down to sixth in the United States out of a total of 93 judicial districts.

We now have five judges. Actually, there are two. We have calendars of a nature and complexity and a heaviness that I think rare in any other district in the United States.

I might mention that some time ago an attorney came back to see me after one of the calendars, and said:

> Judge, I came down here for a matter, and I do not get to Federal Court very often, and I thought I was coming into a courtroom, and once I got in there I felt like I was in a scene from Quo Vadis.

That is the way court is conducted in my district.

We have many trials with juries, trials with defendants, many trials with defendants in custody.

The proximity to the border of our districts comprises San Diego and Imperial Counties, which means that we have a border that is contiguous with those two counties, across which over 40 million new people a year enter the United States, and every one of those is a potential Federal case as they come across the border.

The result of this is that we have a court that is engaged in either heavy calendar matters or trials, almost constantly. Each trial—and I think one of the gentlemen inquired about the number of people in the courtroom.

For each trial, of course, we have the defendant, his counsel, the U.S. attorney, and usually a case agent who works with him, one or more, that must be accommodated at the counsel table, and because of the proximity of our border, many defendants and material people are people of Mexican origin who require interpreters who must also sit at the counsel table, and we have cases in which narcotics, marihuana, and other contraband, and very large quantities.

We have had a 5½-ton marihuana case, a case where several hundred pounds of marihuana was brought in as an exhibit, and this is the present routine of our courts.

Now, the present courthouse, as Congressman Van Deerlin mentioned, was built in 1913. It is on the way to being 60 years old.

As I went to kindergarten many years ago, I used to play on the steps of that courthouse. I believed it to be the biggest and most beautiful building in the world. Now it is outmoded.

Now, the construction of our new courthouse is in the process today. The plans for our new courthouse are entirely complete, and were completed at a time when the new standards were promulgated when the last conference came into being.

This new courthouse, and part of a Federal offices project, is part of an anchor device and a part of the revitalization of our new downtown development. It is going to be a part of the 15-block redevelopment of some of our most shoddy areas of downtown San Diego.

The lease-back bill under construction for those buildings has now passed the House and the Senate, and I think it is in the committee——

Mr. GRAY. In conference.

Judge SCHWARTZ. And it is proceeding at this time.

Now, we have worked on these plans for approximately 2 years. During that time, I might say, I devoted one-fourth of all my time, because I thought this would be a project that would last a half century for our community.

Great concern went into matters concerning economy, security, and functional excellence.

The plans were prepared by an outstanding set of legal architects under the active supervision by the General Services Administration and the active participation by the General Services Administration's architect, who is, really, in my opinion, very experienced in the design and building of courthouses and the design of courtrooms.

Approximately $1 million has already been expended on those plans including the plans for the office building portion of the project.

Now, all of this was done in strict accordance with the then existing General Services Administration directives and standards.

The courtroom, at that time—the standard courtroom, under those provisions, was approximately 40 by 60 feet in size.

Now, at the very outset the judges in my district decided that they did not want courtrooms that large. They thought 40 by 60 was excessive; that we could operate in a courtroom considerably smaller, and so we, instead of taking the 40 by 60 standard, which is 2,400 square feet, adopted a standard which, other than for one ceremonial courtroom, provides for seven courtrooms 42 by 44 feet. They vary slightly, but the general size is 42 by 44 feet, or approximately, or a little over, I might say, a little over 1,800 square feet.

The size that we adopted, the 42 by 44, was the result of careful analysis, having in mind our extremely heavy caseloads that were peculiar to the problems in our district.

During the last part of 1971 the final working plans were completed, and we were awaiting the final General Services Administration approval.

However, in October 1971, as has already been mentioned, at a meeting of the U.S. Judicial Conference in Washington, the new standards were promulgated for one large courtroom in each courthouse, with all the others to be 28 by 40 feet, with the Director of the Administrative Office of the U.S. Courts to have the sole discretion and authority to grant variances from that.

Now, the Federal trial judges of this country were not consulted about these new standards. The trial judges, or the judges of the areas with projects as far along as ours was never consulted. We knew nothing about this oncoming new standard.

Mr. GRAY. In that connection, Judge Schwartz, are you familiar with those that sat on this Devitt subcommittee?

Judge SCHWARTZ. Yes, I am.

Mr. GRAY. Did they at any time visit San Diego, or call upon you?

Judge SCHWARTZ. To my knowledge, they did not.

Mr. GRAY. Are you familiar with the individual judges versus trial attorneys?

Judge SCHWARTZ. I know some of them.

Mr. GRAY. I mean percentagewise, were there judges represented on the committee——

Judge SCHWARTZ. It was generally divided.

Mr. GRAY. How many were on the committee?

Judge SCHWARTZ. Eight, I believe.

Mr. GRAY. Four lawyers and four judges?

Judge SCHWARTZ. Essentially, yes.

Mr. GRAY. Were they trial judges and lawyers——

Judge SCHWARTZ. Yes.

Mr. GRAY. Do they not serve on the customs court?

Judge SCHWARTZ. No; I think one is a customs court of claims judge, and the other is a trial judge, and——

Mr. GRAY. You would not know whether they have any new buildings contemplated in their localities, do you?

Judge SCHWARTZ. I could not answer that.

Mr. GRAY. This seems to be a decision made by judges not affected. This is what disturbs this committee.

Judge SCHWARTZ. I am sure Mr. Kirks is going to give you the views of the Administrative Office. They are fairly standard.

The whole thought, I believe, of this entire controversy was that it was to be kept somewhat in the family. We have come here to you very reluctantly, believe me.

We were very desirous of trying to work something out with the General Services Administration, and the administration, and I am going to detail this, if you give me time to do so, to indicate to you the seriousness of the problem with which the judges of this country are dealing today.

I might say that the information that I have is when the new standards were passed by the Conference in their meeting in 1971, it was the last item on the agenda, on Friday afternoon, when the judges and members of that Conference were looking to catch their planes and trains.

It slid through, and I know now that most of the members of that Conference—I believe I can say this—most of the members of the Conference now feel that their action was perhaps hasty, and in the meeting that was held just last month, on April 7, the second semiannual meeting of the Conference, a resolution was offered and seconded to rescind the action of the Conference.

This resolution was ruled out of order by the Chief Justice, and finally, another resolution was offered and passed, unanimously, I understand, to send the matter back to the ad hoc committee for consideration of some intermediate courtroom sizes.

Mr. GRAY. Do you have any idea, Judge, why the Chief Justice ruled that motion out of order?

Judge SCHWARTZ. Yes, sir; I do.

I think that he believes very strongly that the 28- by 40-foot courtroom is a standard that should be applied without exception throughout the country.

Mr. GRAY. It was not a nongermane or technical point of order. It was just a personal opinion.

Is that what you are saying?

Judge SCHWARTZ. I do not know. I was not there. But I might say this: It was very difficult to obtain any information from either the General Services Administration or from the Administrative Office of the U.S. Courts on this particular matter.

I have asked for it over and over again. I will detail that.

Mr. GRAY. I have had conferences with the ranking minority member—and I think I will point out that we are planning to invite the Chief Justice, to get his views on the record.

Judge SCHWARTZ. In my district we have one small courtroom. It is 58 by 20 feet—thirty feet longer than the new minicourtroom.

The judges of that court go into that courtroom, and visualize what it will be like to operate in a courtroom of the same width or 10 feet shorter, and it is simply not workable. It is not acceptable.

I think the kinds of cases that we have cannot be tried in such a courtroom. They can barely be tried in the one that we have.

I think this thing would be a 50-year mistake if it were done.

I believe the judges of our district and the judges of every district have an obligation to their courts, and a trust to the community to see to it that we get a courthouse that is workable and usable for our purposes.

Now, once we knew that this new standard had been enacted, I wrote a letter—in an effort to obtain the assistance and cooperation of the Administrative Office and the necessary variance that is within the sole power of the director of the Administrative Office to grant—I wrote a letter on December 7, 1971, setting forth the problems of our district, and why we felt that we should be permitted to go ahead and build the courthouse in accordance with the plans that were already completed.

The judges in my court were so concerned about this matter that they said: "We will not leave this to correspondence. We want you to go back to Washington. We want you to go back to Washington, and take the matter up directly with the director, General Kirks."

At the end of the year I came to Washington, brought our general plans, which consisted of some 500 sheets of drawings, and went over them with him.

He advised me that all of this would be taken under consideration. I provided him with some specifics of our operation, and he said: "This would be taken into consideration, too."

A little over a month later I returned to Washington, on January 14, 1972, for a meeting of the Chief Judges of the Metropolitan Courts of the United States.

I stopped in to see General Kirks about the progress on our project, and he presented me with a drawing of a typical courtroom floor—it is in the materials I have supplied to the chairman—in which we were to have two courtrooms of the size of the original design, 42 by 44, in which we would have a total of 17 courtrooms, of which 15 would be the minicourtrooms, and this is what was handed to me.

I looked at it, and present at that meeting, along with General Kirks, was the Administrator of the Administrative Office, Mr. Hefner, who is the head of the Buildings Division of the Administrative Office.

Four of us sat down and looked at this plan. Not one of us could tell what it meant.

Mr. Hefner excused himself, and said he had better call the General Services Administration architect to see if they can explain it to them. And he came back in about 15 minutes, and sat down and was at least able to take us through the thing.

This plan that was handed to me was almost beyond belief in the serious damage that had been done to our project.

Mr. GRAY. Let me, for the record, at this point, make this one statement.

You are saying here now that the General Services Administration had made redrawn tentative plans for 15 minicourtrooms, and two of the large size, without ever talking to any of the sitting judges, or the people in San Diego.

This was all done at the top level in Washington, without any consideration of the people who are going to use the courtrooms?

Judge SCHWARTZ. Yes, sir.

Mr. GRAY. Absolutely inconceivable.

Mr. GROVER. It seems to me, Judge Schwartz, that there could be a part of your caseload, and other districts' caseloads that could effectively be handled by this manner of courtroom, nonjury cases, cases of no great controversy, and so forth. What we could have here is a small modular courtroom as an exception, and not as the rule. I think that would be seconded by many of us. But mention was made before by Congressman Harsha, or somebody, that with the great spectator load that you do have, with other court officials in capacity attendance, and very often a great press load of reporters in your courtrooms, we have here a new design for a "star chamber." It would inhibit the normal effective jurisprudence which you gentlemen look to.

Could you see that as being a valid point?

Judge SCHWARTZ. Well, let me say this.

I think this is in the minds of the people that are concerned with the design of courtrooms, as well as combined with judges.

We do have problems today of an unprecedented kind, the circus-type trial that is beginning to take place more and more frequently.

We do not necessarily want to provide amphitheaters for circus performances.

One of the reasons why we cut down our courtroom from the 40 by 60 standard to be approximately 42 by 44, was, to some extent, to reduce spectator seating, and we got to have enough to handle our juries, a reasonable number of spectators, a reasonable number of friends, relatives, and other people of party litigants, and defendants, that come to the courtroom.

We are certainly flexible on that particular thing. We do not want anything that resembles a star chamber, and I think that if you look at the General Services Administration's photograph of the markup that I handed up there that was prepared here in Washington, you will get the idea.

This room is approximately 40 by 50 feet in size.

If you will visualize a courtroom that will run from the back wall, where you gentlemen are seated, to about the third row of this room, and then would run about two-thirds of the length of this room, to the end there, where General Kirks is sitting, that would be the space in which we would be expected to conduct a court.

Mr. GROVER. With an approximately 10-foot ceiling.

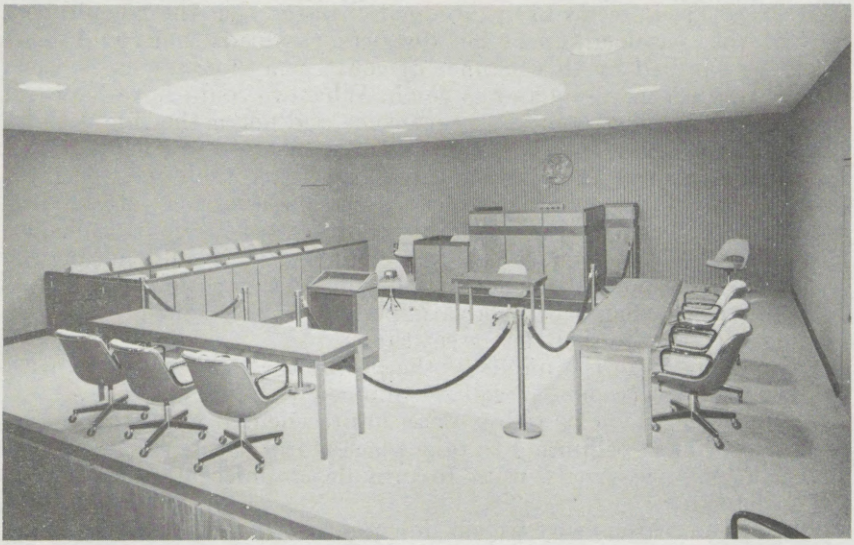
Judge SCHWARTZ. Yes. Which is just about the top of the exterior door that you have there.

Now, in my view, this is not a courtroom where the administration of justice can be conducted with any dignity and we are not trying to put on spectacles, but we do feel we have an obligation to the public to provide something that is in the nature of a dignified proceeding with ample space for the people who come there.

Mr. GRAY. Judge, I will include this in the record so it can be included in the proceedings.

Judge SCHWARTZ. Thank you.

(The photograph referred to follows:)



Mr. GROVER. Not to be facetious, Judge, people have said this looks like an oversized sauna bath. [Laughter.]

Judge SCHWARTZ. I have not seen the markup. Some people have seen it. One thing about the picture, they are taken before that markup, and it looks reasonably spacious, because all of the furniture is minaturized

The counsel tables look like they are about 2 feet wide and 6 feet long.

We have a clerk's desk or table in there for a clerk's desk, which is about 2 by 4 feet.

This is an impossibility for a clerk in a metropolitan court to handle files and exhibits, and all things that are to be used in the courtroom.

Now, I invite you to examine the materials that I have included in the file that has been placed with the committee.

Mr. GRAY. Yes. All of your information will be included in full in the record.

Judge SCHWARTZ. The revised plan did this:

It took our courtrooms, which were 42 by 44, and reduced them to 28 by 40.

The space that was taken out of the courtroom was provided in conference rooms, now, on the same floor. There are two conference rooms on each floor. We have never asked for conference rooms. We do not want conference rooms, and we have no need for conference rooms.

Whenever a conference needs to be conducted, it may easily be conducted in the judge's chamber, in a proper atmosphere of dignity, and that is the way we have done it in the past, and there is no reason to have conference rooms.

Mr. GRAY. So there is no savings. You are substituting space, one room for another.

Judge SCHWARTZ. There is no space savings. About 200 feet are devoted to the conference rooms.

In order to work things out, they have introduced on each floor a little maze of hallways, interior hallways, approximately 162 linear feet of new hallways on each floor. They have taken a security system that was worked out with great care with the assistance of the U.S. Marshal's service in the handling of prisoners, of which we have a great many, and the arrangement was that we would have elevators to bring the prisoners to the courtroom floors. Each elevator would serve two courtrooms. There would be a holding cell on each side of the elevator, and people would enter and leave the courtrooms directly, without having to go into any hallway, and under the new plan handed to us, we now have to share the hallway with prisoners; not only ourselves, our clerks, court reporters—and some of these people are women—are going to be going in and out of hallways to do things in which prisoners pass.

Mr. GRAY. The original plan did not entail that?

Judge SCHWARTZ. It did not. And there are many other things that appear in the file that I have placed with you.

Now, when this plan was handed to me in Washington, this new revised plan, I told Mr. Kirks and the other gentlemen there that I would have to take it back and discuss it with my judges.

I did so, and they could not believe—literally—they could not believe what they had seen. It was looked at by the architects, the local project architects, and they were incredulous of what they saw.

One of the architects said—and I might as well say it right now—he said, "Do you mean to tell me they have paid some 'halfback' in Washington to draw this plan?"

Now, after I had my judges look at the thing, I called and spoke to General Kirks, and told him our views, and this was on January 21 of this year.

He told me then that the revised plan was only tentative. It was not final, that he was flexible, that two of our large courtrooms, of the original design, was not a final provision, and he would get back to me next week.

This was January 21.

On January 26, just 5 days later, I was advised—not by General Kirks—but I was advised that a memorandum had gone out to the architectural firms that they were not to talk to the judges any more.

I have a copy of that memorandum here. It reads as follows:

> This will confirm our recent telephone request that you must refrain from contacting any agency, including Federal judges, without prior approval of this office. In certain cases you may be contacted by agency representatives of Federal judges without our knowledge. If that occurs, you should respond with the information requested only after prior clearance by telephone or otherwise by our office.

And this was sent out by Theodore J. Reed, the acting chief of the——

Mr. GRAY. What is the date of this, sir?

Judge SCHWARTZ. It has no date.

Mr. GRAY. Do you think it went out in January?

Judge SCHWARTZ. I would say around the 25th of January.

Mr. GRAY. Subsequent to the time you informed them that you did not like this plan?

Judge SCHWARTZ. Yes. And subsequent to the plan that General Kirks advised me that he was going to give careful consideration, and he would get back to me next week.

I was also advised on January 26 that General Kirks gave the order to proceed immediately with the revised plan.

This is confirmed by a copy of a letter I have from Mr. Meisen, who will testify later, directed to the regional office of the General Services Administration with regard to the San Diego and Honolulu projects.

The sketches of the subject projects indicating these changes to the working drawings to comply with the new standard courtroom design was approved by the Director of the Administrative Office of the Court on January 26, 1972.

"Proposals should be immediately obtained from the architects/engineers to make the necessary changes to the working drawings—the working drawing document. Requests for funding should be submitted through the necessary channels as soon as possible."

In other words, there was, in my view, an immoderate haste to impose this thing on us without giving us an opportunity, really, to be considered, and having our thoughts and our needs to be presented.

Mr. GRAY. You never received any further communication from Mr. Kirks' office after the January date?

Judge SCHWARTZ. Yes. I received a letter on February 1 from Mr. Kirks, then, saying that:

"The plans that were handed to you in Washington—" and that is this little revised plan by the General Services Administration—"those plans that were handed to you are the final determinations," and that was it, on February 1.

On March 1 the request was made by the judges, not only of my district, but all of the districts in the United States having projects underway, to appear before the ad hoc committee.

On March 15 a meeting of that ad hoc committee of program facilities of that design was held, and we arrived about 9 o'clock for the commencement of that meeting.

At the time the meeting commenced we were asked if we would step out for a few minutes.

The Chief Justice was there. We stepped out. A few minutes extended well over an hour, while the Chief Justice and the committee conferred.

We were then invited in. We received a lecture from the Chief Justice as to how this had to be, because Congress was up in arms about excessive construction costs.

He advised us that Congressman Steed was particularly insistent that this was the way it had to be.

Mr. GRAY. For the record, we would like to state that this is the House Committee on Appropriations.

Judge SCHWARTZ. Yes.

Now, I am advised that at the most recent meeting of the Judicial Conference in Washington, on April 6 and 7, some of the judges were sent—by the Chief Justice—to talk to Congressman Steed, and one of the first things they raised with him was the size of the new standard courtroom, the 28 by 40, and his reaction was that "that has always seemed too small to me, too."

The next thing that was raised is what would be done in those districts where projects were already underway, such as in San Diego, where the plans were complete.

His stand was that it had been related to me—well, in those districts that have the plans well along like that, they should be allowed to build their courthouses in accordance with the plans, unless substantial savings can be effectuated by revision.

Mr. GRAY. You are stating categorically for this committee, in the case of San Diego, no savings would be effected?

In fact, if we delay the project, the costs would far outweigh the savings of $4,800 per courtroom?

Judge SCHWARTZ. I have been advised, and I cannot obtain anything directly, and I have asked in writing for the General Services Administration to give me the figures they say they have which would affect the General Services Administration's program in San Diego, and I have never received anything from them, but I have knowledge that I did not get from them.

That the architects' fees alone would be somewhere in the neighborhood of $200,000.

One of the architects who saw this new plan told us that in order to revise in accordance with that plan, or any other plan of a similar nature, that the situation would be such that it would result, no matter how carefully they tried to do it, in many change orders, and his statement was that "any contractor worth his salt is going to squeeze an extra $1 million out of this thing in profit just for change orders alone."

Mr. GRAY. Forgetting the fact that the architectural/engineering costs would be inflated, what we have here is a space utilization factor.

All you are doing is substituting conference space for courtroom space—no money savings.

Is that not accurate?

Judge SCHWARTZ. That is correct.

Mr. GRAY. Conference space that you say that you do not need. So it costs as much to make a conference room out of 1,200 square feet as it costs to make a courtroom, and there is no savings in the San Diego project, even if the architectural fees are free.

Is that not true?

Judge SCHWARTZ. Yes. What we would end up with is a remodeled hodge-podge in the interior. It would not fit the needs of our district. The security has been ignored in this new plan.

It has been suggested by Mr. Meisen—and there is a copy of his letter in the files you have—that all of these things could be worked out. They have not been worked out.

We have asked over and over again for answers, and we have not received them.

There is no magic in a 28- by 40-foot size. If this is the only size a courtroom can be, then we should close up our courts.

Mr. GRAY. Well, the thing that concerns me, as Chairman of the subcommittee, is that anybody could sit in a judicial conference, saying all courtrooms should be 28 by 40, and limit them to that size. That is wrong.

Judge SCHWARTZ. In the materials supplied to you, exhibit No. 6, there is a letter from Judge Fred Taylor, who is a member of the ninth

circuit, who is on the Judicial Conference, and who voted for the new standards in October.

I will read a portion of that letter:

I want you to know that I fully agree with everything you have said in regard to these mini-courtrooms.

It is inconceivable that such a plan was approved by the Conference. When I saw the markup of the plan I was astounded that it was even suggested for approval. I am sure Judge Chambers—

The chief judge of our circuit—

I am sure Judge Chambers felt the same way.

Such a courtroom may be suitable for a magistrate, but in my opinion, it will not be appropriate nor adequate for a district court.

No doubt there are some changes or improvements that could be made in our courtrooms to save space and money, but certainly, the adopted plan is not the answer.

These are the words of a judge who voted for the standards without realizing back in October what was happening.

Our completed design, from our view, is rational, economical and is not extravagant in size, meets the needs of the heavy needs of our district, supported by the bar of our district, and there is a copy of the report of the bar association in San Diego County in the materials that you have.

Uniformity and economy are good words in the dictionary, but they do not always serve the needs of real life, nor are they the touchstones of the effective administration of justice, gentlemen.

This is a great land, of variated people, and problems. The West is not the East, and the North is not the South.

Everywhere in our country justice and the administration of justice is under attack, and in some cases it is running for cover.

Some time ago the Chief Justice made the statement that the entire operation of the judicial apparatus of the United States cost less than the construction of one C–5A airplane, and when he made that statement, I felt this was the revitalization of courts, and pointing up the hazardous mirage of false economy.

Throughout the country there are justices courts and magistrates courts that operate in substandard facilities.

The American Bar Association has been constant in urging that their facilities be increased; that the dignity of the judicial process be recognized, and I think these urgings have been right.

I believe very deeply that our courts are the bulwark of the Republic, and the protector of the people against the arbitrary exercise of power by the executive, and the effects of, and perils of legislation by the legislative branch.

Make no mistake, gentlemen, that to the citizen involved in litigation, whether he is a party, witness, or a spectator, the courtroom itself, its dignity, its impressiveness, are distinct elements in the drama that determines the responsiveness, the acceptance by the citizens of the fairness and viability of our system of justice.

Reduce the program to under-facility and impressiveness, and you have furthered the degradation of our judicial system, and if we allow this to happen, we will lose all, and if we allow it, it could occur, because if we act arbitrarily, then I think we deserve to lose it.

Mr. GRAY. Thank you, Judge Schwartz.

That was very intelligent testimony.

I agree with your testimony implicitly, and want to pledge to you, and your associates, the judges in San Diego, that we will do everything that we can in getting the Judicial Conference, Chief Justice Burger, and the General Services Administration to change this ill-conceived plan.

We will certainly do everything that we can to be of assistance.

The gentleman from Ohio.

Mr. MILLER. Mr. Chairman, in trying to unravel what I have heard, it appears that the Judicial Conference of 1971 did decide that there shall be two sizes of courtrooms: 28 by 40, and 40 by 60. This is a differential of 1,280 feet, and at approximately $30 per square foot this comes to about $38,400. The building may last 50 years which would be $768 per year. Therefore the cost factor does not seem to be an important factor at the present time.

But it appears that somewhere along the line when this was being designed, perhaps, for interchangeability for efficiency, the Conference decided that the existing backlogs of civil and criminal dockets were needed to be moved as fast as possible, and that if they had this interchangeability, they possibly could have this mass production.

Maybe this is laying it on the line as I see it, and I am not sure it would work at all. I am not a judge, but it would seem as though we have designed something in which the judges would need to move from courtroom to courtroom. I can see the fallacy of such an operation, and in the long run, it could defeat the purpose which was intended.

Am I right about this intent of the Judicial Conference, in order to make this interchangeability?

Judge SCHWARTZ. I think that was one of the intentions of the Conference.

I feel, also, that it was unfortunate that the trial judges of the country, who actually work in these courtrooms, and know how they are conducted, were not consulted.

Let me just say this to you, gentlemen.

I hear people, friends of mine, laymen, all the time talking about the legislative branch of the Government. They talk about Congressmen, they talk about people in the State legislature, saying, "half the time there are no people on the floor of the House or Senate. What are those people doing?"

I have been in the judicial business long enough, and have attended many legislative hearings, and I have always said to myself, "you know, if these people only knew the work, the dedication, with which their representatives operate, they would not complain that their Congressmen, their State senators, their assemblymen, their U.S. Senators, do not put in a sufficient day."

Now, the same thing applies, I think, sometimes, to the attitude of the public with regard to the work of the judges.

Somehow, people see judges on the bench from whatever it is, from 10 to 12, or 2 to 4, from 9 o'clock in the morning. They take long lunch hours, recesses, and so on, and somehow this turns into an imagining that a judge puts in about a 3- or 4- or 5-hour day.

It simply is not true.

When the judge takes a recess, people think he takes a recess in his case.

The truth is he does not. He goes immediately back to his chambers, which are hopefully located right across the hall from his courtroom. He knocks out a letter or two, tries to catch up on his correspondence, tries to answer some of the phone calls accumulated while he was on the bench, tries to work up his jury instruction, tries to keep up with the lawyers with their evidentiary presentation, and after he takes this 15-minute recess, he goes right back to the bench and starts working on the bench again, and I have sat in my chambers many a day where I have gone from 9 o'clock in the morning until 8 or 9 o'clock at night, with a bagged lunch, and that is the way a judge operates.

To say you are going to have some chambers down the hall, or over in some other building, is simply not realistic.

Mr. MILLER. I understand that Judge Northrop stated that in the Baltimore new courthouse building there would be three courtrooms of 28 by 40, and 50 by 44.

Is that correct?

Judge NORTHROP. Yes, sir.

Mr. MILLER. You said there would be a common library.

We are getting back to the mass production manner, it seems. There would be conference rooms, and so forth, and this would be fine if you could put this on a mass production system.

But I can see you cannot do that with the judicial system. How would you have a common library? How would it serve the uses needed?

Judge SCHWARTZ. Many courthouses do have a common library, Congressman, and a judge should have in his office a working set of books.

Just as lawyers have office libraries.

When they get into a complicated problem, they go down to a county law library.

For the day-to-day and moment-to-moment work, the determination of the immediate courtroom problems, evidentiary questions, and so on, a judge has to have these books right at hand, at least a working library, and then, books that can be shared among all the judges of the court should be certainly placed within a central library, so that they are not required to be duplicated for every judge.

I do not think that there is any judge in the country that wants a wasteful judicial process.

We want to save money. We are for it, just like anybody else. We do not want marbled halls or luxury facilities, but we want facilities that we can do our heavy work in, and it will serve courts and the public and the community in which they are located.

Mr. MILLER. I wanted to get some answers from the background of the engineers and architects, and I can understand the comments of architects in attempting to increase the efficiency.

Thank you.

Mr. GRAY. Thank you, sir. It has been very helpful.

I want to apologize to my very distinguished colleague from Hawaii who serves with great distinction on the Rules Committee. He is always very helpful to this committee, and all of its members when we appear before the Rules Committee, and I have never had to wait for an appearance in the Rules Committee, as I have let him wait today.

STATEMENT OF HON. SPARK MATSUNAGA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mr. MATSUNAGA. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I deeply appreciate this opportunity to comment briefly on your commendable efforts to break the logjam which threatens to prevent the construction, after interminable delay, of sorely needed Federal facilities in locations across the country. I am committed to the same goal: The swiftest possible completion of these buildings, including a new courthouse in a Federal office building in Honolulu, Hawaii.

Twelve years ago, in May of 1960, the Public Works Committees of the 86th Congress completed necessary action on the new Federal building in Honolulu, which at that time included space for a new central postal facility. More than 3 years ago money was appropriated and bids actually solicited; but high construction costs in Hawaii put the only bid over the maximum allowed by law, and the structure was never built.

Subsequently, the Postal Service responded separately to its greatly increased needs by building a facility near Honolulu International Airport, where the bulk of both incoming and outgoing mail is now processed. The revised building prospectus, calling for the courthouse and additional space for 24 Federal agencies, is now pending approval of Congress.

In the interim, the Judicial Conference of the United States, at the urging of Chief Justice Burger, asked that the size of new Federal courtrooms be reduced as an economy measure.

Mr. Chairman, and members of the subcommittee, I applaud the motivation of the Judicial Conference. There is no disagreement of the need for curtailing unnecessary Federal expenditures. However, redesigning the proposed courthouse and Federal office building in Honolulu is a curious way indeed to proceed toward that objective. Experts, much more competent in this field than I am will tell you that redesign of the Honolulu facility to incorporate the proposed smaller courtrooms would cost the Federal Government far more in new plans and ever-increasing construction costs than it would save. I understand that the same holds true for the other Federal buildings including court facilities for which the designs have already been completed.

Mr. Chairman and members of the subcommittee, I do not presume to tell you about the dizzying upward spiral of construction costs since the Honolulu facility was first approved for construction 12 years ago. But I would like to emphasize as strongly as I possibly can the imperative need for the facility now. The 24 agencies to be housed in the new office facilities are now operated from 18 separate locations within the city and county of Honolulu, at distances which require driving 10 to 15 miles to reach several different Federal agencies. The present courtrooms and other Federal facilities are grossly inadequate.

The passage by the Congress of legislation to permit lease-purchase methods of acquisition, legislation which came from this very subcommittee, has raised hopes that construction could begin sometime

this year. Acceptance of the recommendation of the Judicial Conference would mean a probable delay of another 3 or 4 years.

In order to meet a dire existing need, and at the same time attain the well-intentioned objective of the Judicial Conference; that is, to save the taxpayer a few dollars, I strongly urge that this subcommittee insist on construction of the Federal building in Honolulu according to completed plans, without the proposed alteration of the courtrooms. I make this same plea for other Federal buildings whose plans are complete and ready for construction.

Due to the fact that our guest witness has to catch a plane this afternoon to get back to Hawaii, and I would like to introduce without further ado the Chief Judge for the Federal District Court of Hawaii, a man who is active not only in judicial matters, but also in community activities, Judge Martin Pence.

Mr. GRAY. Judge Pence, we are delighted to have you with us this morning, and appreciate your waiting.

I wish we could recess and go back to Hawaii with you.

You may proceed in your own fashion.

STATEMENT OF HON. MARTIN PENCE, CHIEF JUDGE, FEDERAL DISTRICT COURT, U.S. COURTHOUSE, HONOLULU, HAWAII

Judge PENCE. Thank you, Representative Gray and Representative Miller, I am personally very grateful for the opportunity to appear right now before you, even though it meant almost 9,000 miles of travel. I am very, very happy to be here, because I noticed in the Congressional Record, when the problem of the courts came up recently, that you, Representative Gray, and Representative Van Deerlin, Representative Matsunaga, and a few others, were very much concerned with upholding the prestige and dignity and authority of the U.S. Judiciary.

I know I speak as well for the other judges who are testifying today, whom I thank you for the time you have given us today.

Mr. GRAY. Thank you.

Judge PENCE. May I briefly answer some of the questions that have been asked by Mr. Miller, Mr. Schwengel, and by others, regarding "how did this whole thing come about?"

Mr. GRAY. Yes.

Judge PENCE. On March 15, 1972, I and the other judges who have testified here so far, each heard the Chief Justice of the United States say that some few years ago the administrative offices had gotten hell from the Appropriations Subcommittee of the House over money for the courts.

Now, I am quoting:

"It was coming through to me that we had serious problems on the Hill." There were "complaints by administrative agencies about hearing rooms, and yet the courtrooms were idle." With courtrooms "not available, the administrative agency had to rent space." And it had also come to the attention of the Judicial Conference, as well as the Judicial Council, "that some members of the subcommittee had been denied use of courtrooms in the hinterlands."

The Chief Justice, therefore, "wanted to deflect congressional inquiry into the use of courtrooms." Admittedly, no such congressional

inquiry had been planned, "but he recognized that it was in the offing." and "all of this," he said, "was coloring the attitude of the Appropriations Committee in the House."

He stated that he had invited Congressman Steed and Congressman Robinson, the ranking Republican members of the committee to lunch with the knowledge that "they were ready to lower the bar."

At this luncheon "they opened up on the cost of courthouses and the lack of utilization."

"I saw we might have problems of getting appropriations, so I said if there was no compromise on the size and cost of courtrooms, the Conference was going to create a committee to work on the problem of smaller and less costly courtrooms. Thereafter I heard from the General Services Administration that the attitude of the new chairman was not as antagonistic toward new courthouses, but was more open."

Mr. GRAY. Who is this from, Judge?

Judge PENCE. Chief Justice Burger, here in Washington, at the Dolly Madison House, the morning of March 15, 1972, and at the time, as Judge Schwartz correctly said, we who were involved in the situation, where our plans were all completed and ready to go, we were told, and had been told, by the administrative office, that we could not have the funds to put these plans into execution. This was after we, the non-hoc committee, namely, the judges affected, after we had been invited, at our request, to appear before the ad hoc committee.

Before that, recognizing the power structure, we had asked the Chief Justice if he would not see us personally, and he wrote to Judge Heebe, and to all of us that this has already been approved by the Conference. You would not expect me to go beyond the action of the Conference. And he would not see us. But he was there at the Dolly Madison House at 9:30 in the morning, on March 15, and that is what he said. Among other things he said that "the reality of the problem is that there is not a penny of appropriation for any building that we are concerned with."

And that was true at that time. And he continued:

"Congress is waiting to see how much cost can be cut" before any appropriations are made.

That was the Chief Justice of the United States, and before he told us that, we had been excluded from the room for about 45 minutes to an hour, as Judge Schwartz advised you.

Now, coming back to your other question—but this is how it started——

Mr. GRAY. Yes. We are glad to get that information.

Judge PENCE. All right, you asked about the makeup of the ad hoc committee.

The chairman, Judge Edward Devitt. There is not a finer judge in the United States than Judge Devitt. There is not a more dedicated man, or more highly regarded judge than Judge Devitt, but he is from Minneapolis, Minn.; and on that committee was a former head of the General Services Administration, now a judge, I think, on the Court of Claims.

On that same committee was a former law clerk, as an attorney representative, of the Chief Justice, and on that same committee, among the attorney representatives was a former law partner of——

Mr. GRAY. Of the Chief Justice?

Judge PENCE. Of the Chief Justice, and on that committee was one of the kindest, finest men, Judge Christensen, from Utah, who said to us on March 15, the judges who were there, he said, "Why, I have sat for 17 years in a small courtroom, and I like it." And Judge Schwartz said, "Yes, Judge Christensen, I know it is small, but it is not 28 by 40."

And Judge Christensen said, "No, not quite."

Mr. GRAY. Not quite.

Judge PENCE. Not quite.

Now, as to this one ad hoc meeting, there in the Dolly Madison House, there on March 15, I have since been advised of two things.

No. 1, there were some members of that committee who were not in favor of the small courtroom, and this is a quotation, "but our actions were inhibited by the position taken by the Chief Justice."

Now, it is also my understanding at that March meeting, the ad hoc committee felt, that it was the feeling of that committee, that we were entitled to some administrative relief.

There was no report of that ad hoc meeting given to the Judicial Conference of the United States on April 6 or 7.

There was a blank space on the ad hoc committee's appearance on the program. There was a blank.

I have here a copy of a letter, dated February 25, 1972, supplied to me by my judge friend, Judge Heebe, from E. Gordon West, a member of the Judicial Conference, to the Honorable Warren E. Burger, stating, and I will submit it for the record.

Mr. GRAY. Yes.

(The information referred to follows:)

U.S. DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA,
Baton Rouge, La., February 25, 1972.

HON. WARREN E. BURGER,
Chief Justice of the United States,
Washington, D.C.

DEAR MR. CHIEF JUSTICE: At the October 28–29, 1971 meeting of the Judicial Conference of the United States, the Conference approved and adopted the report of the Committee on Court Facilities and Design. The result of this approval was to standardize the size and design of all United States District Courtrooms constructed in the future. Several criteria were incorporated in this report, including a standard size for regular courtrooms of 28 feet by 40 feet, and a size of 40 feet by 60 feet for the so-called "large" courtroom.

Since the adoption of this report, and the implementation of it, there has been widespread dissatisfaction shown and objections raised by District Judges in areas where new courtrooms are either in the course of construction or are being planned. I have read with a great deal of interest the complaints voiced by some of these Judges, and I must say that they cannot be dismissed as being without merit.

As a member of the Conference who cast a vote for the approval of this Committee Report, I must say that I have had misgivings after more mature consideration. While I know that the Committee whose report we approved labored long and diligently and at considerable expense to come up with their final conclusions, I nevertheless feel that the Conference owes it to the Judges most directly affected to seriously consider their objections. In retrospect I personally feel that the

approval of the Committee Report might have been a bit hasty, and since the matter involved is of such tremendous importance, I believe that further consideration should be given to this matter. After reading and studying the objections voiced by many of these Judges, I am convinced that there are matters involved in the design of these courtrooms which should be given further serious consideration.

I therefore urgently request that the matter of the design of district courtrooms, judges' chambers, and other connected facilities be the subject of further consideration by the Conference, and I respectfully suggest that this matter be placed on the agenda for consideration at the next meeting of the Conference. In the event that this matter cannot be accommodated on the regular agenda, I would further respectfully suggest that the matter is of sufficient importance to be the subject of a special meeting of the Conference if necessary.

With kindest regards and best wishes, I remain,

Sincerely,

E. GORDON WEST.

(From Judge West's letter:)

As a member of the conference who cast a vote for the committee report, I have had misgivings. While I know what is contained in the committee report and so forth, I nevertheless feel that the Conference owes it to the judges most directly affected, to seriously consider their objections.

Judge PENCE. In retrospect, I personally feel that the approval of the committee report might have been a bit hasty.

It was more than a bit hasty, gentlemen.

It was said by Judge Schwartz that the ninth circuit member, Judge Taylor, was there when the voting took place. He was not. This matter was presented in the dying hours of the October meeting of the Judicial Conference. The dying hours, and as Judge Taylor—and I have his letter here—said, "several of the members had left, and I was on the telephone, checking my reservations back to Idaho."

Now, going back to this letter to the Chief Justice from Judge West, "I therefore urgently request that the matter of the design of district courtrooms, judges' chambers," and so forth "be the subject of further consideration by the conference, and I respectfully suggest that this matter be placed on the agenda for consideration at" the April meeting."

I am advised by Judge Heebe that no answer was received from the Chief Justice. The matter did not come up on the conference agenda, and when Judge West made his motion to revoke, to rescind, the chairman said that it was out of order!

You are familiar with Roberts Rules, and I need not say anything more.

Now, gentlemen, with that background, I will give you, very briefly, the——

Mr. GRAY. That is very good gackground, Judge Pence.

Judge PENCE. The position of Hawaii is simply this:

Over 5 years ago you voted the money for the courthouse that we are talking about.

In 1968 it was all set. You had $22 million appropriated for it, and there was no controversy about the ceiling, the depth of the pit, the attorneys would not be looking down at the judge. The 10-foot ceiling, gentlemen—just envision that a "Tom Thumb ceiling," whatever you want to call it was not in our plans.

The construction of the new building in Hawaii, the design which I have right here, contemplates in the middle of that building where

the courtrooms are to be, the courtrooms were considered standard, with the chambers around the perimeter of the four courtrooms; with the whole building, as to its form, surrounding those four courtrooms. So when the time came that we received the word in December—not October 1971—in December, that this was going to have to be changed, I take my hat off to Mr. Meisen of the General Services Administration, who insisted that the integrity of the architect's design had to be preserved, and it was he, not the Administrative Office, that insisted that we would have to have two of these then standard courtrooms, as already in the plans.

You can see what would happen if you only had one. Since the whole building is built around the central core of these four, how could you ever justify the cost and expense of all the expanse of space in the middle if you were going to cut it up?

Mr. GRAY. How many courtrooms are there?

Judge PENCE. Only four, and we only asked for three to be built to date.

Mr. GRAY. The design called for four courtrooms?

Judge PENCE. It is the same design, except for the wiring, and so forth.

Mr. GRAY. What do they propose to do, Judge Pence? Go to one large courtroom, and three minis?

Judge PENCE. No. Thanks to Mr. Meisen, who said he would have to get a new design for the building if it was that way. He has not told me, and he may tell you differently, but to have three minicourts would cause a redesigning of the whole building. According to the Administrative Office we are to have two large courtrooms, and one mini, now, and when we need the fourth one, it too will be a minicourtroom.

Mr. GRAY. You would have one mini?

Judge PENCE. Yes, one now. But the exterior of the building cannot be changed.

Mr. GRAY. And you would only want four?

Judge PENCE. No. Only three now, the fourth later, as needed. And this fourth courtroom area was designed for future growth, so that we would not have to come back to you later on for money to rip out the whole interior and redo it over again. Then came this new design for the two minicourtrooms to be built. One now, and one in the future.

I heard something here about in-house drawings prepared by somebody back in Washington, and this is the new design the Administrative Office told us we were to take.

Now, we had provided for four attorney-client-witness rooms; small rooms, but four of them for conferences.

Then this new first design came—they were going to give us not four courtrooms, three built now; they were going to give us six courtrooms, two large, and the others chopped up to make minicourts and in order to get those in, they proposed squeezing in and moving the hallways, and instead of using usable room as now planned, they were going to give us six more attorney-client conference rooms, and give us, instead of four courtrooms, they were going to make the space available for six courtrooms.

We do not need that. With the population projections, we would not need six courtrooms in the life of the building.

Mr. GRAY. So here, again, Judge, you have people not from Hawaii telling you what your requirements are.

Judge PENCE. Well, they heard from me that we were going to keep this original design with the chambers, and the jurors rooms all planned to give the maximum use of the courtrooms. In order to give the jury the greatest seclusion we put the jury on the floor above, so there is an entirely separated jury room, and the jurors go up steps to it.

Do not worry about steps. The jurors go up about 40 feet right now, and have for 40 years in Hawaii, they have done that for 40 years, and nobody has died of heart failure.

Now, it is now proposed and planned that they are going to save money, so under the latest plans they are going to do away with those four jury rooms that are provided for, and that is 2,480 square feet "saved."

Now, we have heard a lot of figures bandied around here about the cost per square foot. I heard somebody say $30. I heard somebody say $34, and the best figure in Honolulu is $40 per square foot, and I told Mr. Meisen, for whom I have the greatest admiration, and he said it is now $50 a foot.

That is all right, but for ordinary installation I'll use $40. 2,480 square feet, $40 per square foot, gives $99,200, which is going to be "saved." That is going to be saved.

Mr. GRAY. Over a 50-year period?

Judge PENCE. Listen. You have not heard it all yet. Although Mr. Meisen says an in-house architect can redesign this, the information that I get is that it will be $55,000—$50,000 to $60,000, about $55,000 to implement these changes, just for the architectural and engineering design as proposed right now. So it means that only a net of $44,300 would be saved if it did not cost a dime more than $40 a square foot for the proposed changes.

If there is any delay in the building—and you already talked about inflation—if there is any delay in the building, it will run from $100,000 to $150,000 more.

But there would not be any delay, I am told, we can start the building now, and then come to the change order later. When that change order hits the fan, the contractor wipes off his moustache, and shovels in the gold. But this is what we are buying by the change. We are going to move down the jury to behind—for both courtrooms—behind the minicourts, and that means instead of us getting the figure—about 2,460 square feet, we only get about—let us see. Twenty times 40 times 2. My figures are rough, but we will be getting only about 1,680 square feet of jury space. It was felt when we designed this building that we should have this figure of 2,460 square feet for that space. Then after they got the jury rooms in and I will not go into the details of what the mini jury rooms look like, and how they have the jury's toilets backed up to one courtroom, and also backed up to the other, as they now plan. But of course they say they can change that. But let us see what we get in return.

We are formerly over here, and have the interior space all allocated, as it should be, but they have now narrowed the courtrooms down, and we get 12 feet (40 feet minus 28 feet) along the corridor.

So out of narrowing the courtroom to 28 feet we are to get four more attorney-client consultation rooms, and two judges robing rooms, because you have got to get a judge into the courtroom somehow.

Mr. GRAY. You do not need those conference rooms?

Judge PENCE. Gentlemen, in a letter, frankly, to General Kirks, I said that we needed them about as bad as one needs the fifth teat on a cow's udder, and then, I did say——

Mr. GRAY. Being a farmer boy——

Judge PENCE. I too am a farm boy, and I said, "then, you see, it has my udder rejection." [Laughter.]

I apologize for that.

And this is all waste space, and 1,420 square feet at $40 per square foot equals $56,800 for waste space, and so you have a net loss of $12,500 ($56,800 waste, minus $44,300 saved).

Gentlemen, I appreciate very much your listening to me here, and I join with you, Representative Gray, in saying it looks as if somebody is being pennywise and dollar foolish. And for sure it will cost a lot more to redraw and build these plans with smaller courtrooms, than to go ahead with the present plans for Hawaii, plans that have been ready and complete and approved by Congress, to my personal knowledge, for over 6 years.

Mr. GRAY. Thank you, Judge Pence, and let me agree with your testimony implicitly, and we will do whatever we can to see that the original mandate of this committee is carried out.

Thank you very much, and I wish to thank my distinguished colleague from Hawaii.

Mr. MATSUNAGA. Thank you, Mr. Chairman.

Mr. GRAY. Now, since we did pass him up in deference to our distinguished Members of Congress, I would like to call Mr. Rowland F. Kirks, Director, Administrative Office of the U.S. Courts.

Mr. KIRKS. I will yield to the next judge, Mr. Chairman.

Mr. GRAY. Thank you, General Kirks, for being so generous. Our next witness is the Honorable Robert Krupansky, of Cleveland, Ohio.

Judge, we thank you for your patience, and thank you for coming, and you may proceed in your own fashion.

STATEMENT OF HON. ROBERT B. KRUPANSKY, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION, CLEVELAND, OHIO

Judge KRUPANSKY. Thank you, Mr. Gray, and I appreciate the opportunity of appearing before the committee, and, Congressman Miller, from Ohio.

Gentlemen, I believe that the northern district of Ohio is here in a somewhat different position than those districts which have been represented before me.

I understand, that after a year and a half of negotiations, a new courthouse for the northern district is not contemplated.

However, extensive remodelings are contemplated, which make apropos, of course, the discussion of the size of courtrooms.

Our problem is not whether or not the proper design for a new courtroom is 28 by 40, or 40 by 60, but rather, the reduction of the size of existing courtrooms.

Mr. GRAY. Those bells indicate an adjournment. It must be in respect to Mr. Hoover.

Thank you.

(The prepared statement of Mr. Krupansky follows:)

STATEMENT OF HON. ROBERT B. KRUPANSKY, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION

The Committee on Court Facilities and Design created by the Judicial Conference to report on future courtroom construction and design has recommended to reduce standard Federal District courtrooms from the existing 60 x 40 feet to 28 x 40 feet.

Its reasons for this reduction are:

1. The compact arrangement provides for greater security and manageability.
2. Economy.
3. The arrangement facilities use of electronic recording techniques.
4. The arrangement with a movability of fixtures places participants in closer proximity with each other.
5. The design provides for a removable jury box and seats for nonjury cases.

Of the reasons advanced in support of its action economy may be justified.

Compact arrangement which places the participants in closer proximity to each other especially in criminal cases critically restricts movement of security personnel, court attachés and the judge, thus limiting available emergency action and increasing the confrontation hazards thereby jeopardizing security.

Of less consequence is the assumption that the reduced size facilitates electronic recording techniques.

Electronic recording techniques have not and are not utilized in the Northern District of Ohio. This is generally the circumstance nationally. In all probability these techniques will eventually have a more significant place in the disposition of litigation. With scientific advances in the development of equipment and truly time-saving techniques the procedures may easily accommodate to the standard 40 x 60 foot courtroom.

Finally, the Committee recommendation places great weight upon the capability of removing the jury box and seats from the courtroom for non-jury trials. This procedure requires continuous manpower commitment by GSA to accomplish constant moves. The number of such moves being directly related to the number of judges assigned to the District. Needless to say, the Committee has had little if any exposure to GSA's activity.

The need for economy cannot be argued. Every effort to implement the function of the Federal District Courts and the Judicial System generally should be undertaken in the most economical manner. Costs should be reduced whenever and wherever possible. However, economy should not replace or jeopardize efficiency.

The necessity to reduce and eliminate existing backlogs coupled with an ever expanding civil and criminal docket mandate the facilities with which to accomplish these results.

The courtroom and available space for the judge and his supporting staff are an integral part of administrative efficiency. Courtroom size is directly related to the geographic area involved, and the type and frequency of litigation generated therein.

For example, there are eight judges presently assigned to the Eastern Division of the Northern District of Ohio, two of whom are on senior status, but very active. One judge is without a courtroom since only seven are in existence.

Under the personal docket system adopted on June 1, 1971, each regular judge has had assigned to him approximately 725 cases. The senior judges have somewhat of a lesser number.

The following is a typical civil docket:

CIVIL CASES BY CATEGORY

Category	Pending June 1, 1971 plus filed since June 1, 1971	Pending Apr. 30, 1972
1—Admiralty	8	2
2—Antitrust	8	1
3—Civil rights	41	22
4—Contract	77	29
5—Habeas corpus	19	1
6—Labor	40	12
7—Patent	19	12
8—Personal injury	216	102
9—Review administrative decision	11	7
10—Tax	17	12
11—Unfair competition, trademark	9	3
12—General	91	45
Criminal: All cases	208	32

Antitrust, Patent, Tax, Unfair Competition and Trademark, Contract, Labor, and Civil Rights litigations are such that they involve multiple parties and innumerable lawyers. In this District this type of litigation has involved from six to thirty-six lawyers together with voluminous and bulky exhibits.

The advent of the Strike Force concept utilized by the Justice Department in its crusade against organized crime has made multiple defendant conspiracy trials commonplace.

Under the personal docket system each judge is charged with administering his own docket. The effort involved in coordinating multi-lawyer cases is complicated enough without the necessity of attempting to schedule accommodating courtrooms.

Judges are reluctant if not adverse to committing their courtrooms to others for extended periods of time to the detriment of their own docket administration. Ever expanding areas of multi-party litigation of the type characteristic of Federal District Courts makes the proposed 28 x 40 foot courtrooms obsolete before their construction particularly in large, heavily industrialized and populated urban areas. The design and concept are a failure from the outset. Such courtrooms physically cannot accommodate the heavy trial schedules and workloads required to be administered.

The cost differential between the proposed design and the existing standard 40 x 60 foot courtroom would not justify the risk of obsolescence, jeopardy of limited function, and administration.

Judge KRUPANSKY. GSA proposes to reduce courtrooms in our district from their 40- by 60-foot size to the new 28- by 40-foot size, and therefore, that brings me to Washington on the request of the chief judge of our area to present to you our position as to the reduced size of courtrooms.

Mr. GRAY. Let me recap that, Judge, if I can interrupt you.

You have larger courtrooms now that the size of 28 by 40, and in the remodeling process it is proposed to cut them down?

Judge KRUPANSKY. That is right.

You see, we have presently eight judges in the eastern division of the northern district, two of which are on senior status.

The remainder are on active status.

Of course, we have only seven courtrooms.

My appointment was effective October 15, 1970, and I have had no courtroom for a period of approximately a year.

I then was assigned the inadequate facilities of one of my senior judges, who moved to more functional quarters, and Judge Contie,

the most recently appointed judge, of course, has no facilities, courtroom, or otherwise, at this particular time.

As to the size of the courtrooms, I doubt if there would be very much that I can add to what has already been said—and in the interest of time, gentlemen, I submit to you my prepared statement.

Mr. GRAY. It will appear in the record in its entirety.

Judge KRUPANSKY. I think it will represent our position in support of our colleagues.

Unfortunately, I was notified that I was to appear here late Friday, and perhaps I have not had adequate time to prepare the statement.

Mr. GRAY. Well, you are doing very well, and let me apologize. We wanted to get moving on these hearings, because as you know, there is an attempt to implement these plans immediately, and we must act with haste if we are going to stop them.

Judge KRUPANSKY. Gentlemen, I would like to call your attention, basically, to one aspect of the statement that appeared previously, and that is, for the purpose of emphasis, the personal docket system which was adopted in the northern district of Ohio on June 1, 1971, and which is the general standard for each court in the Nation, places upon individuals and judges a very weighty administrative problem.

Typical of a caseload in the northern district of Ohio, which, as you are well aware, is a highly industrialized, highly populated urban geographic section of the country, appears in my prepared remarks.

Each of the judges has a similar docket since the accumulated cases have been equally distributed. You will notice the large number of individual assignments in the fields of antitrust, civil rights, contracts, patents, personal injury to some degree, net worth cases in the area of tax, unfair competition, and trademark cases.

For those who are actively engaged in the trial practice and in the trial of cases, there will be little argument concerning the complexity of this type of litigation and the time-consuming efforts involved in their resolution.

Patent cases, antitrust cases, complicated net worth tax cases involve as many as six, and sometimes as high as 36 lawyers, separate and apart, gentlemen, from the participants, and the witnesses, and if you have ever gotten involved in cases of this kind, it is not inconceivable to have the courtroom filled with documentation, exhibits, and models.

The breakdown does not reflect upon the new trend in criminal litigation. The northern district has a strike force, and since the innovation of the strike force, multidefendant conspiracy trials are not uncommon.

I had one just last week, 16 defendants, and one before that with six defendants.

Needless to say, the number of counsel participating in matters of this kind has greatly increased.

My point is gentlemen—and I do not wish to take more of your time than necessary—the trend today is to multiparty, multicounsel litigation.

There is a definite increase in the amount of litigation due to population increases and other sociological evolvements. I think these issues are uncontroverted.

With this new trend, and with the great interest, public interest, that is being displayed in the area of the judicial processes, the interest of the public, in attending many notorious cases, and I say "notorious" in a general term, in a sense, in that they attract public attention, the 28- by 40-foot courtroom is obsolete before its construction, and the concept should be abandoned.

The 28- by 40-foot courtroom is completely unfeasible, and I concur with my colleagues.

Can you imagine eight judges, with a docket of this kind, attempting not only to schedule anywhere from six to 12 cases with 15 to 18 lawyers to participate in a case and dispose of them, and then go courtroom shopping among his own judges, when each judge is faced with the same practical problem of trying to dispose of his own personal docket.

The response is going to be negative. Each judge is going to be reluctant, if not adverse, to permit some other individual to use that courtroom, when he himself needs it.

Suffice to say, gentlemen, and in conclusion, I am certainly hopeful that you are sympathetic to statements that have been made here today, and, hopefully, that the matter is resolved expeditiously.

Mr. GRAY. Thank you, Judge Krupansky.

Let me ask you one question.

During all this period that was proposed to remodel the courthouse in Cleveland, up to this date, has anyone called you to ask for your opinion, or any of your colleagues in your court in Cleveland, as to the size of the courtroom?

Judge KRUPANSKY. Oh, yes.

As a matter of fact, I have talked to so many people that I have lost count of them.

Finally, it came to a point where the projected designs were such that I went out and had some plans drawn as to what I thought we needed which, of course, were promptly turned down, and this idea of cutting this existing courtroom in half, and then——

Mr. GRAY. Instead of seeking advice, they have been trying to sell you on the other idea of this smaller courtroom; is that it?

Judge KRUPANSKY. Yes. And, of course, the cost figures that have been quoted to me on the deferential—I am not an architect or an engineer. However, certain cost figures become rather obvious.

Talking about 65,000 square feet, in this particular model, I was quoted a figure of $460,000, and that would figure somewhere around $57 to $70 per square foot, and I had it estimated myself by a reputable engineer, and the figure is $30,000 to $35,000 more—and I do not have the exact figures—more than the cost of the projected costs for the small court which, of course, would be completely unfeasible, and it is most unfortunate that you cannot explain the realities and the practicalities of an active trial court to people who are interested in the academics and the theory of it.

Perhaps the answer is that they should view some of the trials that we are faced with, and some of the problems that we have as we come to grips with on a day-to-day basis.

Mr. GRAY. Repeating an old cliche, though, these figures, as given, would not hold up in court.

Judge KRUPANSKY. I think that is a fair assumption.

Mr. GRAY. Thank you.

Mr. MILLER. Mr. Chairman.

Mr. GRAY. The gentleman from Ohio.

Mr. MILLER. If I may, Judge Krupansky, this is very good information, and I am sure it will assist us in looking at and trying to decide what is to be done. We are always happy to have people from Ohio before us.

I do have one question that I would like to clear up in my mind.

You say there are eight judges in the northern division of Ohio, and there are courtrooms already in the building that are designed that you will be using.

Judge KRUPANSKY. There are courtrooms designed on the old style, with the exception of one courtroom, that approaches the proposed module, with the 9- or 10-foot ceiling, and I might say thus far it has been completely disfunctional, I think, is the proper word.

One of our judges, while his facilities were undergoing remodeling, undertook to conduct a trial in that particular courtroom which, fortunately or unfortunately, was a patent case, and that particular case involved something like 10 or 12 lawyers, and they had to block off the entire hallway which, of course, not only inconvenienced court personnel, but also inconvenienced the public, and the judge endured this imposition because of the lack of facilities for 3½ months, during the course of this particular trial and it is difficult to point out how really disfunctional these courtrooms are.

Mr. MILLER. I have had a little experience with patent cases, and have an idea of what you were talking about.

You have one 60 by 51, and six 40 by 60. How many changes are to be considered?

How many of the 40 by 60 size would be removed, and how many of the 28 by 40 would be installed?

Judge KRUPANSKY. So far, Mr. Miller, it is only contemplated that one or two of the existing courtrooms needs remodeling.

The minicourtroom which was constructed on a temporary basis must be remodeled to put it into a permanent shape, and another small courtroom is contemplated, so the specific answer to your question is that one, possibly two, of the larger courtrooms needs immediate remodeling and reconditioning, and one of the minicourtrooms needs to be remodeled, and one new courtroom is required to be constructed.

Mr. MILLER. And it would be the larger or the smaller?

Judge KRUPANSKY. It is contemplated of the smaller.

Mr. MILLER. Thank you.

Judge KRUPANSKY. Now, you understand this meets only the immediate need. There is no future projection.

Mr. MILLER. Right. I understand.

Thank you, Mr. Chairman.

Mr. GRAY. Thank you very much, Judge.

Now, we are happy to call the very distinguished Director of the Administrative Office of the U.S. Courts, General Rowland F. Kirks, and, gentlemen, would you please come forward.

We want to thank you for your patience, especially since we have used your name in vain a few times.

Mr. KIRKS. Mr. Chairman and Members of the committee, is it appropriate for me to inquire as to what the time schedule would be?

Mr. GRAY. We would like to run right on through. We have other witnesses from the General Services Administration, and it would be desirable to conclude this part of the hearings, and I understand the Judicial Conference—that in fairness, we should at least invite them to come or submit answers to questions and we could make a total judgment as to how we can handle this. In direct answer to your question, General, we would like to finish this afternoon. But as far as the time limit is concerned, we will not impose any restriction on you.

You may proceed in any fashion, give a proposed statement, or summarize.

I do have a few questions after you conclude.

Mr. KIRKS. Fine, Mr. Chairman.

I do not have a prepared statement, as such, but I have made some notes in regard to the nature of this hearing, which I think are relevant at this time.

STATEMENT OF ROWLAND F. KIRKS, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Mr. KIRKS. I am appearing before your subcommittee today at your request to describe for you the actions of the Judicial Conference of the United States relative to the subject matter of courtroom facilities and design.

In the fall of 1970, representatives of my office appeared, together with representatives of the General Services Administration, before the Appropriations Committee of the House of Representatives in behalf of the request for funds for courthouse construction, and, specifically, for a new courthouse in San Diego, Calif.

At that time there was considerable comment from Members of the committee regarding the size and elaborateness of the Federal courthouse construction and courtroom utilization. My office had both before and since that testimony received similar comments as well as criticism of the height of courtrooms in this modern day of air conditioning and the wasted space in many courthouses across the country, especially in the light of increasing building costs.

The events in a State court in California and the threats made to Federal judges have also served to remind us that security has rarely been a factor in courtroom construction in the past. The Judicial Conference and the Administrative Office have been convinced by recent developments that security must indeed be an important consideration in all future construction.

The Judicial Conference of the United States at its meeting in March 1971 discussed this problem and agreed that, except where imperatively the size of needed courtrooms should be cut back substantially provided that each courthouse had, as a minimum, one large courtroom for special cases. The Conference further agreed that there was a need for new concepts of design in order to draft plans that would afford greater security, and simplify courtroom control. It was agreed that the Conference should work in close cooperation with the

General Services Administration on these matters and the Chief Justice was authorized to appoint an ad hoc committee on courtroom facilities, design, and security. Very shortly thereafter, the Chief Justice appointed this committee and named Chief Judge Edward J. Devitt of the district of Minnesota as chairman. In light of previous testimony, I believe it is appropriate to invite the attention of this committee to the composition of this committee and for me to describe the judicial and legal experience of each member, due to the fact that frequent reference has been made to it.

The chairman of the committee is Chief Judge Edward James Devitt, who served 4 years as a municipal court judge, after having served as a member of the U.S. House of Representatives, 5 years as a probate court judge, and is serving now as a U.S. District Court judge for a period of 17 years and 5 months, for a total of 26 years judicial experience and a total of 37 years legal experience.

The second member of the committee is U.S. District Court Judge Aubrey E. Robinson, Jr., who served 1 year on the juvenile court, and who has served 5 years and 4 months on the Federal bench. He has a total of 24 years legal experience.

Mr. GRAY. Before you go to the third one, General, where is Judge Robinson from?

Mr. KIRKS. Washington, D.C., U.S. District Court for the District of Columbia, sir.

Mr. GRAY. Fine.

Mr. KIRKS. The third member is District Judge Lloyd F. McMahon, of the southern district of New York, who has served 12 years and 6 months on the Federal bench. He has 33 years legal experience.

The fourth member, District Judge—now senior judge—A. Sherman Christensen, who has served 16 years and 9 months on the bench and who has 41 years legal experience.

Mr. GRAY. And where is he from, sir?

Mr. KIRKS. Salt Lake City, Utah, sir, ninth circuit.

The fifth member is Judge Robert L. Kunzig, who was recently appointed a member of the Court of Claims, and he was, prior to that time, the Administrator of the General Services Administration.

In addition to these five judicial members of the committee, there are five lawyer members.

The next member is Mr. Robert W. Meserve, president-elect to the American Bar Association. He is from Boston, Mass., and has had 38 years legal experience, the vast bulk of which has been in the trial court.

The next member is Mr. Edward Bennett Williams, a private practitioner in Washington, D.C., who has had 28 years trial experience, a great deal of which has been criminal in nature.

The next member is Mr. B. Warren Hart, of St. Paul, Minn., a trial lawyer for 21 years.

Incidentally, I am going to recapitulate their years of service when I finish the presentation.

The next is Mr. William T. Kirby, of Chicago, Ill., a trial attorney there with 38 years legal trial experience.

And the last member of the committee is Mr. W. Reese Bader of San Francisco, Calif., also a trial attorney with 5 years experience.

Now, the accumulated judicial experiences of this committee is 63 years on the bench.

The accumulated legal experience—that is, since they have been members of the bar—and these were all active practitioners, is 295 years.

So I respectfully submit to the committee that this was an experienced and qualified committee to serve the pleasure of the Judicial Conference of the United States.

They span the Nation geographically, and, certainly, from that vast reservoir of practicing and judicial experience, this was not a novice committee.

Mr. GRAY. Well, while we are on that subject, General, and with all due respect to them, I am casting no disrespect on these distinquished jurists.

Is it not a case of whose ox is being gored?

None of these judges or jurists are being affected by this order, and if you think a judge in New Orleans should be in a 28- by 40-foot courtroom, who is now sitting in a 50- by 100-foot courtroom, and you have no member of the conference that is going to be affected by this order, it makes a difference.

Mr. KIRKS. May I respond to that?

Mr. GRAY. Yes.

Mr. KIRKS. The ruling of the Judicial Conference on October 29 of last year affects the entire system.

Mr. GRAY. I was referring to Judge Devitt's subcommittee that made this recommendation.

Mr. KIRKS. Yes; that is what I am referring to, Mr. Chairman.

The finding or the mandate of the Judicial Conference of the United States is applicable to the entire system.

Now, there was, until quite recently, and I do not know the status of the construction work—new courtroom work taking place here in the District of Columbia.

This was in Judge Robinson's court. They were doing similar work in Judge McMahon's court in New York southern in the State of New York. We have a project involving Boston, Mass., from which comes Mr. Meserve, so I do not think it a fair statement to say that these men are disinterested in the policy of the Judicial Conference of the United States and its applicability to the system.

Mr. GRAY. I did not say they were disinterested. I said it was ironic, to say the least, that they were not affected by the order. And I just meant that in equity and fairness, if I were setting up an ad hoc committee to devise something, I would ask the people more directly affected; namely, the judges who were sitting in these courts that were to be affected.

Mr. KIRKS. I am stating, Mr. Chairman, that Judge Robinson is affected, and there are two of the five judges that are affected by the order.

Mr. GRAY. We have the Commissioner here, but I have a list of the 63 buildings that this committee has authorized that have not been constructed where orders have been issued to redesign, and we have nothing here in the District of Columbia, and it is my understanding that the Federal Building in the Federal Triangle is being built with

previous specifications and not the minicourtroom, but the list that we have here of the 63, the one in San Diego, Baltimore, the remodeling job in Cleveland, and others, that these people that are directly affected, none of them serve on the ad hoc committee.

Mr. Sampson, the Commissioner, is here.

Can you tell us whether or not the Federal Triangle Building in the District of Columbia is being redrawn?

Mr. SAMPSON. No specifications on that.

The District of Columbia project, of course, will not be on our list.

Mr. GRAY. That is what I said, Judge Robinson, who sat on this committee, is not affected by the new order.

Mr. SAMPSON. He is affected, but this is not a General Services Administration project.

Mr. GRAY. It is not a General Services Administration project?

Mr. SAMPSON. No.

Mr. GRAY. It was not a part of the deliberations of this committee in approving the 63 buildings, this is the point I was making.

You may proceed, General.

Mr. KIRKS. Thank you.

After the appointment of this committee, the committee began its sessions almost immediately. It listed courtrooms on the Federal, State, and local levels across the country, and in conjunction with the London meeting last July of the American Bar Association, several members of the committee visited courtrooms in Great Britain. The committee worked closely with the Administrator of the General Services Administration, and his staff.

Judge Devitt reported back to the October 1971 session of the Judicial Conference of the United States on behalf of his committee, and advised that after extended discussion of his committee, the committee had arrived at three basic conclusions to govern its deliberations.

First, better efficiency must be built into new facilities, embracing the latest developments in science and technology, so as to satisfy both operational and esthetic needs comparable with the best traditions of our judicial system.

Two, the size of courtrooms should be reduced to achieve greatest efficiency and to curtail the cost of construction, and

Three, more attention must be given to the security of court facilities.

The General Services Administration constructed a model facility of a standard courtroom and the members of the Judicial Conference at the October 1971 session visited this model facility. After extended discussion, the Conference agreed to the following conclusions prepared by the committee.

First, the module of a standard courtroom should be 28 by 40 feet.

Second, the module of a large courtroom should be 40 by 60 feet.

Third, the ceiling for the standard room will be 12 feet high over the activity area with a dropped area of approximately 10 inches deep.

Fourth, the ceiling of the large courtroom should be approximately 16 feet high.

Fifth, the principal participants in a trial should be on different floor levels. Court personnel on the lower level, counsel, the witness,

the jury and spectators on the next level, and the judge should be on the highest level.

Sixth, movability should be built into the fixtures so that there may be a maximum flexibility in arrangement of the furniture, consistent with the needs in each particular case. By way of example the witness box should be movable so it can be easily relocated and locked next to the judge or opposite the jury, as is desired.

Seventh, all rails should be movable so as to accommodate varying requirements.

Eighth, attention has been given to color, light, sound, and communication facilities in the courtroom so that the end result will embrace the latest in esthetic and technological features.

Ninth, access to the courtroom should be provided the participants so as to maintain appropriate separation. By way of example—a separate entrance for the judge, for the jury, for the witness, for the public counsel and supporting personnel.

Tenth, approval of the administrative office and General Services Administration must be obtained prior to permitting variations from these basic floor plans and dimensions.

In adopting the foregoing conclusions the Conference agreed that no judge of the multiple-judge court should have the exclusive use of any particular courtroom and that each courtroom must be available on a case-assigned basis to any judge.

The Conference further agreed that in all new court construction each court facility must be equipped with one large (40′ by 60′) courtroom, and such additional standard (28′ by 40′) courtrooms, as may be required.

Where the need is shown, the Conference decided that the Director of the Administrative Office may authorize additional large courtrooms in such number as may be required.

The Conference was in agreement that the ad hoc committee should continue in existence, and should work further with the General Services Administration on the design of auxiliary courtroom facilities.

Now, I think it should be made abundantly clear to the committee that the Administrative Office of the U.S. Courts does not establish policy.

We carry out the policy that is established by the Judicial Conference of the United States.

The discretion that we are permitted to exercise is that which I have just referred to, and it is the purpose of the Administrative Office to serve the Federal judiciary, to support it logistically, and in every other way, in order to enhance the administration of justice.

Today we have heard considerable comment about the standard-sized courtroom.

I think it is appropriate to consider the discussion of standard-sized against the courtrooms background that there are in existence today 637 courtrooms for Federal courts. We do not have, at our immediate disposal, so I can submit it to the committee, the exact measurement of all those 637 courtrooms, but I would say that it would be reasonable to speculate that the vast majority of them are 40 by 60, or very close thereto. So the impact of the decision of the Judicial Conference in October of last year is to infuse into this reservoir of large courtrooms, standard-size courtrooms that will meet certain particular needs

of the court. What we are attempting to do in the Administrative Office, with close cooperation of the General Services Administration—and I can say that the relationship between the General Services Administration and the Administrative Office of the Courts is a very harmonious, closely cooperative effort—is to carry out the mandate of the Judicial Conference of the United States for the benefit of the Federal judiciary.

Mr. GRAY. Thank you, General.

Is it not a fact, though, that the Conference did give to your office the authority to issue waivers in specific instances?

Mr. KIRKS. To the extent——

Mr. GRAY. On size.

That is, if the particular court needed a courtroom in excess of the 28- by 40-foot dimensions, as has been alluded to here all morning, is it not a fact that the Conference said that you had the authority to issue a waiver in that particular instance where you had a specific request?

Mr. KIRKS. No, sir. That is not precisely right, Mr. Chairman.

The conference reposed in the Administrative Office the authority to permit variations on basic floor plans and dimensions where, in the judgment of the General Services Administration, and the Administrative Office, that was considered to be desirable.

Mr. GRAY. If I can quote from the report, it says:

> The committee decided that in all new courtroom construction, each courtroom will be equivalent to each large 40 by 60 courtrooms, and sets, as an additional standard, as required, and where the need is shown, the Director of the Administrative Office may grant permission for a variance in such a manner as may be required.

Now, is this not an accurate statement of what the Conference did, General?

Mr. KIRKS. Yes, Mr. Congressman, but I respectfully submit that that is not what you asked me.

Mr. GRAY. Well, what I said was the court gave you a variance, from a standard-size courtroom, to a large size, 40 by 60 courtroom, as may be required. That is a variance.

Mr. KIRKS. Well, I must have misunderstood you, then, Mr. Chairman. I understood you to put the question to me that I had the authority to grant a variance when it was requested.

Mr. GRAY. Well, "required, requested," that is a play on words.

I will strike "requested" and put "required."

Mr. KIRKS. Yes, sir.

Mr. GRAY. You do have that authority?

Mr. KIRKS. I do have that authority, sir.

Mr. GRAY. In the 63 buildings that we have authorized, have you granted any variances upon requests anywhere in the country?

Mr. KIRKS. May I have a copy of your list that you are referring to, sir?

I do not know the items——

Mr. GRAY. Would you please tell me if you have granted any variances in any place in the country, because we have several Federal buildings that have been funded by Mr. Steed's subcommittee; in fact, about $175 million a year. Has there been any variance made by the Administrative Office of the Courts?

Mr. KIRKS. The word "variance" troubles me, Mr. Chairman.

If you will permit me——

Mr. GRAY. Well, I am using the words of the Conference, "As may be required, the Administration may authorize additional large, 40-by 60-foot courtrooms," and I am talking about going from the standard 28 by 40, up to the large 40 by 60, which has to be a variance, obviously——

Mr. KIRKS. Well, I think what you are asking is whether or not we have authorized more than one large courtroom in any facilities——

Mr. GRAY. Yes.

Mr. KIRKS. We have under negotiation now recommendations where there would be a noticeable increase in large courtrooms, 40 by 60 feet over the required one. The answer to your question is "Yes."

Mr. GRAY. Would you be prepared to tell us in what cities and what court facilities those additional larger sized courtrooms will be authorized?

Would any of them be in San Diego, or in Baltimore, where we have testimony where they have a very serious problem?

Mr. KIRKS. Well, with respect to Baltimore, we have submitted a proposal to Baltimore, which is in, if you will, a state of discussion, and in negotiation with that court where we are proposing five large courtrooms, six standard courtrooms, and open space, which is not immediately required, a floor space, which would lend itself to either three or four combinations in the future. Four large; three large, and two standard, or six standard courtrooms.

Now, with respect to Honolulu, two large courtrooms. Each case has been taken on its individual merits, and is being pursued.

Mr. GRAY. What is the situation in New Orleans, where we had very expert testimony from the judge down there?

Mr. KIRKS. The Administrative Office is in an extremely difficult position, when the court takes an adamant position, and states categorically that it will accept no standard courtrooms, and if that is a firm position, there is very little area to negotiate.

Now, there are several courts in the system that have stated categorically they will not accept any standard courtrooms.

Mr. GRAY. When you say "standard" you are referring to this recent decision of the Judicial Conference——

Mr. KIRKS. 28 by 40 feet.

Mr. GRAY. (continuing). This decision of the Conference to go ahead with the 28 by 40?

Mr. KIRKS. Yes, sir.

Mr. GRAY. Well, this committee has approved billions of dollars of the taxpayers' money for space all over the country, and I could name off all the agencies, Social Security Administration, Internal Revenue Service, and on down the line, and I have yet, in my 18 years service on this committee seen an agency that did not go back to the place where the space was needed and ask them what their needs were.

I am just wondering whether you propounded to this ad hoc committee the question of whether or not their decision was based on dollars, or on actual administration of justice in the courts, or, putting it another way, if we went back to this ad hoc committee, and said, "Disregard the cost factors," or "Disregard the fact the Appropriations Committee told us to cut down on the size," do you really believe

that they would have recommended courtrooms be on a standard of 28 by 40?

Do you think that is a dollars and cents judgment?

Mr. KIRKS. I really——

Mr. GRAY. I know you cannot speak for the Conference, and I think I know, but I am trying to find out, for the benefit of the committee, how we got into this dilemma.

I believe the gentleman from Tennessee pointed out that their courtroom was too large down in Tennessee for the workload they have. Somebody else says their courtroom is too small, and unless they are under the gun of the Appropriations Committee, I am trying to find out how we got into this problem.

How did we get here on the collision course of your trying to do a good job, having a request of the people you are serving, the judges saying, "That is not adequate, and I am not going to hold court in a 28- by 40-foot courtroom," and the Chief Justice saying, "Yes, you are, because this is a dollar and cents argument."

And it cannot be based on better efficiency, because the people using that courtroom day to day have testified here in public that it is not an efficient courtroom when you narrow it and make it 28 by 40, and can you tell me, please, sir, how we got into this dilemma?

Mr. KIRKS. Certainly, I will be happy to respond, but may I preface my response by saying, as I have suggested, the chairman of this committee, Judge Devitt, is ready, willing, and able to appear before your committee to testify and, of course, he is in a much better position than I to share with you any subjective reasoning that has gone into the deliberations of the committee, but as I endeavored to indicate in my informal opening remarks, there are a blend of considerations.

One is money.

And I say, very respectfully, Mr. Chairman, it comes as a surprise to me when a coordinate and equal branch of Government, in responding in a cooperative way to what it deemed to be the wishes of another equal and coordinate branch of Government; namely, the Congress, that we should economize, and we set about upon an economy program, that we are being chastized for doing so.

That, to me, is very surprising, Mr. Chairman.

Mr. GRAY. Let me interrupt you by telling you that the Appropriations Committee has 52 members, and there are 435 Members of the House of Representatives, and 100 Senators, and Mr. Steed, even though he is a close personal friend, he does not speak for all of the Congress.

Let us lay the blame where it belongs.

This committee authorized the San Diego building in 1968. At that time it was estimated it would cost a total of $30,470,000.

Now, that same Appropriations Committee that is castigating you for building a decent-sized courtroom has failed to appropriate the money. That same building will now cost almost $15 million more.

They are now saying to the court, "wait a minute. We can save so many thousands of dollars if you will hire an architect to redraw that courtroom." This is false economy.

Now, we have the responsibility to see that these courtrooms are built in the best possible manner.

Now, I have sat here for 18 years and I have seen these change orders come, and I think what is going to happen, if you build these courtrooms 28 by 40, and you have a change in administration, or somebody in the General Services Administration, or one of your successors says, "Gee, we made a mistake and we need a $28 million provision to gut the building"—as the judge from Hawaii talked about—"to make these rooms larger," and I have seen things like this all over the place, and I think this needs to be taken care of before it is built, and I am saying the judges know better about it as to what is needed in their cities.

Mr. KIRKS. Mr. Chairman, I do not think I have attributed anything to Mr. Steed.

Mr. GRAY. Well, it was testified here——

Mr. KIRKS. Not by me, sir.

Mr. GRAY. But you admitted yourself that this was an order that came down from Congress, and you are being chastized by what Congress ordered another branch to do.

Mr. KIRKS. Mr. Chairman, if I may, I think you are oversimplifying the matter.

There are three items, economy, efficiency, and security. And they have been blended together.

Mr. GRAY. Let us delineate those.

Mr. KIRKS. Well, what you are saying is, if I interpret what you are saying, every courtroom will be designed by the judge of that court to suit its own pleasures, et cetera.

Mr. GRAY. No.

Why should the courts be different from the General Services Administration, the Social Security Administration, or the Internal Revenue Service?

In my home town, as well as other towns, when the Social Security Administration, or any other department needs space, they requisition that space, because they are going to be working there, and who is better qualified than the working people who are going to be working there to determine it, and you have the basis to control that, and the Government agencies are going to be charged rent for that space so they will be more frugal, and they will cut down on the size, but you have to start with their needs first.

Do you think they have the authority to pick out—was it eight—four judges and four practicing attorneys—and arbitrarily draw the size of buildings to be authorized by the taxpayers?

Mr. KIRKS. He did not do that, Mr. Chairman.

Mr. GRAY. Who did it?

Mr. KIRKS. The Judicial Conference of the United States made this decision.

Mr. GRAY. On the recommendation of an ad hoc committee?

Mr. KIRKS. Yes.

Mr. GRAY. All right.

Mr. KIRKS. But under the present law passed by this Congress, the Judicial Conference of the United States determines these matters, and that is in the present law.

Mr. GRAY. Determines the size of a courtroom?

Mr. KIRKS. It reposes in the Conference and in the administrative office the requirement of providing adequate facilities.

Mr. GRAY. Right.

Mr. KIRKS. It is within their purview to determine what is adequate.

Mr. GRAY. Let us stop right there. "Adequate facilities"?

Mr. KIRKS. Yes, sir.

Mr. GRAY. But is there anything in the law that says they have the authority to set the size of every courtroom as uniform, and this is what they have done?

Mr. KIRKS. There is no prohibition against it, Mr. Chairman.

Mr. GRAY. Well, I do not know why we need this committee or Congress. Why do we not just authorize a building and say "If the judge is going to use it, let them go out and determine the size; go ahead and build it. We do not need the Congress."

Mr. KIRKS. No. What you are suggesting is precisely that it be handled that way, and I suggest to you that under present statute there is a body within the Judiciary to determine what are adequate facilities for the Judiciary.

May I make one further observation, because I can state categorically to you, and the committee, and I assume that the General Services Administration will follow me here, and they will confirm it; that in every case, with no exception, Mr. Chairman, in every case where we have suggested a change in existing plans, there will be a dollar savings. Not an overrun in cost, with no exception.

Now, the General Services Administration have the facts and the figures, and they will take up the whole roster of projects that we have referred to.

I have down there—you have referred to one set of figures. I have a grand total of 137 courtroom projects on our roster.

Mr. GRAY. Yes.

As I said, the most recent are the 63.

Mr. KIRKS. Right.

Mr. GRAY. But we have additional directly funded projects in the program, also.

Mr. KIRKS. Right, sir.

And so, as one of the principal ingredients that have gone into my determination of these cases has been at the outset, first, carrying out the mandate of the Judicial Conference, which involves efficiency, security, and cost, that we would not have an overrun in cost if we made a change in plans, and be sure that that was the case. The next consideration was delay.

I have been assured by the General Services Administration, and I take it literally, that there will not be one day's delay on any program in the project as a result of making a change, sir.

And so, with those ingredients, and studying in detail the work of these courts, I know precisely what they have done, ever since the day they have been in existence; the nature of every case, because they have provided us with the information. That is one of the responsibilities of the Administrative Office; that is, to collect judicial business data and to report to the Congress annually on it, and I just recently submitted the material on fiscal year 1971 to the Congress.

Mr. GRAY. I know you have been doing a good job, but you have to admit that the judges who are working in the courtrooms would know more about what they need, and you would have a case where there will be 500 people coming into the courtroom, and that judge sitting

there knows when he is cramped, and he knows that what he does can affect a life, and the jurors, overhearing a whispered bench conference, may be told to disregard that, and just by saying that the 28- by 40-foot courtroom is going to be great for everybody in the courtroom, I think is pure folly.

Mr. KIRKS. Well, Mr. Congressman, if the Congress will provide resources for all our needs fine, but we have other matters of major concern that do require financing in addition to housing. As you know, there is a hue and cry from judges for an assistant law clerk, and they want more personnel, and we have to blend these requests so that when we come before the Congress we have to make an appropriate appeal for all the financial needs of the courts, and I think if we are indiscreet on any front, we can be criticized, and we must——

Mr. GRAY. Where I find fault for this proposal in making a standard sized courtroom is in leaving out the facilities needed.

Mr. KIRKS. I do not know accumulatively the judicial experience of all the judges on the Judicial Conference and on this committee, but I imagine the Federal judges represent over 300 years of judicial experience.

I submit to you, sir, that they have a valid opinion as to what is needed, and what is not needed——

Mr. GRAY. They have a valid opinion, but they are not affected, you see.

This is the problem.

Mr. KIRKS. They are affected.

Mr. GRAY. You have not named me one locality, and I certainly take exception to the District of Columbia. You have not named me one locality of anybody sitting on that ad hoc committee that will be affected by the 28- by 40-foot courtroom.

It is easy to go into a meeting and say, "Look, boys, the heat is on. The Judicial Conference tells us we have to cut down. The Appropriations Committee is on our back," but you heard what was going on, and you heard one of the committee members being heard to say that he had misgivings about his actions, and he would like to go back and change it.

Mr. KIRKS. Well, the deliberations of the Judicial Conference are held in executive session, Mr. Chairman.

Mr. GRAY. Well, we had it given by a judge who sat in on that meeting today. That is printed and, if you wish, you may read it.

Mr. KIRKS. I sat here and heard what he said.

Mr. GRAY. Well, you will admit it was taken in haste.

Mr. KIRKS. No, sir; I will not. Those are not the facts.

Mr. GRAY. Well, we can go back and have it read——

Mr. KIRKS. And that was unanimous on the part of this committee and the Judicial Conference, and when the implication is made that the decision was frivolous by the Judicial Conference I think this is not a fact.

Mr. GRAY. Was it based upon efficiency or dollars and cents?

Mr. KIRKS. Three things, sir; security, efficiency, and money.

Mr. GRAY. You would not want to grade those, would you?

Mr. KIRKS. No, sir. I think the chairman of the committee would be very happy to respond.

As a former Member of the House of Representatives, he holds in high esteem the Congress and the legislative process, and he will be more than happy to come down and share with you any data that I am incapable or qualified——

Mr. GRAY. We plan to invite him, we assure you of that, and we will ask him that question. But I am just wondering if you would admit if the Appropriations Committee had never raised the money question, you would never have come forth with the security, efficiency, and money argument.

Mr. KIRKS. Well, this is a result of the system, Mr. Chairman.

As you know, we have had a number of disruptive trials within the system, and this has imposed upon us the need to engage in very extensive and detailed working arrangements with the Department of Justice and the General Services Administration.

Mr. GRAY. But you do not have a double standard for security, do you, general?

You say you are going to have one courtroom in the courthouse for ceremonial purposes, with the dimensions of 40 by 60, and things are all right there, and then you have to cut everything down to 28 by 40. I do not get the argument——

Mr. KIRKS. Well, you cannot take one example alone.

Mr. GRAY. I think the judge in Baltimore stated that in the plans there, you have the prisoner and the judge in the same hall.

Do you think that that is good security?

Mr. KIRKS. Any details such as that that are undesirable can be ironed out.

Mr. GRAY. But you are telling the committee that the real reason and the criteria for doing this is security. You are throwing the fox into the chicken coop.

Do you call that good security?

Mr. KIRKS. Well, when we come back with the plans, they are not infallible, but there is dialog, and when the court says, when you come back with this, that they will not accept it, then there is dialog, and the door is open.

They came up with a set of plans and we determined that they were unacceptable. They violated the mandate of the Judical Conference of the United States. They have found imperfections in them.

We have talked with the General Services Administration. They have said we can move these little rooms, always, and we will do this ad infinitum, but not——

Mr. GRAY. Well, we heard testimony from Judge Schwartz that he not only wrote your office, but made several trips up here, and asked for the larger courtrooms, and got a flat rejection, and you said a moment ago that the door was open. I do not think it was open as far as San Diego is concerned.

Mr. KIRKS. I was referring to Baltimore, sir.

Mr. GRAY. Well, what is the situation with regard to San Diego, where all the judges have said they do not want the minicourtrooms?

Is the door open there?

Mr. KIRKS. No.

Mr. GRAY. It is closed?

Mr. KIRKS. The door is closed.

If they wish to appeal the findings to the Judicial Conference, that is their prerogative.

Mr. GRAY. The Judicial Conference gave you that latitude, General, of making the decision of whether or not you could enlarge the courtrooms where it is justified, and you are saying that the five judges in San Diego are refusing to accept the 28- by 40-foot courtrooms, and therefore there is no requirement for a larger courtroom.

Is that right, sir?

Mr. KIRKS. No.

Mr. GRAY. "Where the need is shown, the Director of the Administrative Office may authorize additional large (40 by 60) courtrooms in such number as may be required."

And we have five judges, not with a split decision, but a unanimous decision that it is necessary to have the larger courtroom, and, in my opinion, that more than fulfills the requirement given to you by the Conference. "As may be required."

Mr. KIRKS. The same general pattern exists in San Diego as exists in Baltimore relative to requirements for the courtrooms, and we are prepared to suggest to San Diego the same blend of large and standard courtrooms that we have in Baltimore, but when it is stated that they will not accept any of the prescribed courtrooms established by the Judicial Conference, then what is there to talk about?

They want all large courtrooms in San Diego.

They want their original plans without change, and——

Mr. GRAY. Does the original plan call for 17, full-sized courtrooms?

Mr. KIRKS. No, sir. The original plan—just one moment——

Mr. GRAY. I will yield to Judge Schwartz.

Judge SCHWARTZ. There is a total of 12. Eight to be built initially, with four in reserve.

Mr. KIRKS. In San Diego, they have five regular judges, and a senior judge, for a total of six judges. The original plan called for eight large courtrooms, and space for four additional large courtrooms, for a total of 12, double the number of judges on the bench.

Mr. GRAY. What does the revised plan call for?

Mr. KIRKS. The proposal that we made, where there were two large courtrooms, we would have the two large courtrooms, with six standard rooms, and space reserved for four future standard courtrooms.

Judge SCHWARTZ. I think the proposal is too large. We only want a courtroom with the dimensions of 42 by 44, and they are not too large, with six to be completed of the small courtrooms, and space for nine additional smaller courtrooms.

Mr. GRAY. But you are saying that even the two large rooms are not the so-called large rooms of 40 by 60?

Judge SCHWARTZ. No. We designed them smaller than that to begin with.

Mr. GRAY. So what you are doing, then, General, you are forcing on them two larger courtrooms than they want, and denying them the 40 by 42's, 42- by 44-foot courtrooms that they need.

And if you took away the space that they do not need, you are trying to force on them—you could give them what they are asking for, instead of the 28 by 40 minicourtrooms.

This is some of the thinking just because the Conference has come up with standard sizes, you are forcing on San Diego two courtrooms they do not want. You are saying these are too large, and that deflates your security argument.

Thank you very much.

Are there any comments?

Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

I have two questions.

If the three factors mentioned: economy, efficiency, and security, were fed into a computer——

Mr. KIRKS. I beg your pardon, sir; I did not say that.

Mr. MILLER. This may be fed into a computer, which may be the thinking of architects and engineers, who are concerned with interchangeability, efficiency and mass production and when you get away from that computer and the hardware, and consider that the courtrooms must be available to any judge who wishes to use it, this means no judge could have the exclusive use of a courtroom.

When in attempting to work out a combination of interchangeability for efficiency and mass production, we take away the individual courtroom from the judge, then we find that the material hardware and the human factors lock horns.

Thank you.

Mr. GRAY. Thank you.

Thank you, General Kirks, for coming over.

Mr. KIRKS. Thank you, sir. It was a pleasure to appear before you.

Mr. GRAY. Thank you, sir. You are very kind.

Our next witness is the distinguished Commissioner of Public Buildings Service of the General Services Administration, Arthur F. Sampson, and he is accompanied by Mr. Walter A. Meisen, Assistant Commissioner, and Thomas G. Gherardi, the Director of Congressional Relations.

It is always a delight to see you, Mr. Commissioner, and thank you for your appearance.

We did not think we would run this late.

STATEMENT OF ARTHUR F. SAMPSON, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY WALTER A. MEISEN, ASSISTANT COMMISSIONER, CONSTRUCTION MANAGER, AND THOMAS G. GHERARDI, DIRECTOR, CONGRESSIONAL RELATIONS, GSA

Mr. SAMPSON. Mr. Chairman, it is a pleasure to be here, as usual.

Although I have no prepared statement, I would like to emphasize the comments made by General Kirks, that we are both cooperating very closely to carry out the mandates of the original——

Mr. GRAY. Well, the procedure that is taken, in any agency, whether it is the judiciary, whether it is a Member of Congress who needs space in his district for congressional use, do you not go into the community and ask them what their space requirements are?

Mr. SAMPSON. An agency will request space, but we determine what is required as far as space is concerned, and there is very little difference, Mr. Chairman, working with agencies and courts, as far as standards are concerned.

Mr. GRAY. Let me interrupt you.

I think this is important, to get the chronological order of events here.

When you say that you determined the requirements, that is, the General Services Administration, where do you make it; in Washington or in the community where the building is located?

Mr. SAMPSON. Normally, in the community.

The thing I wanted to say, however, is that in determining agency space, and also in determining court space, there are standards to be followed. For instance, we may provide a standard office space of 123 feet per person, depending upon the type of office activity. We also take standards into account in determining court space. We sometimes go back and say, "You have asked for too much space," and we apply a standard. We work from a standard.

Mr. GRAY. Well, I am glad to get this information.

You have put your finger precisely on what was said to General Kirks, and that is if they had the expertise of the people in the community of what the requirements were, had those submitted here to the Washington level, then you would have some means of compromising and coming to a determination of what the needs were in those communities, and you have stated what I said. You go out in the community, and you find out what they need, and you apply that to the criterion, but that has never happened in this case. The Judicial Conference arbitrarily decided that the courtroom would be 28 by 40, regardless of what anybody needed in New Orleans, Baltimore, San Diego, and many other places around the country.

That is where we fall out.

Mr. SAMPSON. That is not exactly the case. I think you will find that in our practice standards are established nationally, then we apply the standards to the local situations.

A national standard has already been established when a local agency comes in from Detroit and wants some space. The negotiation takes place in Detroit, but the national standard is applied.

Mr. GRAY. True, but that national standard was arrived at by consultation at all levels. What I was saying in my remarks a moment ago concerns the present situation that we find ourselves in.

They did not go out to the local community and ask the judges what their needs were, and we had that testimony, one after the other, all day.

Mr. SAMPSON. Well, Mr. Meisen could probably tell us something about this.

Mr. GRAY. Mr. Meisen, we would be glad to hear from you.

Mr. MEISEN. Well, all the judges were not contacted, and I do not know that that was by design. I know that the ad hoc committee visited a number of judges. I did not accompany them on all of their trips, but I know that during the trips I went on, many judges were contacted.

I think I will agree with you, Mr. Chairman, that it was unfortunate here that some judges were not contacted, but I do not think it was by design.

Mr. GRAY. Well, I would think that before you spent $44 million of the taxpayers' money, you would want to have some idea of what the space needs are in San Diego.

Mr. MEISEN. I think the committee intended some flexibility on that score. I think they intended that where the large courtrooms, as opposed to the standard sized courtrooms were needed; that could be

adjusted. I think that is why they placed discretion within the Administrative Office of the U.S. Courts, and told the Administrative Office to use its discretion—not merely wipe out all the large courtrooms, but I do not think you could read into that—"you may wipe out all the small courtrooms, and make them large."

Mr. GRAY. Mr. Meisen, what is your background?

Mr. MEISEN. I am an architect.

Mr. GRAY. You are an architect?

Mr. MEISEN. Yes.

Mr. GRAY. Well, would it make sense for every social security office to be designed one size?

Mr. SAMPSON. It is done now.

Mr. GRAY. It is now?

Mr. SAMPSON. Yes. There is the standard size of the office. They are built to standards.

Mr. MEISEN. The Department of Public Health, Education, and Welfare has——

Mr GRAY. Commissioner, you are leasing buildings all over the country. We leased one in Alabama that has 1 million square feet.

Mr. SAMPSON. That is right.

Mr. GRAY. Well, you are not saying that less people are not going into these Alabama offices than in Baltimore, are you?

Mr. SAMPSON. Well, you have a standard.

Mr. GRAY. A standard of so many square feet per capita use.

Nobody is arguing with that, but that is the first time today I have heard that injected into any of the discussions; that we think so many people are going to use the courtrooms in San Diego, rather than in Baltimore, and I know this argument is fallacious, to say that all courtrooms will be 28 by 40, because, you know, without a doubt, in Hawaii, for example, you will not have the amount of people you will have in Baltimore.

Mr. SAMPSON. That is right.

Mr. GRAY. Because you do not have the population.

Mr. SAMPSON. Well, if you were to build to different standards all over the country it would cost you a fortune.

You have to create standards for those facilities needed.

Mr. GRAY. Well, I respect your opinions highly, but all these buildings, totaling $1.4 billion are all specialized buildings, built for the special needs of every single community here. If not, why is one $1.5 million—one is $13.9 million, one $4.5 million. They are all specialty buildings.

Who are we trying to kid?

Mr. SAMPSON. They are different in size.

Mr. GRAY. I am glad you said that. They are as to size.

Mr. SAMPSON. They are standardized as to module space and floor space.

Mr. GRAY. A group of judges met here and decided the size that courtrooms should be, but the size is different from the needs.

That is what we are talking about here.

Mr. MEISEN. Mr. Chairman, there has been a standard since 1949, I believe, of 40- by 60-foot per courtroom. That standard was arrived at——.

Mr. GRAY. What year was that?

Mr. MEISEN. 1948 or 1949.

Mr. GRAY. Over 20 years ago?

Mr. MEISEN. Yes.

Mr. GRAY. And the Government said you needed a 40- by 60-foot room; is that right?

Mr. MEISEN. Yes.

Mr. GRAY. And we heard a moment ago that the criminal work in Baltimore has quadrupled over the last 3 years, and if that standard size was recommended 20 years ago how could anyone justify going from 40 by 60 feet down to 28 by 40 feet?

Mr. MEISEN. Well, the increased workload is why we need more courtrooms.

Mr. GRAY. Well, did you not hear testimony sir, that you would have to shuffle judges and cases from one courtroom to another? If you had a criminal case, and a judge was sitting in a 28- by 40-foot room, and he had a criminal case, he has got to pick up, go to someone else's court, and sit over there.

Is that efficiency?

Mr. MEISEN. Yes, Mr. Chairman. I heard that.

Let me give you some brief background.

About 1948 it was one size. It was designed to be large enough to take care of the largest possible case, and so every courtroom was built on the concept that it might have the largest possible case held in it. And this has worked fairly well.

There have been very few cases that you could try in the old standard courtroom of 40 by 60 feet.

It was felt in this review, as I understand it, to design all of the courtrooms to meet the largest possible case was inefficient, not only in terms of costs but in terms of operating efficiency, being heard, being able to get about comfortably in a courtroom, and so they have attempted, I believe, particularly in this new standard, to develop a second sized courtroom that would hopefully meet the majority of the needs of most cases, let us say 80 to 90 percent.

Whether they have hit that target is obviously open to considerable debate, but the attempt was to build a courtroom that would accommodate 90 percent of the trials, and still have a larger courtroom to accommodate these larger crowds, and the judge could be across the hall from his chambers, and the only time he would need the larger courtroom is when he had the larger cases.

I think that was the kind of information from the ad hoc committee's deliberations and studies.

Mr. SAMPSON. May I add one more comment?

Mr. GRAY. Surely.

Mr. SAMPSON. A recent study has shown that if you would go into the average courtroom today you would find an average of five spectators.

The reduction of space in the 28 by 40 courtroom is principally in the spectators' section, and not in the work area of the judge, counsel, and jury. The new courtroom is designed that way to dispose of the extra space which is not being used.

Mr. GRAY. I do not agree with you.

Pick up the photograph and show it to the Commissioner.

See the minifurniture in there?

We had testimony that there was not enough room for the exhibits and the attorneys to carry on their work, and take a look at the close proximity of the jury box and the judge, and with the jury sitting there, after an elongated bench conference, and a defendant was to go up behind his attorney and say, "Plead me guilty," and the jury is sitting here, just a few feet away, and the judge says, "No, I am not going to allow that."

The jury is sitting there, and they have heard that, and although the judge overrules the request, and instructs the jury to disregard it, there is no way in the world that they are going to return a not guilty verdict.

In that small a courtroom, how are you going to have any privacy for the judge, and anyone else, and I think this is far more important than people sitting out in the courtroom.

This is a mistake.

Mr. SAMPSON. Well, would you disagree with disposing of the aisles in the areas of the spectators? You are cutting it in half.

Mr. MEISEN. No, sir. More like a third.

Congressman, you might like to note that the bench shown there is approached from the side, not the front, and in most cases today in courtrooms, you cannot approach the bench from the side, because of the clerk's table and the jury box.

Mr. GRAY. Mr. Meisen, were you ever in private practice as an architect?

Mr. MEISEN. As an architect?

Mr. GRAY. Yes.

Mr. MEISEN. Very briefly.

Mr. GRAY. If you were, who do you think would know more about a house you were going to design, or a marketplace, other than the people that live there and the people who are going to be doing business there, or do you get your design out of a magazine because it looks efficient?

Mr. MEISEN. Well, I know what the client wants through consultation, and they certainly hired me so that I might be able to give them the best advice to satisfy what their wants are.

Mr. GRAY. But with all due respect to you and the General Services Administration, you know that the judges are sitting there day after day, knowing more about what their space requirements are, better than anybody else, and we have heard 100-percent testimony from a large geographical area of the United States here today that this 28- by 40-foot courtroom is grossly inadequate, and the minifurniture is inadequate. All without being consulted.

Mr. SAMPSON. The General Services Administration is not taking the position that it is the expert, of course, by any means.

Mr. GRAY. I have listened to you gentlemen testify, and as I have said many times, I have a high regard for you, but I would not say that you are on the side of the judges here, by any means.

Mr. SAMPSON. Well, let me make our position clear.

We are following the mandate of the Judicial Conference, and you are asking me some questions about what they decided.

Mr. GRAY. Yes.

Mr. SAMPSON. And based upon what I know, I think what was recommended was sound.

Mr. GRAY. You are taking the side of the Judicial Conference?

Mr. SAMPSON. I am not taking sides. I am looking at the recommendations proposed, and they look reasonable to me.

Mr. GRAY. They look reasonable, except to the people who have to use them.

Mr. SAMPSON. I have visited courtrooms all over the country——

Mr. GRAY. Well, I think you make a good Commissioner of the General Services Administration, but I do not think you are able to have a better opinion than a judge would.

Mr. SAMPSON. That is right.

Mr. GRAY. Let me ask you an all important question, and this is why we are here.

In each individual case, if you go back now and change that 40- by 60-square-foot courtroom that we authorized, with the plans completed, and you redraw down to the 28 by 40, how much savings per courtroom can you actually expect?

Mr. MEISEN. About $40,000 per courtroom.

Mr. GRAY. $40,000 per courtroom?

Mr. MEISEN. That is not the net savings.

Mr. GRAY. I am talking about the net savings.

Mr. MEISEN. Probably between $5,000 and $8,000.

Mr. GRAY. Per courtroom?

Mr. MEISEN. Per courtroom.

Additionally, which is one consideration, you will end up with what we need right now, and that is more courtrooms.

Mr. GRAY. Well, what you are doing now is cutting down the courtroom area, and creating more conference rooms——

Mr. MEISEN. I do not think we meant to mislead you.

There was going to be an additional courtroom, and some conference rooms. There will be three courtrooms, and two conference rooms.

Judge SCHWARTZ. We have never been told of that, ever.

Mr. MEISEN. I think the design you saw was three courtrooms and two conference rooms.

Mr. GRAY. Mr. Meisen, are you not in fact going to have a lot of in-house people do the change in plans?

Mr. MEISEN. No. I made that comment to Judge Pence.

Mr. GRAY. Well, you know an architect is not going to redraw a building for $8,000.

Mr. MEISEN. Well, it is not the whole building——

Mr. GRAY. You will have to redraw a whole floor, as you are going to have to do in Hawaii.

Mr. MEISEN. Well, in that space, which totals about 800 square feet, a courtroom is going to have to be laid out, and jury rooms, which has to be laid out upstairs.

Mr. GRAY. And you are telling me than an architect is going to redraw that for $8,000?

Mr. MEISEN. Well, we can do it for 6 percent, which we are having to do by law, and $265 is per courtroom, and we know how much it is going to cost, and the architects came in and offered $200,000 for something which we felt was only worth $60,000. We are not going to pay him whatever he wants.

Mr. GRAY. Well, if you go back and look at our appropriations history.

How much more in the FBI Building down here have you paid the architect from the original figure at which you started?

Mr. MEISEN. I can guess.

Mr. GRAY. Please tell the committee.

Mr. MEISEN. I think it is around $600,000.

Mr. GRAY. In one building. Why?

Because of change orders, mostly. The FBI said, later on, we need this, and we need that. It was not drawn in originally.

Over one half million of the taxpayers' money has been spent, and not only that, the original cost of the FBI Building has more than doubled, and we are now, this week, going to have a meeting of this committee to authorize $128 million, and the original authorization was $60 million.

More than doubled because of such shenanigans as this, because somebody said, "I do not like this hall, or that hall. I want this cut down."

Sixty million dollars of the taxpayers' money has been lost through escalation of costs through change orders, and $600,000 architectural and engineering work on one building, and yet my friend sits here and tells me that we are going to do this so easily it is going to be painless; $6,000 here, and $8,000 here.

Now, you know when you start building the courthouse in Hawaii, and you get up to the sixth floor, and have a change order, the contractor is going to say, "I am going to have to renegotiate the contract."

You are talking about five times, or six times the estimated costs.

Mr. MEISEN. We are not going to have change orders. It would be in the original price we get.

Mr. GRAY. Mr. Meisen, there is no architect in the country that is going to come back and give you, in Hawaii, or in San Diego, or anywhere else, a revised plan, ready to be advertised, in less than 6 months.

Mr. MEISEN. The time involved in San Diego is 45 days to 60 days.

Mr. GRAY. And yet you told these people that there was going to be no delay?

Mr. MEISEN. That is right.

Mr. GRAY. You know why there is not going to be any delay, because you are going to award a contract on the old plans, and then we get up to the fifth floor that we are changing, and say that we will submit plans, and when you do that, my friend, the guy comes in and says, "That is not in the original offering. I did not say I would accept all the change orders when I bid on that," and you are going to go into new contracts with additional costs, and if that is not true, why has the FBI and other buildings catapulted into excesses?

Mr. MEISEN. Well, the time to advertise these contracts—we have about 45 days to complete the drawings. If we do not get a decision now, obviously we would not be able to make those changes without some delay, but were a decision made at this point, we would still have time to get completed architectural drawings in time to have a firm lump sum price to be submitted as part of the contract price.

Mr. GRAY. Mr. Meisen, you know that in most of these large buildings in San Diego, you are talking to people who are very busy, large firms, and this firm got the contract because they are large.

They are not going to stop whatever they are doing some place else and redraw plans for as little as $8,000.

And you say it will be 60 days or 90 days, and you are ready for bids, and they say, "Give us another 90 days, and then give us the drawings," and you are escalating the cost of that building.

That is $4,400,000 a year escalation on that San Diego project alone.

Mr. MEISEN. We are not going to do that, sir.

Mr. GRAY. You are going to do that with the 28 by 40 courtrooms.

Mr. SAMPSON. No. We will not on the courtrooms involved. We want to get the buildings up as soon as possible.

Mr. GRAY. And if there is no reason to delay, the judge is going to get his full sized courtroom; is that not correct?

Is that not what you are saying, if we pass this bill, and the President signs it during the next week or two, and you engage the architect to redraw the plans within the 45 days to go out with bids, you will build it the way the judge wants; is that not correct?

If not, there will be an escalation in cost of construction.

Mr. SAMPSON. We are not going to escalate the building costs.

Mr. GRAY. Well, if you are in that position, the judge will get the courtroom he wants.

Is that not true?

Mr. SAMPSON. They are not in that position in San Diego.

Mr. GRAY. Well, I have been here for 18 years, and I have heard of expeditious contracts, and I again remind you that you have been supervising the FBI Building down there, and we have been underway for 10 years on that building.

You supervised the Kennedy Center, which was to be open for the public in 1969, and you got into it in 1971. Let us not kid ourselves. It takes a long time when you talk about revising something in a building, and I do not care if the architect drops everything and comes back with new drawings, and if there is such an architect, I wish you would name him, because they have been 2 years on that $1 million building in my district.

I would not have taken the lumps I took to get this approved—this system approved, because I expedited that bill and worked hard, day and night, to get it passed in order to build these buildings so that these judges can get their chambers.

Now, I am not going to be a party to saying we are going to delay them, because someone said in the Judicial Conference that we will have standard sized courtrooms because Mr. Steed says we will have to cut back on costs.

We have testimony from Judge Schwartz that the architect in San Diego thinks his plan is a good one. We could award the contract tomorrow if we had the authority.

Do we not pay attention to the people in the community for whom we are building?

Mr. SAMPSON. Yes; we do.

Mr. GRAY. Then why do we have to design it over?

Mr. SAMPSON. You get into the space needed.

Mr. GRAY. Well, he knows what he needs.

We have ignored the five judges, as has the Judicial Conference, because the Judicial Conference says that it is bad.

Now, if anybody wants to follow this list, the buildings have CT on there. They are courthouses.

Mr. SAMPSON. I assure you those buildings will not be delayed.

Mr. GRAY. If not, there would not be very many courtrooms that will be 28 by 40, because in my district, we have a city named Metropolis which is the home of Superman, and if you go down to Metropolis, you will see Superman's picture on the water tank, and if he was alive he could redesign these buildings within 45 days, but I don't know of an architect that will.

Mr. MEISEN. What we are talking about is laying out of a small area.

Mr. GRAY. Changes in walls, plumbing, and everything, and that requires a lot of time, and requires a lot of figuring, and if you cut off 45 feet of pipe here, and you shorten it, it has to be refigured.

You tell me that this guy is going to have schematic drawings, and have them approved, and back to you in 45 days.

Come on, be honest.

Mr. MEISEN. If they do not, all the things we have been doing for 3 years to speed up the designing process is wasted.

We can design a major building in 12 months. If we cannot design a few floor areas—that is what we are talking about—and not changing the mechanical material, we are talking about mostly laying out again some partitions, and if we cannot do that in 45 days, shame on us.

Mr. GRAY. Well, shame on you, then. You cannot name me a building in the United States, including the building in my district, which is the smallest building on this list, name me one building where you signed a contract with the architect and got the final approved drawings within 12 months.

Not one, but two.

Mr. MEISEN. You are looking at past history.

Mr. GRAY. Well, hindsight is best, my friend.

Name me one building where the drawings are completed within 12 months.

Mr. MEISEN. I can name 50——

Mr. GRAY. Give me just one building—not fifty.

Mr. MEISEN. I can name small social security offices, but I do not want to do that.

Mr. GRAY. Well, in Mount Vernon, Ill., there is a good architect, a good, local firm, and he does not have to travel any place, and he has had the contract for 17 months already, and working day and night to get the drawings ready, and I think the Chicago office gave him 24 months to draw them.

Mr. MEISEN. But no more. Most of that was our time, and it has changed, to a great extent.

Mr. GRAY. Well, I salute you, and I have a great respect for all of you, and I have enjoyed working with you, but I do not think that we should let the record show that we are going to redraw all of these courthouses, and have the plans back in 45 days.

That is impossible, unless you assign all of your engineers in-house to cooperate with the architects, and bring in the architect, and burn the midnight oil, you will never do it.

Would you, Mr. Commissioner, estimate how many courtrooms we are talking about in all of these buildings, or authorized on remodeling jobs? How many courtrooms?

Mr. MEISEN. Under projects that are a part of this 63 buildings, and also authorized——

Mr. GRAY. Also direct Federal funding.

Mr. SAMPSON. May I provide that for the record, Mr. Chairman?

Mr. MEISEN. I think we could do that.

Mr. GRAY. Are we talking about 100——

Mr. MEISEN. About 150 courtrooms.

Mr. GRAY. About 150 courtrooms?

Mr. MEISEN. Yes, sir. There are only 10 buildings affected with redesign out of that 63, and most of the courthouses in the 63 have only one courtroom, and as such, are not affected.

Mr. GRAY. But if you take all of the 63 buildings, all that we have to finance privately, you are talking about 150 courtrooms?

Mr. MEISEN. Yes.

Mr. GRAY. And by stretching the imagination, which is what you would have to do, plus the pencil, you think there would be about $40,000 in savings on the gross, with $10,000 for a private architect.

Figuring no administrative costs in your office, nothing, that is a small savings of $4.5 million for the entire United States.

Mr. MEISEN. It would not be worth it for those savings themselves. That is right.

Mr. GRAY. And if we have to hold up the projects for a total of one year, we will more than eat up that $4.5 million, and I am using your figures, now.

And 150 courtrooms if we build them all, we have got a pittance of $4.5 million, and you know, as well as I know, that with any one of these buildings, like San Diego, you will wind up spending $4.5 million on that building on change orders, and I hope I am here to see when the revised contract comes back.

Mr. MEISEN. I hope you are here, too.

Mr. GRAY. And I would like for Mr. Kirks to get these figures, because the whole thing is based on savings, and that is one of the criteria.

Mr. MEISEN. Mr. Chairman, very early in the ad hoc committee's discussion it became clear that to justify an efficient courtroom simply in savings of the cost of construction was fallacious. There was no indication to saving $30,000 or $40,000.

Mr. GRAY. What will the savings come in?

Mr. MEISEN. The real savings comes in, for example, in a building like San Diego, where formerly you would have 12 courtrooms in the building, you would have the potential to add 17 courtrooms, and you could do it and still use the space efficiently as office space in the meantime.

We are talking about many Federal buildings throughout the country.

Mr. GRAY. Mr. Meisen, did you hear testimony from the judge stating that he did not need any more conference rooms, and you are giving him conference rooms that he does not need?

Do you call that a proper use of space? Do you call that a savings?

Mr. MEISEN. Well, I think the judge was mistaken. There was an extra courtroom.

Mr. GRAY. The extra courtroom of the size that he does not want and need, but in addition you are giving him conference rooms that he

does not want or need, and would it not be better to take the courtroom he does not need and add in the space of the conference rooms he does not need, and give him a courtroom that he does need? Does that not make more sense?

Mr. MEISEN. Well, as the judge testified, the General Services Administration worked very closely with the judges when these buildings were designed.

Mr. GRAY. You worked very closely with the judges when you were designing the buildings, is that right?

Mr. MEISEN. Yes. In accordance with the criteria.

Mr. GRAY. And we have a plan to go forward in every city when you get the authorization, is that right?

Mr. MEISEN. Well, almost all of them. That one in Baltimore is in the finishing stages.

Mr. GRAY. We are agreed up to that point.

Mr. MEISEN. Yes.

Mr. GRAY. You worked up a plan with the judges, and that plan has been approved by the committee, and has been approved by the House and Senate.

All it needs now is the signature of the President to be implemented, is that right?

Mr. MEISEN. That is right.

Mr. GRAY. Now, all of a sudden, that criterion is bad.

Mr. MEISEN. Mr. Chairman——

Mr. GRAY. Let me, if I may, recap, just for the record, where we are going here.

You followed the mainstream in thinking here. You have talked with the local judges, you have approved all of the plans, and now we find out that the Judicial Conference has used judges that were not in on the original thinking at all, to change all of these plans under the guise of saving money.

Now, I think we knocked that full of holes, and even if you take your figures as 100 percent accurate, and we have no cost overruns, no delays, no inflationary costs, we are talking about $4 million in 150 courtrooms throughout this land. There is no real savings.

Mr. MEISEN. Well, if we had done that in all of these courtrooms, we would have had 70 additional courtrooms that somebody is going to come back and ask Congress for in the future, if we do not get the courtrooms now.

Mr. GRAY. Somebody?

Mr. MEISEN. If you take the 150 courtrooms being in the planning stage, if we get the opportunity for using the standard, instead of large rooms, we get the potential for more courtrooms in the future.

Mr. GRAY. I buy that philosophy if you are going to do that, but we have testimony here from the judges that you are cutting the large courtrooms down to small courtrooms and creating conference rooms, and additional lavatories, and additional hallways.

Mr. MEISEN. What I am saying is that that is not correct. There is only one case where we are not getting additional courtroom potential, and that is in Honolulu.

Mr. GRAY. You admitted yourself, in that large $44 million building in San Diego, you are going to have one additional courtroom.

Mr. MEISEN. No. We will have five additional courtrooms if the proposal goes through.

Mr. GRAY. One additional courtroom, and room for four minicourtrooms, is that correct?

Mr. MEISEN. No. I did not——

Mr. GRAY. Wait a minute. Room for expansion, with two large courtrooms, and two minicourtrooms, and why could you not build four large ones——

Mr. MEISEN. I am saying that the building had an ultimate space of the courtrooms that the judges there felt were adequate.

If the minicourtroom concept is adopted, there would be ultimate space for 17 in the same building and on the same floor area, and I am saying that that is an increase of potentially five courtrooms.

Mr. GRAY. That is like the guy who traded two $500 cats for one $1,000 dog. You are trading off the large rooms to get numbers. They do not want that. They want efficiency, not numbers.

Mr. MEISEN. I am not in a position to judge whether these courtrooms are adequate. There are many judges who agree.

Mr. GRAY. Well, I thought you were agreeing with what the Conference did, and now you say you are not in a position to deal with what the Conference did. Now, please, let us make up our minds.

I realize you are carrying out the request of an agency—in this case, the judiciary—and the Commissioner said he agreed with the Conference.

Mr. MEISEN. I agree with the Commissioner. [Laughter.]

Mr. GRAY. Now, we are getting to the nitty-gritty, and I know it is hard to come before a committee when you are told what to say. [Laughter.]

Mr. GHERARDI. Mr. Chairman, I think that when we go into the details of a courtroom's adequacy on a building-by-building basis, we are getting away from what the General Services Administration's role is in all of this.

The Commissioner testified that be believes that there ought to be a standard for courtrooms, just as there has been a standard for courtrooms for 22 years.

Mr. GRAY. But not a bad standard, Mr. Gherardi. There is an awfully big difference between a bad and a good standard.

You cannot take off in the summer enough clothing to keep cool, but you can put on enough clothes in the winter to keep warm; that is a different standard. So is the need of the courts different.

That is all they are asking you people to do, to give them a standard that meets their needs.

Mr. GHERARDI. I submit they are asking the wrong party, sir. The General Services Administration did not establish the standard we are talking about today, and I think we can say for the Administrator of General Services or the Commissioner of Public Buildings that we are prepared to implement any reasonable standard.

Reasonable men of the judiciary do sit on the Judicial Conference, and did sit on the ad hoc committee, and did vote for the new courtroom design. Some of the reasonable people who disagree are in this room.

Mr. GRAY. Mr. Gherardi, you are a very articulate lawyer. Do you honestly believe that anyone could sit in Washington and pass judgment on what needs to be done in San Diego, when you do not work there, you have never been there, possibly, and you do not know what is in the everyday workings, possibly, and would you take your knowledge as over precedent of the judges who unanimously chose to send their chief judge here four times to plead for a change of these standards?

Mr. GHERARDI. I think, perhaps, in Chief Judge Devitt's testimony——

Mr. GRAY. Well, without being facetious, I think Judge Devitt is in the same position as Mr. Meisen is.

I think Chief Justice Burger gave him some guidelines to go to the Conference with, and he did so.

Mr. MEISEN. I did not mean to say that I said that just because the Commissioner—I do believe, from what I have been told by some judges, that this is a very workable size, and——

Mr. GRAY. We have had nobody tell us that.

I wish the General was still here. I would like for him to give me the names of some of those who think these new standards are great.

Mr. MEISEN. Well, you could start with the four on the committee to begin with.

Mr. GRAY. Well, as I said, sir, in all candor, these people were given the instructions by Chief Justice Burger that if you do not cut down the size of these courtrooms, you are not going to get any "money." Quote, unquote.

That is what they were told by the Appropriations Committee, and if you were told to go into a meeting and fight for a small courtroom or you will have no courtroom. And the Appropriations Committee went far beyond their prerogatives.

If we are going to let the Appropriations Committee write legislation, we might as well abolish our committee. You are now abolishing what we did administratively.

Mr. MEISEN. I think if you talk to the judges involved, you will find that——

Mr. GRAY. We are going to talk to them. We have had a message from one of the members who said he had second thoughts about what he did.

Mr. MEISEN. That is just one of the judges on the committee——

Mr. GRAY. You were talking about the ad hoc committee?

Mr. MEISEN. Yes.

Mr. GRAY. And one of these judges sits on the Court of Claims, so he does not have this problem.

And this committee, I believe, has been completely ignored. Nobody came back with a revised prospectus to the effect that we now have decided to have major modifications in them. Nobody contacted us from the administration, nor the courts, and we were never consulted in any way.

I have been embarrassed about this. And we now find that this whole building schedule is in turmoil, and the judges are irate.

I would admonish the administration not to do anything before going back to talk with these judges, like you did in the first instance,

and give them the full benefit of the doubt, and then come back and report to the Congress as to what the sitting judges want. Then we will be in a better position, and we are certainly going to have these people before the committee.

Mr. SAMPSON. We can talk to them, but we still have to abide by the Judicial Conference Ad Hoc Committee's recommendations.

Mr. GRAY. Well, I understand that.

Before I call the Judicial Conference Ad Hoc Committee to find out what they know—how these judges feel, I would like to know how the rest of the judges feel that are going to be affected by the small courtrooms. In that way we will have some idea as to what all of the affected people want to do about this.

Mr. SAMPSON. Well, I suggest, Mr. Chairman, it might be better for the courts to do that rather than the General Services Administration.

Mr. GHERARDI. I think that is sound, Mr. Gray. And Mr. Meisen can check me out on this—whenever we check with the judges on matters like this, we always do it through the Administrative Office.

Mr. GRAY. Mr. Gherardi, we heard General Kirks a moment ago, and a very eminent judge from San Diego flew out here on four separate occasions, pleading for him to do something about a variance in the case of San Diego.

Now, he said no, the door is closed. Do you honestly feel that we are going to get an objective survey of the judges when the Administrator of the Courts is wedded to this idea?

I want an unbiased opinion from the people affected. If you cannot do it, we will do it in the committee.

Mr. SAMPSON. We will perform the requests.

Mr. GRAY. And I think the General Services Administration can get a better response than General Kirks' office can, with all due respect to him.

And I read to him where the Conference gave him authority to make a variance, if they wanted every courtroom in San Diego 40 by 60, General Kirks could do it under the resolutions passed by the Judicial Conference and he has closed the door.

Mr. SAMPSON. You asked us. Yes; we are satisfied with the original plans, and, yes; we like it better than the minicourtroom. We know they are going to say that.

Mr. GRAY. You are sure that is what they are going to say?

Mr. MEISEN. Yes, sir.

Mr. SAMPSON. There are an awful lot of misconceptions about the new standard courtroom——

Mr. GRAY. When they see that picture, they are going to know there is going to be a change. Like when a judge was asked the question, "Do you have a 28- by 40-foot courtroom?" And he said, "No, it is a little larger."

Mr. SAMPSON. There are several small courtrooms in Chicago being used very successfully.

The judges are very satisfied. In fact, there are six small courtrooms in San Diego that are being used very effectively.

I have visited them, and they are being utilized in San Diego right now.

Mr. SCHWARTZ. You mean the Marginer Building?

That is 40 by 40.

Mr. GRAY. That makes a big difference.

Let me ask you one more question, and I will yield to my colleagues, and then we will quit.

We have knocked, I believe, all of the wind out of the sails of the people who say this is going to save money.

What about security?

Is it a fact that the small courtroom would be more easily administered as far as security is concerned than a large courtroom, if somebody has a knife or gun, if he is crowded into a small room, his activities are less easy to detect than in a large courtroom, and I can see him getting into the smaller courtroom.

Do you not think that would be better——

Judge SCHWARTZ. Mr. Chairman, the courtroom in which the judge in Marin County was taken hostage and ultimately killed is 37 by 30 in size.

The fire marshals are saying that the crowded smaller courtrooms are going to make their jobs harder.

Mr. GRAY. Then you agree that the larger courtroom is better than a small courtroom for security?

Judge SCHWARTZ. A U.S. marshal said that.

Mr. SAMPSON. General Services Administration has a security force too. There are two aspects to security. The smaller courtroom is easier to secure, because you have fewer people in the courtroom, and you have less space to secure. On the other hand, if you go in and crowd that small room, you are in trouble, but the small courtroom is not designed to handle a large crowd. That is why the smaller courtroom is easy to secure.

Mr. GRAY. Then the danger is on the outside just like the judge that was killed in California.

That is where the danger is.

There is a great difference if somebody throws a bomb into a large room in a building that is empty——

Mr. SAMPSON. You control the number of people coming into the room.

Mr. GRAY. I think statistics will show that any problems in the courtroom are coming in.

Mr. SAMPSON. Well, GSA handled building security for the Chicago Seven trial. We did not have one incident. You control the number of people going into the room, as well as you control them coming out, and there is no problem.

Mr. GRAY. Well, you are stating that it does not make any difference what the size is. It is controlling the flow of people coming in and out; is that not true?

Mr. SAMPSON. Much depends on how you handle the people.

Mr. MEISEN. Well, you do not enter the witness box from behind the witness box. The witness box is placed next to the judge, and if you have a prisoner placed next to the judge, there is a possibility that you are going to have difficulties.

Mr. GRAY. I see judges shaking their heads.

Mr. MEISEN. Well, there is no way of getting into that box without walking through the courtroom somehow, and one technique would

have the witness come into the witness box from outside the courtroom, so a witness need never come into the courtroom before his time to testify, and never be near the judge.

In most courtrooms today, the defendant sits right next to the judge—as a witness sits next to a judge, and he sits right by the judge, and you can put a marshal behind him, if you want, and that is still not any good if he wants to reach over——

Mr. GRAY. Well, do you not know that his activities are easier to monitor in a large room than, you know, as opposed to a small room, with everything crowded up, with minichairs, mini this and mini that, everybody is going to be up together.

It would be easier for somebody to lunge at you with a knife, or gun, than in a large room.

Mr. MEISEN. Well, if you talk about a gun, whether he is shooting a distance of 35 or 40 feet, that is one thing, but not very much.

What you do is control the movement of people with barriers.

Mr. GRAY. Well, do you not think that open space leads to more safety?

Mr. SAMPSON. Only in extreme and severe crises.

Mr. GRAY. Well, if I was in the ring with Cassius Clay, I would want more room than is in there in order to keep away from him.

Mr. SAMPSON. Well, in controlling spectators in courtrooms or in court buildings, you control what the people take in and take out.

Mr. GRAY. Well, you do not take every woman into the rest room and look in her purse, and frisk everybody——

Mr. SAMPSON. No. You have a weapons detection device which you use before they go into the courtroom. They are examined by an officer very carefully before they go in.

That can be very, very well controlled. Security in courtrooms has changed greatly.

Mr. GRAY. Well, I went over to Congressman Dowdy's trial, and nobody stopped me, and I did not see any security around, and I could have held a double-barreled shotgun there and killed everybody. That was only 2 months ago.

Mr. SAMPSON. You do it with sensitive trials.

Mr. GRAY. How do you know what is sensitive in courtrooms?

What happened at 9 o'clock this morning may not be sensitive until 11 o'clock.

Mr. SAMPSON. It depends upon the trial, of course.

Mr. GRAY. I know a man who was shot in the courtroom by his neighbor in a dispute over a small piece of property. They came there in a peaceful lawsuit over where the property line was. It turned into a violent argument.

Mr. MEISEN. But the size of the courtroom did not help him much.

Mr. GRAY. But if he had been in a little small courtroom, see, he would have had no chance, but if he had been in a larger room, he would have had a chance to dodge.

Mr. MEISEN. Well, when we are talking about security in a courtroom, that does not relate to size alone.

Mr. GRAY. I am glad you said that. That knocks out one of the points raised by the Judicial Conference.

I am glad you said that.

Mr. SAMPSON. No.

Mr. GRAY. Cost, security and——

Mr. MEISEN. Cost and security, efficiency, and that means providing security for the judge. And what killed the judge in California, the marshals walked in, and they had no way of knowing what was going on. He pressed a button, and the police walked right into guns. If they had been able to hear what was going on——

Mr. GRAY. If we had known Lee Harvey Oswald was in Dallas, John Kennedy would be alive today.

Mr. MEISEN. Had there been a device for overhearing what was happening—instead the judge pressed a button, and guards ran in, and ran into a shotgun. If they could have heard——

Mr. GRAY. But making that courtroom 12 feet smaller is giving the judge more security, is that what you are saying?

Mr. MEISEN. I am not saying that.

Mr. GRAY. The Judicial Conference is.

Mr. MEISEN. Having devices that will allow security forces to monitor what is happening will help. So will better control of the persons permitted to enter the courtroom.

Mr. GRAY. There is less efficiency by cutting the room down 12 feet.

There is no savings in cost, and now we find out there is no security savings, so what are we here for?

Why do we not go on and build these buildings the way we originally authorized them, because I have not, in all the hearings, heard one thing to substantiate these three points.

Mr. GHERARDI. There are other desirable security features in the proposed new courtroom. It is not just the size of the new courtroom that makes it more secure.

Mr. GRAY. I do not doubt that for a moment. I am directing my comments to General Kirks' statement. The reason the conference voted to change the size was because of the "better security in smaller courtrooms."

That obviously is not so. You are testifying that you can have security in a larger or a smaller courtroom; is that not correct?

Mr. SAMPSON. When courtrooms are designed for better security, you have better security.

Mr. MEISEN. And you get a change of the old standard when that courtroom he does not need or want.

Mr. GRAY. We can still do that, instead of giving a judge a smaller courtroom he does not need or want.

Mr. MEISEN. We think you have to change the old standard.

Mr. GRAY. I am not saying that you should not do that. You do not kill a dog to get rid of a flea. If you have a problem with security, let us redesign the security apparatus, and quit putting people in a box in order to accomplish this purpose.

Are there any questions or comments at all?

(No response.)

Mr. GRAY. Counsel just reminded me that we should leave the record open for any submissions, either for or against this proposal, and we will try to contact the ad hoc committee, to find out when they can be heard.

In the meantime, we will leave the record open in case any of the judges would like to submit any additional data. It will be made a part of your testimony immediately following your testimony today.

Judge NORTHROP. Mr. Chairman, I have two additional papers.

Mr. GRAY. Without objection, we will receive those, and they will appear immediately following your original testimony.

I want to thank all of you for your patience. I think this is a very important matter. And I think we would be derelict if we did not hear it in detail.

With that, I thank all of you for coming, and the subcommittee stands adjourned.

(Whereupon, at 3:20 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.)

ALLOTMENT OF SPACE IN FEDERAL COURTHOUSES OR IN FEDERAL BUILDINGS WHICH INCLUDE FEDERAL COURTS

THURSDAY, MAY 18, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PUBLIC BUILDINGS AND GROUNDS
OF THE COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m. in room 2167, Rayburn House Office Building, Hon. Kenneth J. Gray, chairman, presiding.

Mr. GRAY. The Subcommittee on Public Buildings and Grounds will please come to order.

I want to welcome all of our distinguished guests here this morning and thank my colleagues for their attendance. This is a very busy time. I appreciate so much your taking time out of your schedule to be present.

The purpose of the hearing this morning is to continue testimony relating to allotment of space in Federal buildings, which include the Federal courts. Approximately 2 weeks ago we had testimony from a large number of very outstanding and eminent judges throughout the country relating to this problem. We recessed the hearing until we could have the privilege of hearing Chief Judge, the Honorable Edward J. Devitt, who sits in the U.S. District Court, St. Paul, Minn., chairman of an ad hoc committee appointed by the Judicial Conference of the United States to study this problem.

We felt that Judge Devitt could shed much light on the subject of what the Judicial Conference did, and particularly what his ad hoc committee did.

I want to announce that we are very fortunate this morning, as always in our hearings, to have the outstanding and very able and very distinguished chairman of the full Committee on Public Works, Mr. Blatnik, of Minnesota.

I would like to yield to him at this time to introduce our very distinguished guest.

The CHAIRMAN. Mr. Chairman, I thank you.

At the outset I want to thank you and all the members of the Subcommittee on Public Buildings and Grounds for the extra effort made to make as clear as possible testimony on a very important and meaningful subject, the nature and character of which includes the design and dimensions of our Federal court structures.

I want again to commend what is typical of this subcommittee and the manner in which the chairman of this subcommittee works, the

thoroughness and fairness with which they consider matters before them. They affect many, many municipalities, people, and individuals.

Today we are hearing the Honorable Edward J. Devitt. I am certainly privileged, but more than that personally very pleased, to present him to the subcommittee because we came into Congress together 25 years ago. His good judgment became immediately evident. I continued to hold office in Congress where we are constantly criticized and sentence is being constantly passed upon us by the people. The judge, with far better foresight, decided long ago to become a Federal judge and is passing sentence on the people. There is quite a difference.

Judge, would you please come forward? I understand you are accompanied by a number of people.

The judge comes here not only in his own personal capacity as a judge of some number of years, but he is chairman of the ad hoc committee on Courtroom Design and Facilities of the Judicial Conference of the United States.

You have been chairman for over a year or more, Judge, so your credentials are extremely impressive.

During the course of his testimony I am sure he will describe the method in which they work to reach a consensus regarding the recommendations which they have made in an interim report and will make in a final report to the Judicial Conference. Therefore, his testimony will be extremely helpful in completing and more fully rounding out the hearings on this particular and important legislation.

Judge Devitt, we welcome you back to the halls of Congress. This Rayburn Building is a far cry from the old Cannon Building we occupied 25 years ago this spring.

Thank you very much, Mr. Chairman.

Mr. GRAY. Thank you, Mr. Chairman. I would like to associate myself with the remarks of our chairman.

We are also delighted to have with us today our very distinguished colleague, Joseph E. Karth, of Minnesota.

Mr. KARTH. I certainly have no intention of interrupting these proceedings.

Mr. GRAY. You are not interrupting at all, Mr. Karth. We are delighted to have you.

Mr. KARTH. I want to say that we have with us today one of our most distinguished citizens from the Fourth Congressional District of Minnesota to give us the benefit of his testimony, Judge Devitt.

It is nice to see you, sir.

Judge DEVITT. Thank you.

Mr. GRAY. Stay as long as you like.

As a former colleague we welcome you back, Judge Devitt. Also we are delighted to see General Kirks.

You do not have a prepared statement, Judge?

Judge DEVITT. No; I do not, Mr. Chairman.

Mr. GRAY. You may proceed in your own fashion.

STATEMENT OF HON. EDWARD J. DEVITT, CHIEF JUDGE, U.S. DISTRICT COURT, ST. PAUL, MINN.

Judge DEVITT. Thank you, Mr. Chairman Blatnik for the kind observations you made about me.

I probably should mention that my retirement from Congress was involuntary. You stated it very nicely. My schoolmate, Eugene McCarthy, caused my withdrawal into private life.

However, you are right. I have been a Federal judge for about 18 years. I served as a State judge for a total of about 8 years. I am Chief Judge of the U.S. District Court for the District of Minnesota, and I have been such for about 12 years.

I came at your invitation, Mr. Chairman Gray, and I am very appreciative that you extended the invitation to me. I do not have any prepared statement. I would be ready and willing and I hope able to explain to you anything that you would like to know with reference to the functioning of the Judicial Conference of the United States or this ad hoc committee, to tell you what our reasoning was in our research with reference to these recommendations which we have made about courtrooms, or to respond in any way you would like me to do.

Mr. GRAY. Thank you very much. As you know, the reason for these hearings was brought about by a great number of Congressmen who contacted this committee stating that they had been contacted, in turn, by Federal judges in their respective areas complaining about the actions of the ad hoc committee. Therefore, I hope in propounding these questions that you understand these are not intended in a personal way but merely reflecting our colleagues' views which have made it incumbent upon us as a committee to find out why these regulations were proposed to be changed.

When I say regulations, as you know, the regulation size of a courtroom has been 40 by 60. When this committee over the past several years authorized courtrooms to be constructed in joint multipurpose Federal buildings we expected they would be that size.

We understand that the Judicial Conference does have the right to request General Services Administration to redesign buildings.

The reason we are concerned, particularly now, is that we have just passed in the Congress legislation which would take all of the backlog of our Federal buildings and get them built now with private entrepreneur financing. Legislation was requested by the President to do so.

It is our feeling that if we stop these buildings now and redesign them it will cost the taxpayer a lot of money, so we are concerned with more than just airing the complaints of the judges who feel these courtrooms would be too small if they were narrowed down to 28 by 40. However, we feel that to stop our program, particularly in these 15 buildings which would have to be redesigned, this would be much more costly than the alleged savings.

For the record I would like to propound two or three questions to try to get to the point.

The CHAIRMAN. Off the record.

(Discussion held off the record.)

Mr. GRAY. The Committee on Public Works of the U.S. House of Representatives is responsible for authorizing the construction of Federal buildings, including the provision of space to be occupied by the Federal courts. As you know, recently the Judicial Conference recommended the establishment of new standard sized courtrooms measuring 28 by 40 feet.

This new dimension represents a substantial departure from the earlier standard, 40 by 60, courtroom. Concern has been expressed

over whether the 28- by 40-foot size is adequate to fulfill judicial functions or to provide proper security for judges and participants.

The following questionnaire was submitted to selected Federal judges to determine their views on the ideal size of Federal courtrooms scheduled for future construction.

The response to these questions has been almost unanimous. The questions were: If the cost of construction was not a factor, would you favor establishment of the new standard courtroom of 28 by 40?

In almost every instance the chief judges to whom we propounded these questions came back and said absolutely not. They felt 28 by 40 was much too small, and voluntarily we had five judges before this committee approximately 2 weeks ago who came in to protest these dimensions of 28 by 40.

For example, Chief Judge William McRae, of Orlando, Fla., replied: "Judge feels standard 28 by 40 courtroom is totally unacceptable, that a judge cannot properly conduct dignified proceedings in a room of such a small size."

Chief Judge Warren K. Urbom, of Lincoln, Nebr., replied:

> Although the judge has approved the use of a standard (28 x 40) courtroom for Lincoln project, he feels that the room should be at least 5 feet wider. The judge also feels that the well (recess) in the courtroom should be eliminated—that it presents a safety hazard to both court personnel and counsel.

It goes on. Chief Judge Gordon, Winston-Salem, has written expressing his "concern over limitation of a 28 by 40 courtroom design. The judge now uses, on occasion, a 27 by 40 courtroom and finds it extremely difficult to work in. The room will not accommodate large exhibits. One counsel table is located too close to the jury." He finds it necessary to excuse the jury to hold bench conferences.

These are comments, and I have many others, in addition to those judges, such as Chief Judge Schwartz of San Diego and others who appeared here in person at their own expense to say they vehemently protest the actions of the ad hoc committee.

What I would like to know, sir, is upon what basis was this recommendation of a 28 by 40 courtroom size made, particularly in view of the fact that all the judges we have talked to who are going to occupy these buildings have stated they were never contacted by the ad hoc committee in any way to ask their opinions.

Judge DEVITT. Thank you, Mr. Chairman. First, I think I should make it clear that our report provides for two sizes of courtrooms. Some of the material you read apparently in answer to questionnaires seems to imply that the idea was to have every courtroom 28 by 40. That is not the situation at all.

The plan is to provide for standard sized courtrooms of 28 by 40 and larger courtrooms of 40 by 60 in such number and in such mix as may be required by the particular district.

I think that is a misconception that I noted when scanning through the record of the appearances of the other judges about 2 weeks ago, so it is a discretionary matter as to whether there will be one 40 by 60 or two or three or four or five, with the others being the new standard 28 by 40.

You seem to make a point there that we did not contact these four or five judges or other judges before we made this recommendation. Well, we did not officially contact any judges.

Perhaps I should tell you about how the Judicial Conference and its committees work. The legislative branch has its Congress, the executive branch has the President of the United States, and in the judicial branch our chief authority is an instrumentality known as the Judicial Conference of the United States. That consists of 25 judges under the chairmanship of the Chief Justice.

The chief judge of each circuit court of appeals in 11 circuits is automatically a member of the Judicial Conference.

In addition to that, the district judges in each one of these circuits selects one of its members to serve as a district court representative of the Judicial Conference of the United States.

In addition to that, the Chief Judge of the Court of Customs and Patent Appeals and Chief Judge of the Court of Claims are also members. Therefore, it is truly a representative body of judges, distinguished, most of them, with extensive service as judges.

That body, the Judicial Conference of the United States, is really the legislative and executive and administrative branch of the judicial branch of the Government. It meets twice a year here in Washington. It operates principally through committees.

The ad hoc committee, of which I am chairman, is one of perhaps 20 or 25 committees.

The point seemed to be that before we went out and made these recommendations that we didn't talk to all of these judges. It is true, we did not talk to them. I suppose if a Congressman is going to vote on a bill in Congress, he doesn't go out to all of his constituents and ask his opinion about things.

These recommendations are not only applicable to the districts represented by the five or six judges who were here. These are new standards intended to be applicable to all district judges in the entire United States.

It is true, Mr. Chairman, as you indicated, that prior to this time we have been operating under standards of 40 by 60. Those standards were likewise established by the Judicial Conference back right after World War II, I think in 1947. Incidentally, the chairman of that committee also came from St. Paul, Minn., Judge John B. Sanborn. That committee functioned in the same way we are functioning; that is to say, a complete survey was made of all the available literature in the world, not only in the United States but in the world, with reference to courtroom construction.

The General Services Administration has expended I don't know how much, but I would estimate $200,000, $300,000, $400,000, in making this thorough study on our behalf. We have been benefited by exceptionally competent technical assistants in our work.

As a result of this examination of the history and experience in this country, the State court system, the Federal court system, in other countries, and as a result of many meetings of the committee, much study, much onsite examination of new types of courtrooms in the entire United States, we came to the conclusion that we just didn't need every courtroom in the Federal court system to be 40 by 60. That is the sum and substance of it—we just don't need all big courtrooms.

So, in the interest principally of economy and of good sense, we made the judgment that a courtroom of 28 by 40 as a standard court-

room, with provision for a larger courtroom in such numbers as are needed size 40 by 60 would be an appropriate kind of mix.

Mr. GRAY. You stated "wherever needed." You stated just now wherever needed you could have the larger courtroom?

Judge DEVITT. I should say it this way: Every courthouse, Federal courthouse, has provision for at least one courtroom of 40 by 60. Then there are such additional 28 by 40 courtrooms as are needed, plus, if needed, additional 40 by 60 courtrooms.

Mr. GRAY. This is the point I am trying to make. If there is a need for an additional 40 by 60, the standard size which prevailed before your Judicial Conference ad hoc committee met, then you could have it.

We had testimony from Chief Judge Schwartz that he made two trips at his own expense from San Diego to ask General Kirks for a waiver of building those size courtrooms and was denied that request on both occasions. In practicality, this is not working that way, sir. This is the problem.

Judge DEVITT. The committee report clearly provides for one courtroom, at least one courtroom, of 40 by 60 in every court facility which is built.

Mr. GRAY. This is true, but the argument advanced by the judges who were here, particularly again referring to San Diego as a specific case in point, was that if you had, let us say, three or four jury trials going on at the same time, this would delay justice by virtue of the fact that you could not hold those jury trials in the small 28 by 40 courtroom, which means you have to wait until the larger courtroom became available. This does not seem like much efficiency.

Judge DEVITT. In the first place, Mr. Chairman, the 28- by 40-size courtroom will accommodate a jury trial. The fact of the matter is that that size courtroom will accommodate 95 to 96 percent of the business conducted in the U.S. district courts. It is only the exceptional case where you need a courtroom bigger than that. Most of our business is humdrum, routine. It does not inspire the number of visitors they speak of.

I have observed in the last year, because it was pertinent to my work as Chairman of this Committee, that in the average case that we try in the Federal court, whether jury or nonjury, there are no more than two or three spectators.

The CHAIRMAN. Would you repeat that?

Judge DEVITT. In the average case which we try in the U.S. district courts in this country, there are no more than two or three or four spectators, and sometimes no spectators at all.

When we get to some kind of case which has a lot of public interest in it, for instance, young men burning down draft records or some criminal case which has a lot of public interest, we get a big crowd in a courtroom. But routinely we do not. It just seems to us it is darn foolishness to have the Government build 40 by 60 courtrooms for each one of the 402 U.S. district judges in this country when we just plain don't need them. That is the answer to the whole thing.

The CHAIRMAN. Did you make any survey or poll of courtrooms or judges around the country indicating some idea of the average usage across the country?

Judge DEVITT. You mean about how many people were in attendance just watching?

The CHAIRMAN. Yes.

Judge DEVITT. We didn't make any official survey, I believe. Mr. Kirks said he made one recently that I didn't know about.

The CHAIRMAN. The record does not show this.

STATEMENT OF MR. KIRKS—Resumed

Mr. KIRKS. I am Rowland F. Kirks, Director, Administrative Office of the U.S. Courts.

The CHAIRMAN. Mr. Kirks, you did make a survey on this?

Mr. KIRKS. We conducted a survey of the 25 largest metropolitan courts in the system. The nature of the survey was as follows—and it was designed to determine, if you will, public attendance at trials in Federal district courts:

These courts were checked at 11 o'clock in the morning and at 3 o'clock in the afternoon, all 25 of them, twice on the same day.

In addition to counting the number of spectators in all of the courts in the 25 largest cities of the Nation, they also determined whether it was a jury or nonjury trial and also whether or not it was a multiple defendant trial. I do not have the statistical returns before me now, Mr. Chairman, but they can be made available to the committee. We would be pleased to make them available.

The CHAIRMAN. When received, the information will be inserted at this point in the record.

(The following was received for the record:)

MAY 23, 1972.

Congressman KENNETH J. GRAY,
House of Representatives, Rayburn Building
Washington, D.C.

DEAR CONGRESSMAN GRAY: You will recall that during the May 18 Hearing of your Subcommittee, both you and Congressman Blatnik expressed interest in a Survey directed by the Administrative Office of Federal Courtroom usage.

The attached table summarizes the results of that Survey, conducted on April 5, 1972. The Survey was confined to the 25 busiest places of holding court in the entire Federal Court system and covered the 228 Courtrooms in those major court centers. These centers accounted for almost 57% of the trial days of the entire Federal Judiciary in Fiscal Year 1971.*

The Survey concerned itself with a check of two items—how many Courtrooms were empty and how many were in use, and, second, of the Courtrooms in use, how many spectators were in attendance. A check of these two items was made of each Courtroom at 11:00 A.M. and 3:00 P.M. on April 5.

The findings, as shown in the table as follows (combining the morning and afternoon results.):

1. Some 62½% (5 of every 8) of the Courtrooms were empty.
2. An average of only 85 Courtrooms were in use throughout the day (as compared with the 228 total Courtrooms checked.)
3. In 45 of the Courtrooms (over half of those in use), there were 6 or fewer spectators.
4. In 72 of the Courtrooms in use (84% of the total in use), there were fewer than 20 spectators.
5. The median point of spectator volume on April 5, 1972 was less than 6 spectators.

Sincerely,

ROWLAND F. KIRKS, *Director.*

Enclosure.

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*These major Federal Court centers are: Atlanta, Baltimore, Boston, Brooklyn, Chicago, Cleveland, Dallas, Denver, Detroit, Houston, Indianapolis, Los Angeles, Memphis, Miami, Minneapolis, Newark, New Orleans, New York, Philadelphia, Pittsburgh, Sacramento, San Diego, San Francisco, St. Louis, and Washington, D.C.

SUMMARY OF COURTROOMS USAGE SURVEY,[1] CONDUCTED APR, 5, 1972

	11 a.m.	3 p.m.	Average
Courtrooms surveyed, total	228	228	228
Courtrooms in use (A)	94	77	86
Courtrooms empty	134	151	142
Empty courtrooms as a percent of total	57	66	62.5
Distribution of courtrooms in use by spectator volume:	Number of courtrooms		
Number of spectators:			
0	16	10	13.0
1 to 3	19	20	19.5
4 to 6	12	13	12.5
Subtotal	47	43	45.0
7 to 9	11	13	12.0
10 to 20	20	10	15.0
20 to 30	10	5	7.5
More than 30	6	6	6.0
Total, courtrooms in use (A)	94	77	85.5
	Courtroom distribution (cumulative percentage)		
Number of spectators:			
0	17	13	15
3 or less	37	39	38
6 or less	50	55	53
9 or less	62	73	67
20 or less	84	86	84
30 or less	94	92	93
Total	100	100	100

[1] Confined to the 25 most active places of holding court, based on tria days for fiscal year 1971.

Mr. KIRKS. Certainly.

Mr. GRAY. Without objection so ordered.

Mr. KIRKS. My recollection is that the average number of spectators—and these were not individual courtrooms but these were all of the courtrooms in the 25 largest cities so it involved, I think, well in excess of 100 courtrooms—the average number of spectators was seven. There were many which had none. There were some which had more. The average for about 100 courtrooms checked during the normal business hours of a trial day, and a trial normally starts at 10 and runs until lunchtime and then resumes at 1 or 2 and runs until 4, so we took the midpoint.

In addition, it was quite revealing to see how many courtrooms were not being used at all. This is another ingredient in the consideration Judge Devitt has been describing as to why it is not economically expedient to build larger than necessary courtrooms and have them sitting idle.

The CHAIRMAN. The average of approximately 100 courtrooms in 25 major cities of the United States, the average attendance per courtroom was seven. How many courtrooms were not used at all?

Mr. KIRKS. Only 57 percent of all of the courtrooms were in use.

The CHAIRMAN. And this 57 percent of the courts averaged seven spectators?

Mr. KIRKS. Correct.

The CHAIRMAN. 43 percent were vacant?

Mr. KIRKS. Completely unoccupied.

Mr. GRAY. On that given day, you are talking about?

Mr. KIRKS. That is correct.

Mr. GRAY. Do you think if you made a similar survey a week later you might find the same result?

Mr. KIRKS. I think so, Mr. Chairman, because we did this at random. We want the facts. It was not a peculiar week, if you will, which was selected. It was selected at random. Also it was selected on Wednesday rather than on a Monday or a Friday which could influence attendance at court. It was taken at the center point of the judicial week.

Mr. GRAY. General, how do you account for such a discrepancy when we have the Honorable Frederick Heebe, District Judge of New Orleans, which represents the extreme South, saying "Grossly inadequate 28 by 40 courtroom."

Judge Donald Edward Northrop, District Judge of Baltimore, saying grossly inadequate, the proposed 28 by 40.

The Honorable Edward Schwartz, representing the west coast, chief judge, representing unanimously all five of the judges, who have gone so far as to say, "We will not practice or sit in the new courtroom, will stay in the old building," saying they are grossly inadequate.

Way out in the Pacific the Honorable Martin Pence, Chief Judge, Federal District Court, Honolulu, Hawaii, came here at his own expense saying "Grossly inadequate."

Out in the Midwest, the Honorable Robert Krupansky, U.S. District Judge, Northern District of Ohio, saying "Grossly inadequate."

Then in written form Chief Judge Eugene Gordon, Winston-Salem, N.C., representing that part of the country, finds it necessary to excuse the jury to hold bench conferences in a small 27 by 40 courtroom.

Then we go on out to Sidney O. Smith in the Midsouth, Atlanta, stating that the "courtrooms should be larger. They are much too small as now proposed."

We move on over to the chief judge in Orlando, Fla.—"Cannot conduct dignified proceedings in a room of such a small size."

One after the other in all geographic locations. Therefore I am wondering, without being facetious, how you managed to skip around geographically and find all of these great favorable comments when this committee has been contacted personally on a number of occasions, testified to here before the committee from eminent chief judges representing all of the judges in their circuits, stating that these proposed sizes are grossly inadequate.

Could you please tell us how there is such a discrepancy in your findings compared to what this committee has developed in public hearings?

I am quoting directly now, sir, from either written statements or testimony in person before our committee from all of these eminent judges I have named, over 10 of them.

Mr. KIRKS. The survey I referred to just a moment ago in response to Chairman Blatnik's inquiry was not a survey of judges relative to their opinions. What we did was to walk in and observe with our own eyes what the conditions were at that particular moment in that particular court.

Now, the difference in the standard size courtroom and the larger courtroom is primarily reducing the public audience space, and I

respectfully submit to you it doesn't make any difference what you have in the way of a survey about finding a standard size courtroom 28 by 40 inadequate—when it provides for, under normal conditions, 28 spectators in it, that spectator area does not have to be large enough to accommodate 100 people, which is the case in the standard sized courtroom, and have the space sitting there idle.

When you get into the mechanics of the conduct of the trial—and I will certainly yield to the distinguished chairman of the committee on my right because he is a jurist and I am not—I happen to be the recipient of views and data which is submitted to my office.

I respectfully submit to you that there is substantial judicial authority and experience that will refute the statements of those judges who say that you cannot properly conduct a trial in a 28 by 40 courtroom. It is not a fact because it is being demonstrated every day in every State in this Nation—State, city, and in Federal installations—that a proper trial can be conducted in those facilities.

Mr. GRAY. General, what they are talking about is jury trials mostly. I do not think they are talking about nonjury trials.

Again I give the example that if a large 40 by 60 courtroom is in use and there is need to start a jury trial, this will delay justice. Everyone said the only way to stop crime in America is to have expeditious trials.

If we are going to build courtrooms, and Judge Devitt pointed out a moment ago every Federal building would have at least one large courtroom, if you have 10 judges and nine have to sit and wait for that one room to become available, that is not judicious action. This is the thing we are concerned with.

Judge Devitt stated, at least he was quoted as stating, that the main purpose of recommending the 28 by 40 size of these courtrooms downward would be to achieve greater efficiency and curtail the cost of construction.

We had expert testimony here from the people constructing these buildings, General Services Administration, that in the entire 63 buildings that will be constructed under this new bill passed in the House, 15 of these buildings are affected. That is, you are recommending that we reduce the size of the courtrooms in 15 of these. They testified that the maximum savings in any one of those would be $30,000.

Therefore, if you take no delays, which is impossible, any time you redesign a building you will delay, if you take no delays on all the buildings we propose to construct in the entire United States now, 30 times 15 courtrooms, that is $450,000 of savings.

Judge DEVITT. If the chairman would yield to me a moment—you see, our consideration of the smaller courtroom cannot be expressed in terms of exact dollars saved in construction. The plain sense of the matter is that it is much cheaper to build and to maintain and to heat and clean a courtroom of 28 by 40 than it is one 40 by 60.

Our basic consideration was that we just don't need the big courtrooms. The whole trend throughout the country is for smaller courtrooms.

Congressman Grover has at the bench a floor plan for a new State courthouse being built in Westchester County. That consists of a mix

of one large courtroom, even a little smaller than our recommended 40 by 60, plus three smaller courtrooms, I think even a little smaller than our 28 by 40.

In Chicago they have a new State building which has 120 courtrooms in it. I am sure the Congressman from Chicago is well acquainted with that. Most of those courtrooms are small. That is just exactly the plain fact of the matter.

Mr. GRAY. I was addressing myself to the so-called effected savings. Judge, being honest, there will be no savings because, as I said, if you take every building we will build that is only $450,000 in savings on the 15 buildings. Then we know without a doubt—let us take San Diego—when you stop that $40 million building for 30, 60, 90 days, redraw plans, you will eat up more than that $450,000 in inflation. There are no savings.

As to efficiency, we have testimony here from a judge in Baltimore that all they propose to do there is narrow down from 40 to 60 the size of the courtroom and take the additional space and put it into conference rooms. The conference rooms they do not need.

They have to be air conditioned, cleaned, and heated so there is no utility savings when you cut the size of a room down and put two or three conference rooms on the side. You are just changing the utility of the size of the courtroom. I don't think there is any efficiency to be found in the operation of the buildings, either.

Judge DEVITT. May I pay my respects to Congressman Dorn?

Mr. GRAY. Indeed.

Mr. DORN. I am not on this subcommittee but I came down for this special occasion. I am delighted to see my good friend here.

Mr. KIRKS. May I respond on the question of cost, Mr. Chairman? We have to rely upon GSA and their expertise in this field. This is not within the purview of our office.

It is their carefully considered judgment that the difference in a saving between a 28 by 40 and a 40 by 60 courtroom is $40,000. It costs approximately $80,000 to construct a standard size courtroom and $120,000 to construct the 40 by 60 courtroom.

Mr. GRAY. At that point, General, they estimated they would have to pay the architect $8,000 to $10,000 to redraw the smaller design which gave us a net savings of $30,000. Multiply that by the 15 buildings and it gave us the $450,000. We are in agreement on the cost.

Mr. KIRKS. Not quite, Mr. Chairman. What you are doing is multiplying the savings of one courtroom against a courthouse.

In San Diego alone, where they will have 15 courtrooms, if we save the net figure of $30,000, and of course we recognize there is an expense in redesign, if you take 15 courtrooms and multiply that by $30,000, you have $450,000 on that one building alone of savings.

If you take the same and put it in Philadelphia, and the same in all the others, we are talking in terms of millions of dollars of savings on all new construction.

Mr. GRAY. You have refreshed my memory, General. GSA testified that if we take all of the courtrooms, and that is the courtrooms in the 15 buildings which we have not constructed, plus all those in the pipeline, plus those they might renovate, it would come to 75 courtrooms. They use a figure of 75. Mr. Sampson says this. If you multiply that, it is $2.2 million in the entire country on all the courts.

I would say, sir, when you hold up a billion-dollar program and redesign it, that would be eaten up in about 3 days by inflation, because every year that we delay these buildings which have been authorized by this committee, it costs $100 million—not $2.2 million but $100 million. There is not an architect living who can redesign a courthouse in 30 or 60 days and bring it back and ready to go out for bids. Invariably this will delay these projects.

In the case of San Diego, you mentioned $450,000 for the 15 courtrooms. You know as well as I know that if you delay that project 30 days, it is more than eating up that $450,000.

Judge DEVITT. Mr. Chairman, may I respond to the question of delay? You will recall, I think, when I last appeared here, I stated at the very outset that one of the bases on which we proceeded in arriving at the decision, we did incorporated these two factors, a savings in money and no delay in time.

We have been assured without equivocation and without exception that there will be no delay.

I certainly recognize, sir, if any administrative decision we make entails 6 months' or a year's delay, we are faced with all of the attendant increases which are likely, and I would say you could almost guarantee they will take place.

GSA has asserted over and over again, and I believe Commissioner Sampson and Mr. Meisen testified to the effect, that whatever changes we were recommending in these new constructions, there would be no delay, and therefore we would not encounter what you are greatly concerned with and we are.

If I may, you save $2.5 million.

Mr. GRAY. The entire country using the figures of GSA, 75 courtrooms.

Mr. KIRKS. Mr. Chairman, the budget for operating the entire Federal judicial system is so modest in comparison with other budgets in the Nation that $2.5 million is a tremendous sum of money to us.

Mr. GRAY. If it were a savings, I would be for it, too, General. I say it is not a real savings. It cannot be a real savings because if you redesign 75 courtrooms, you are going to cost the taxpayer at least $5 million or double that amount in inflation.

Look at the Kennedy Center. This committee originally talked about a $20 million facility and it cost $75 million.

Look at the FBI Building, and these are GSA projects, we will go back and show you where they said there would be no delays with a change order. We are spending $128 million, more than double the original $60 million.

I have been here 18 years. The distinguished chairman has been here longer than I have. They will all tell you we have reauthorized year after year after year, projects where there was a change in design and there is invariably an overrun in the cost. It is just inevitable.

When we sit here and talk about saving $2 million for the taxpayer at a time when we have to redesign 75 courtrooms, it is really folly to talk this way. There is no real saving.

Mr. ROBERTS. I want to make a statement—I don't want to be inhospitable to our distinguished witnesses—but I believe we have been in the construction business, most of us, about as long as the general has.

I am not going to make one judge mad for a proposal which may not save money at all. I am ready to go ahead with the program. I don't believe a single judge we have should refuse to serve in one of these 60-foot courtrooms. If so, I am sure he can enjoy his straight retirement.

Judge DEVITT. The basic difference between the 28 by 40 and 40 by 60 is that the big courtroom holds 130 spectators and the small one holds about 30. Insofar as the operating area of the courtroom is concerned, it is just about the same. It is a little better than 5 feet shorter. That is the sum and substance of the whole thing.

If I may invite your attention to the members of this committee who made this judgment. You call attention to the fact that some of these judges said you just cannot work in a 28 by 40 courtroom. In this committee of ours, we have five judges. I will just tell you about the experience of these people. One is Judge McMahon, who comes from New York, the Southern District of New York. He has the heaviest caseload of any Federal court in the country. Judge McMahon is enthusiastic about this smaller courtroom.

We have Judge Aubrey Robinson, who sits in the District of Columbia here, the second or third busiest court district in the Nation. He is enthusiastic about it.

We have a very revered gentleman from Utah, Judge Sherman Christensen, who has been on the bench longer than the rest of us. He has been around the country trying cases many years. He is most enthusiastic about it.

Mr. GRAY. If I may interrupt you right there, since you mention Judge Christensen's name, he was quoted as saying he would vote to rescind the action because he thought it was taken in haste.

Judge DEVITT. Not Judge Christensen.

Mr. GRAY. We have testimony here, if I can find it.

Judge DEVITT. I am sure that is mistaken. Judge Christensen is our most enthusiastic supporter.

Mr. KIRKS. I think you refer to Judge Taylor of Boise, Idaho.

Mr. GRAY. I stand corrected.

Judge DEVITT. He has been a member of the Judicial Conference.

Mr. GRAY. The general is correct. It was Idaho.

Judge DEVITT. Take lawyers we have, lawyers are in the courtroom all the time. Edward Bennett Williams, of Washington, he is an exceptionally well-known lawyer. He is enthusiastic about this.

We have a Mr. Kirby, from Chicago, who has been a trial lawyer 35 years. All the members of the committee are enthusiastic about this. They represent a cross section of the country. They don't all come from one particular place. Their judgment is that you can well and more effectively try a lawsuit, a jury lawsuit or any kind of a lawsuit, most of them in a courtroom 28 by 40.

If you need more room, if you have a bigger case and need to accommodate more people, you can move over to the 40 by 60.

Mr. GRAY. If it is available.

Judge DEVITT. Mr. Chairman, 40 by 60 courtrooms are going to be available in every courthouse that is built, in the numbers needed.

Mr. Kirks' office maintains statistics about the numbers of trials conducted in every one of the districts in this country. He has an exact

record of how many jury trials, court trials, trials involving two or three defendants, so he can estimate from the past what the future need will be for the number of large courtrooms.

Mr. GRAY. Let us take a situation like Arthur Bremer, attempted assassin of Governor Wallace, let us say his trial is sensational and last 3 months, which it could do. He is being tried in the large courtroom. You have several jury trials of lesser offenses. You mean it is saving the Government money and serving justice to have somebody wait 3 months in order to get into that larger courtroom?

Judge DEVITT. You are starting with the wrong premise. You start out with the premise there is only one 40 by 60 courtroom in that particular courthouse. That is not necessarily true.

Mr. GRAY. That is what is being proposed in these new buildings we are building, one 40 by 60 and several lesser size courtrooms. General Kirks just stated in the case of San Diego they will have the one large courtroom and they will have 15 minisized courtrooms. They have five judges out there jumping up and down saying, "We don't want this."

Judge DEVITT. Have you read our report? Have you read our recommendation to the Judicial Conference?

Mr. GRAY. Yes.

Judge DEVITT. It provides, does it not, for at least one 40 by 60 courtroom.

Mr. GRAY. It does.

Judge DEVITT. For such number of 28 by 40 courtrooms as may be needed and for such additional 40 by 60 courtrooms as the need may show.

Mr. GRAY. That is the very crux of the problem. Who determines that? General Kirks?

I just stated for the record that Judge Schwartz, the chief judge of San Diego, flew here two times across the continent at his own expense to plead on his bended knees for a waiver for more than one 40 by 60 courtroom and was denied on both occasions. This is what we are talking about.

Is this right or wrong, General?

Mr. KIRKS. The difficulty that exists with the desires of the San Diego court and the Administrative Office can be very simply and succinctly stated, and it is turned the other way around. Judge Schwartz's court refuses to accept one standard size courtroom in that entire complex. He has asserted publicly, privately, and in writing they will not accept a single standard sized courtroom, and the moment that court made that assertion that ended dialog with that court—because I am under a mandate from the Judicial Conference to erect in every facility a large courtroom and such other standard sized courtrooms as the facts, the statistics, the desires of the court, and all the accumulated factors indicate they need.

Mr. GRAY. I agree with that, General, but you did not dispute my word that the chief judge did ask for a waiver for additional 40 by 60 courtrooms and that waiver was denied. Is that a fact on two occasions?

Mr. KIRKS. No, sir; that is not a fact. I will state what is the fact.

He didn't ask for a waiver of additional large courtrooms. He said, "I want a courthouse with nothing but large courtrooms. I will not accept a small courtroom in the courthouse." That was his position.

We have under negotiation with Baltimore now a blend of where 60 percent—I think that is the statistic which I can verify—of their requirements would be in the large courtrooms and 40 percent in the standard. However, when you take a court which asserts that we will not accept any standard size courtrooms and we cannot conduct any kind of a trial in the 28 by 40 courtroom, what opportunity is there for dialog and negotiation?

The CHAIRMAN. You said earlier, Mr. Kirks, that you checked 50 major cities twice a day. Is San Diego one of those?

Mr. KIRKS. It was, sir.

The CHAIRMAN. Do you have any figures? What was your attendance record for San Diego? Were all the courtrooms of San Diego checked twice a day?

Mr. KIRKS. Yes. We have that data, but not at my fingertips at the moment. I will get it immediately.

Sir, I have the figures right here. Five courtrooms were checked in San Diego at the hours of 11 a.m. and 4 p.m., twice a day. On each occasion there were none of the courtrooms in use.

Mr. GRAY. If I may follow this thought on San Diego. The fact of the matter is that Judge Schwartz asked you, General, for five, I think it was, 40 by 60 sized courtrooms. You offered him one. You say there was no room for dialog. Would it not have been possible for you to say. "We cannot give you all five, but we can give you two or three"? He stated categorically you never offered him more than one. Therefore his position is firm that you were as reticent as he was. Is this not a fact? Therefore, I don't see how I misstated it when I said he asked for a waiver of the one room or one courtroom of 40 by 60 in that building. He asked for a waiver, whether it was two, five, or 10. I don't see how I misstated Judge Schwartz' testimony. I can read it to you if you want to go back to our hearings of 2 weeks ago.

Mr. KIRKS. I was present and I heard him and I have read the testimony subsequently. It is the responsibility of my office to serve the entire system.

Mr. GRAY. I understand that.

Mr. KIRKS. I am ready, willing, and able to discuss with any court, including San Diego, the subject and a happy compromise, provided you start with the premise that the court will not completely insist upon violating the mandate of the Judicial Conference.

Judge Schwartz' position is: "I want my courthouse the way it is designed with all large courtrooms." He did not say, "Yes, I am willing to accept some standard courtrooms because the statistics on that court and the projections on that court really do not distinguish it particularly from any other large metropolitan court in the Nation."

Our chairman, Judge Devitt here, has stated this morning that there is as much expert judicial experience asserting that you can conduct trials in standard sized courtrooms, and do so effectively. All we are doing is cutting down on audience space. We have proved over and over again that you do not need large audience space because it is not filled most of the time.

Mr. Chairman, I think again that it should be recognized that in the entire system I think there are almost 653 courtrooms in the Nation today. I would imagine that well over 600 of them are large

courtrooms. Therefore, whenever we talk about constructing a new standard sized courtroom of 40 by 28, we are merely blending into a backlog of 650 large courtrooms x number of standard sized courtrooms.

Mr. GRAY. The thing that puzzles me, General, is the fact that in all of our Federal Government, particularly the administrative branch of our Government, take a Social Security office, Health, Education, and Welfare office, Draft Board, whatever, the General Services Administration goes to the agency using the space to find out what is needed. In fact, we have a standard space-needs survey conducted. That survey starts at the place where the space is to be used.

The thing that is perplexing here is the fact that most of the judges, if not all of them, who sat on this judicial ad hoc committee are not judges directly affected with the construction of these new buildings and therefore the small rooms.

No. 2, I don't see how we can arrive at any reasonable standard for the size of a courtroom without talking to the people out in each individual area who are going to use the space.

Judge DEVITT. Of course, the object of this committee's work was to establish a standard for all judges and districts. If these judges took umbrage in our failure to talk to them, and I am sorry about it, the object is to make it applicable to every Federal judge in every district. That is the point of it all.

Mr. GRAY. We could use that same argument by saying let us make all the Social Security offices in the country the same size. But in Carbondale, Ill., we might have 12 employees. Harrisburg, Ill., has 55 because there is a bigger workload. It makes no more sense to build all courtrooms the same size than it would to build all Social Security offices or Soil Conservation offices a standard size. Why not have a standard size for all buildings if we are to do that?

Judge DEVITT. That always has been the policy. We used to build them 40 by 60. Now we think that is just too big. Standardization certainly is a strong argument, it seems to me.

Mr. GRAY. Sort of like wintertime and summertime. You can always put on enough to keep warm, but you cannot take off enough to keep cool. If the standard is large enough to accommodate a large crowd, fine. If it is too small, you are in trouble.

I think you can realize that if you narrow down a courtroom by 12 feet, or take this room and narrow it 12 feet, we wouldn't have room for all the members to sit. This is the argument these judges chant.

If they have litigants come to the bench to talk, they have to excuse the jury because they can hear everything they say. It might be something which would affect the trial, cause a mistrial, or cause a lot of cost, perhaps reimpaneling a jury.

Judge DEVITT. The smaller courtroom is about the same thing, only you do not have as much audience space. That is the difference between the large and small.

The whole working area is about the same. If you go into one of the regular 40 by 60 courtrooms, you will see 10 or 15 feet over on one side is not effectively used.

We have a model of this courtroom down in the Gun Factory here. Have you seen it?

Mr. GRAY. I did. It looks like a poolroom, like a rec room in a house.

Judge DEVITT. GSA spent some $50,000 on this. They didn't embellish it with a lot of draperies and so forth.

Mr. GRAY. When you narrow a courtroom by 12 feet in width, you are putting the jury, judge, litigants, and everybody else together.

Judge DEVITT. I guess we disagree about it, Mr. Chairman.

Mr. GRAY. I am not trying to start an argument. I appreciate your coming.

However, these questions I am propounding have been asked, and I cannot answer them without asking questions.

Here again I am not casting aspersions at all on the ad hoc committee, but Judge Schwartz testified that the Judicial Conference ad hoc committee met late——

Judge DEVITT. I think he said they met late on the afternoon of the last day, everybody was in a hurry.

Mr. GRAY (reading):

> I might say the information I have is that when the new standards were passed by the Conference in their meeting in 1971 it was the last item on the agenda on Friday afternoon when the judges, members of that Conference, were looking to catch their planes and trains. Most of the members of that Conference now feel that their action was perhaps hasty and in the meeting that was held just last month, on April 7, 1972, the second semiannual meeting of the Conference, a resolution was offered and seconded to rescind the action of the Conference.

If they were all satisfied with these standards, why was there a motion to rescind the action?

Judge DEVITT. I can only comment that I was present at the conference when this was passed. It was not hurried through or pushed through. It did not come as the last item of business.

In the late morning we started to present our report. We finished it by perhaps 2:30 or 3 o'clock in the afternoon. All the members of the Judicial Conference went down to examine this courtroom, the model courtroom. They voted unanimously for it. There wasn't any pressure or any pushing.

If some of them have second thoughts about it, the thing for them to do is to offer a resolution to modify the stand they took.

However, I was not at the last Judicial Conference meeting so I don't know what happened there.

Mr. GRAY. The resolution was offered on April 7 to rescind the previous action, and the only reason it didn't pass is that the Chief Justice ruled it out of order.

Judge DEVITT. I read the report of the Judicial Conference of the last meeting, and I did not see such reference to such resolution.

Mr. GRAY. They passed another resolution which was ruled in order to send the matter back to the ad hoc committee for consideration of some intermediate courtroom sizes.

Judge DEVITT. If they did, I have not heard about it.

The CHAIRMAN. That is important. That should be checked.

Mr. KIRKS. I can give the answer to that because I am present at the conferences.

The CHAIRMAN. Yes.

Mr. KIRKS. While it is an executive session, I do not think I do violence to the deliberations by responding to a matter that is as vital as this.

What the Conference did was to abstain from taking any action on this subject until Judge Devitt's committee completes its initial mandate, which is to come up with standard auxiliary facilities. This means every other room in addition to the courtroom itself.

The committee has this under consideration, and until they report back to the Judicial Conference, the status of the matter is that the action taken in October is what governs the system.

Mr. GRAY. Is it not a fact, though, that the second semiannual meeting of the Judicial Conference did in fact unanimously refer this matter back to the ad hoc committee?

Mr. KIRKS. That is not correct, sir.

Mr. GRAY. That is not a correct statement by Judge Schwartz?

Mr. KIRKS. It is not, sir. He wasn't present and I was.

Mr. GRAY. Would you have any idea as to why the motion was offered to rescind the previous action if everybody was satisfied? That is an accurate statement, that a motion was offered and seconded to rescind, and it was ruled out of order by Chief Justice Burger?

Mr. KIRKS. That is correct.

Mr. GRAY. Why do you believe that if they are satisfied with these standards that at the very next meeting they would ask this matter be rescinded? That doesn't sound logical.

Mr. KIRKS. That is not the way it happened.

Mr. GRAY. Didn't someone present a motion at the ad hoc committee?

Mr. KIRKS. Not the ad hoc committee but the Judicial Conference.

Mr. GRAY. It was the Judicial Conference which adopted the recommendations of the ad hoc committee in the first instance?

Mr. KIRKS. That is right.

Mr. GRAY. It is the same Judicial Conference meeting that made a motion to rescind the action, so there must have been some reason for it. Undoubtedly it would have passed to rescind the action if the Chief Justice had not ruled it out of order.

Mr. KIRKS. I don't know on what you base that premise, that it would pass, because I have no insight on what those 25 judges will do.

Mr. GRAY. Because 99 percent of the judges we contacted are vehemently opposed to the action of the Conference. That is the basis. After they found out what the Conference did, they began to rise up in arms and come from Hawaii, from Atlanta, from New Orleans, from Baltimore, from all over the United States. That is why we are having these hearings. I cannot walk out on the floor but what some member asks: What are you doing about the size of the courtrooms? I am catching eggs from back home.

Mr. KIRKS. We are trying to cooperate with you, of course.

Mr. GRAY. If this matter has been before the Second Judicial Conference, and it is a matter of concern to all the judges, why cannot the ad hoc committee reconvenee and come in with some intermediate size, like 35 by 50, or something which would satisfy these people? Why should we really force something on these judges, who will have to sit

there day after day, something that they don't want, No. 1; and No. 2, it is a fallacy to argue you can redesign a building for $30,000, and that is all the effected savings are as testified to by GSA. There are no savings any more than we change orders down at the FBI and we save money. We double the cost.

We are just trying to get out of this dilemma. I would solicit your cooperation to try to work out this matter.

The CHAIRMAN. The suggestion made by the chairman is reasonable. He is asking for a little more flexibility to accommodate the peculiar needs of some of these judges, such as in the case of Judge Schwartz. I understand they do have a rather heavy workload. He feels being in close proximity to the Mexican border brings up some problems.

Would it be practical for the ad hoc committee to take into consideration needs peculiar to certain areas, such as San Diego? I don't see where they need five ceremonial courtroom sizes.

Judge DEVITT. You mention two problems here. One is the merit of a smaller standard size courtroom. It seems to me that the merits of that are pretty well established.

The second problem is, and most of these judges from whom you have heard are affected by the second aspect of the problem, is whether or not these new standards should be made applicable to their courtrooms and to their courthouses. They argue and urge, perhaps with a good deal of merit, that in many of these cases their courthouses have been planned for many years. Judges have spent a lot of time talking with architects and even the GSA previously approved plans they now persist in having. There is a good deal of merit in that.

If judges sit down, as they have in Baltimore, for instance, and in San Diego, and in Hawaii, they spend all this time and ask, "Why should all this descend on us at once and from on up high comes the word to cut down on the size of the courtrooms?" There is merit to that.

So far as these pending projects are concerned, some should be made. Perhaps, if it progresses to a great extent, as it has in Philadelphia, where the steelwork is already up, perhaps major concessions should be made to accommodate those people.

The same thing is true with reference to San Diego, New Orleans, Hawaii. Of course, though, that is the function of the Administrator. Certainly this committee can't just sit down with architects and work out this sort of thing.

I have confidence, and our committee has confidence, that Rowland Kirks is trying to accommodate these people.

For instance, there is a problem in Tucson, Ariz. This problem was worked out.

There is a problem in Las Cruces, N. Mex., and two or three other places where the problem is solved. I think he is in the process of solving it for Philadelphia and Baltimore. He is not making too much progress in San Diego because there is a conflict of ideas there.

What you suggest, gentlemen, is true. It is a question of people of good will sitting down, talking with each other, and trying to accommodate the requirements of the needs. I am in full accord with that, so is my committee, and I hope Mr. Kirks will be able to work out these problems.

Mr. MIZELL. I thank the chairman for yielding. I appreciate the comments made here by Judge Devitt and also the suggestion of the chairman of the committee.

I am not an attorney, but a number of outstanding attorneys in my district have called me, as they, too, have learned of the proposal which was made. In my particular area, one courtroom is used for all of the cases and it would be an impossibility for them, with a jury and so forth, to be able to represent their clients without confusion. These same comments have also been made by the Federal judge in my district.

In my particular case, we have a new Federal court building being built in Winston-Salem, N.C. The late judge in the area did just what you suggested. He discussed the plans and tried to come up with the space they would need to accommodate the courts in the area.

Judge Gordon, who is the chief judge now, feels this same thing, and he expressed this to me. Not having the background on this I went to him to get his advice and counsel. He suggested that where you have to use a courtroom, and you have only one, a 35- by 55-foot courtroom would be sufficient.

Judge DEVITT. Would you yield for just a moment?

Mr. MIZELL. I would be glad to.

Judge DEVITT. I guess you were not here at the time when it was pointed out that in a district such as yours there will be a large size courtroom, 40 by 60. The report provides, and the Judicial Conference says, that in every district the first courtroom built shall be a 40 by 60, a big one.

It is only after that we decide how many more small ones or big ones we need. In your district it is taken care of by the report.

Mr. KIRKS. We have already agreed to that, sir.

Mr. MIZELL. This helps. I am sure it will relieve a lot of anxiety in my area.

As far as a multiple courtroom, this is something those more familiar with them would have to work out.

Mr. GRAY. We are going into conference next Wednesday on this $1,400 million bill which would immediately authorize the private and immediate financing of 63 Federal buildings, which will see 15 of these remodeled courtrooms.

The order has gone out now to redesign. GSA now is in the process of going out and spending more of the taxpayer's money to redesign these so-called minisized courtrooms.

What I would like to see would be to reconvene this committee and say since this has evolved into a controversy we go ahead with the original plans on these 15 and then determine once and for all what you think the standard size should be after a survey of all the judges throughout the country.

I have five very simple questions here which can be propounded to every judge.

If the cost of construction were not a factor would you favor establishment of a new standard courtroom of 28 by 40?

If they say yes, fine. If not, what do you feel would be ideal dimensions for a standard size courtroom, length, width, and height?

Third, for those trials in which there are multiple plaintiffs and defendants and where a large attendance is expected what size courtroom do you believe is necessary?

Do you believe a security problem would arise for judges, bailiffs, clerks, attorneys and plaintiffs in the quarters of a 28- by 40-foot-size courtroom? Yes or no?

No. 5. If you have any further comments concerning any advantages or disadvantages to the proposed new standard size courtroom, we would appreciate your replying to them.

By asking these questions of all the judges I think you would get a good mix as to size, width, height, all the things necessary. Once and for all, then, establish a standard for all future courtrooms.

The dilemma we have now, is the President has personally ordered that all Federal buildings be constructed post haste. He wants them up because every year we wait $100 million is being eaten up in inflation.

While we are arguing with GSA we are in the middle of redesigning a small courtroom. They have the original plans. GSA told me last night they could be out under construction on these 15 Federal buildings where you will have courtrooms within 30 to 45 days if they follow the old plans. That will save a lot of money.

Reconvene the Judicial Conference after having talked to all the people affected, every Federal judge. I am sure General Kirks can have someone send out a questionnaire and send them these questions. They don't have to be these precise questions, but along these lines. Bring that back, reconvene the Conference, come up with standard sizes.

If a majority of the judges say that 28 by 40 is fine, then I think everybody would be agreeable to living with it.

The thing that is causing ruffles by the Congressmen, and we have the very distinguished gentleman from San Diego here, Mr. Van Deerlin, they are concerned that their people were not asked as to what size they thought a standard size courtroom should be. These standards were merely drawn up and they were told to live with them.

If we had a broad questionnaire to all of the judges, then you made a decision, everybody can live with it.

Would this be unreasonable?

Judge DEVITT. I can only respond as I did before. We are mixing two problems.

The main problem which prompted concern by Members of the Congress is not the size of the standard courtroom. The problem is the application of this new type of standard to court projects that are already in process. I think that is the big problem.

As I say, I have a sympathy for those judges who have worked for so long, in San Diego, Baltimore, and elsewhere. That is a problem of working it out, trying to accommodate these judges to the new policy in view of their local situation.

Mr. GRAY. But we have testimony here, with all due respect to General Kirks, that they have not been able to get that flexibility. General Kirks is carrying out only what your Conference did. I can understand his side of it too. Therefore we have a situation where the Judicial Conference says the Administrative Office of the Courts can change

this, give a waiver. However, we know without a doubt if he does it in San Diego he has to do it in Baltimore. If he does it there they will expect it elsewhere. Therefore, we will get into a long hassle here with an ultimate delay in the construction of these buildings with escalating costs.

Judge DEVITT. Has money been appropriated for these projects?

Mr. GRAY. It does not have to be appropriated. We are going to a private entrepreneur for financing. We are saying "Here is a set of plans. You provide the construction financing, the long-term financing, and sell that building back to us over 30 years." It is a purchase contract. We do not have to go through the congressional appropriations process. The President wants it done this way. He wants 63 of these buildings under construction this year to provide more employment. We are trying to accommodate this bill. It has passed both the House and Senate.

We go to conference next Wednesday. I hope to have the conference report on the House floor next Thursday. It should be on the desk of the President next Friday.

Immediately thereafter GSA is ready to advertise for bids on all of these projects. I think you can see the urgency of our not trying to sit down with General Kirks in every locality and saying "What do we want here?"

"What do we want in Baltimore?"

This will cause delays. There is no way an architect can redraw a building in 30 to 60 days. I asked the GSA to give me one place where a change order had been effected within that period of time. They said he could think of none offhand. There are none. That is the reason.

When do you have the next meeting?

Judge DEVITT. Of our committee, the ad hoc committee?

Mr. GRAY. Yes.

Judge DEVITT. The next one is scheduled for August.

Mr. GRAY. Do you have procedures for polling by mail or phone?

Judge DEVITT. As I pointed out to you earlier, Mr. Chairman, these members of this committee represent a broad spectrum of judges and lawyers throughout the country. Most of them have talked to judges in their own areas. We have not taken any formal poll. We have not made a point of talking to these particular judges because we were establishing standards for the whole judicial system, not only these judges but courtrooms to be built 10 and 20 years from now.

Mr. GRAY. We found tremendous resistance to those standards. I think anyone would have to say the best thing we can do is to take another look at it.

I thought if you could poll them and say in these 15 buildings where there will be courtrooms affected, go ahead with the original plans. Then establish permanently the size of your standard size courtroom, whether it goes back to 28 by 40 or some intermediate size.

We cannot do that in sufficient time to keep from having a delay in these 15 projects. That is our concern.

Judge DEVITT. I am satisfied that each Federal judge in the country has a different idea about the size of a courtroom, in the same way Congressmen do not agree upon the wisdom of legislation. That is why

you have conference committees between the two bodies, to reconcile those differences. Federal judges are more inclined to have their own individual ideas than anybody else.

I make a guess if you send out a poll to Federal judges and ask how big a courtroom should be, you will get 500 different answers because there are 500 different Federal judges. They don't agree.

Of course, there is opposition. Some of it is because of misunderstanding. I think this committee as a result of hearings here had the impression that our report provided for every new courtroom to be 28 by 40. As I have tried to point out, that is not true. It provides for just a mix of the big and small, depending upon the needs of the particular district.

Mr. GRAY. But there is no equity in the mix when you have one large courtroom and 15 small ones.

Judge DEVITT. I know of no case where the general has provided for such a ratio.

Mr. GRAY. That is what it is in San Diego. You stated a moment ago there will be $450,000 of savings there.

Mr. KIRKS. I was multiplying to get a figure.

Mr. GRAY. You gave no waivers. I would not say that is much of a mix.

Mr. KIRKS. As I indicated last time, several weeks ago when I was here, we have under active negotiation with the court in Baltimore a blend of 60 to 40. That is the ratio. It is 60 percent large courtrooms, 40 percent standard courtrooms. GSA has drawn some preliminary drawings. There will be a conference tomorrow in Baltimore to review those.

The requirements, the floor plans, are quite similar between Baltimore and San Diego. Our background of caseload work, the prospects, are almost the same between the two cities.

I would hope that such a proposition would be acceptable to San Diego. I have never maintained the position, Mr. Chairman, in a multicourtroom facility such as this that there be a ratio of 1 to 15. As I am illustrating for Baltimore—let me get the exact figures.

Mr. GRAY. I was taking the figures of $450,000 of savings in San Diego. With $30,000 for each courtroom, that would have to be 15 courtrooms.

One of the two main reasons allegedly for going to this courtroom size is to curtail cost of construction.

Mr. KIRKS. That was one of three factors.

Mr. GRAY. If we are not planning 15 minisized courtrooms, how do we get that amount of savings?

Mr. KIRKS. The plan as originally designed for Baltimore consisted of a courtroom 72 by 53; 11 courtrooms 55 by 35. This makes a grand total of 12 courtrooms, and space to be reserved in the building for three additional courtrooms for some time in the future 55 by 35.

What we have proposed in lieu of that to them is that there be two large and three standard courtrooms on the three floors. We have not suggested a change in the ceremonial courtroom of 72 by 53. We have recommended two 55 by 35 courtrooms, and the remainder per floor be three standard courtrooms to these two large courtrooms. I refer

to them as large in view of the fact they are larger than 28 by 40. They are 55 by 35.

This is a blend which hopefully would accommodate not only the court's present needs but also their future requirements for the foreseeable future.

I think the same relationship would be a happy combination in San Diego. I would hope that the court would be receptive to the idea of a ratio of 40 to 60 or something of that proportion. There is no particular mysticism about a precise 40 by 60. It could be 55 by 45, or some blend.

However, I do wish, without belaboring the point unduly, Mr. Chairman, to convince you that the Administrative Office's responsibility is to serve the judiciary. However, I have to do it under certain ground rules which you have generously indicated.

Mr. GRAY. That is right.

Mr. KIRKS. In that very small area of administrative discretion which is reposed in me by the Judicial Conference of the United States, I am trying desperately hard to accommodate the wishes and desires of every court. But, and this is the last time I will say it, if a court starts off by saying to me, "I don't care what your mandate is, I don't care what the standards are, I don't care what the requirements are, I am delivering a package to you and you take it or leave it"—Mr. Chairman, it is a simple thing for me not to take it because I cannot take it. It is not a question of variance or compromise. It is a question of being confronted with an uncompromising proposition.

Mr. GRAY. I understand your dilemma, General. However, what have you done to go back to Judge Devitt's committee and saying, "Look, you have given me regulations which are being strenuously objected to by the chief judges of the courts throughout the country. Wouldn't it be sensible to take another look at this to try to come to some compromise?"

Mr. KIRKS. Of course, it would be, and I am ready, willing, and anxious to do it.

Mr. GRAY. I am sure the Judicial Conference, after talking to these judges I have talked to, would vote overwhelmingly to reject this 28 by 40 courtroom. I am confident of that.

If I were not confident of that, I would not be asking you to make a detailed poll of all the judges in this country and propound that question: Are you satisfied with a 28 by 40 courtroom?

I don't think, picking out these geographical locations I have enumerated, these are isolated cases or isolated judges or the needs of these judges are peculiar to judges in other parts of the country. I think it is overwhelming.

One other thing, and we will try to conclude by noon. Could you, Judge Devitt, please tell us what prompted the Judicial Conference forming an ad hoc committee to study this? Is this a matter under discussion for years, or was this because—I might be honest about it—we understand the House Committee on Appropriations said something about cutting down on these ceremonial size courtrooms? Was this the process you went through?

Judge DEVITT. I cannot say I know what started it all. I heard the Chief Justice say that he was concerned. I talked with Members of

the Appropriations Committee about excessive costs being expended in building courthouses.

The first I knew of it was that I was appointed a member of this committee. I always had an interest in this because during the time I have been chief judge we built two new courthouses in Minnesota, one in St. Paul and one in Minneapolis. Each of those courthouses has four 40 by 60 courtrooms.

Well, when we built the new courthouse, the last one in St. Paul, I just practically begged the General Services Administration to give us one 40 by 60 and three smaller ones.

Well, they wouldn't do it. They said the book says they all have to be 40 by 60, so we end up with four 40 by 60 courtrooms in the Twin Cities. The plain fact of the matter is that we don't need them.

I have served in small courtrooms during most of the time I have been a Federal judge. They have been just splendid.

It is true out in the Midwest generally the courtrooms are being built, it is true throughout the country, courtrooms are being built on a smaller scale.

I don't know what prompted it. I imagine the last time the Federal courtrooms were looked at in the Federal system was 1947. This reflects the same kind of feeling throughout the country. As I pointed out to you a while ago, most State courts today are being built in this smaller size.

I suppose it is a question of the Federal system catching up with the State.

Mr. GRAY. As a Federal judge, if you had the opposite opinion of these other judges, do you think it would be fair for a group of judges to meet and foist a standard on someone else who has to work with this every day?

Judge DEVITT. We get back to the same thing. This was not foisted on anybody. The Judicial Conference is a representative body. It is really a miniature representative republic. Each of these district judges is elected by his fellow district judges. He is, in effect, a Congressman.

In fact, our representative from the eighth circuit now is the former chairman of the Interstate Commerce Committee from Akansas. We still call him Congressman.

These judges who are chief judges of the circuits are pretty sharp guys. I don't see how any committee or anybody else could foist anything on these people. I repeat, it was a standard we were establishing. We were not trying to foist anything on anybody.

Mr. GRAY. It is being foisted on those objecting or they obviously would not be objecting. Call it what you want to. Perhaps that is a poor choice of words, but it is being forced on judges who have to sit in these small courtrooms every day.

For example, it was testified by GSA they proposed minisized tables even. If you had a large exhibit, it would not even accommodate an exhibit. That is inconvenient, to say the least.

Judge DEVITT. The judgment of our committee was that the tables would be big enough, 28 by 40 courtrooms would be big enough. I repeat——

Mr. GRAY. I am not accusing the Judicial Conference and the ad hoc committee of not deliberating properly, but you know as well as

I do that unless you actually see a 28 by 40 courtroom, you may not realize how small it is. This is what is happening now.

Those people who voted are having second thoughts, as attested to, so that at the next meeting they voted to rescind the previous action.

Carl Weinman, a chief judge from Dayton, Ohio, says he accepted the standards but thinks perhaps consideration should be given to a 1,500-square-foot minimum rather than the 1,000. One of our ad hoc committee already is saying—I have it in writing.

Mr. KIRKS. I beg your pardon, sir.

Mr. GRAY. Was he on the ad hoc committee?

Mr. KIRKS. No, sir .

Mr. GRAY. He is a member of the Judicial Conference. Chief Judge Carl A. Weinman attended the meeting and approved at the first meeting, voted for the resolution, and when polled, since he will be vitally affected by a building constructed in Dayton, stated, "I think perhaps consideration should be given to 1,500-square-foot minimum rather than the 1,000." He automatically is saying it should be a third larger. He is one who voted for it.

I am just saying, after these judges took a look, they are having second thoughts.

Mr. MILLER. I would like to read something that I mentioned in our previous hearings and ask Judge Devitt to comment.

We spoke at the time of three factors: Economy, efficiency, and security. If they were fed into a computer, which may be the thinking of architects and engineers concerned with interchangeability, efficiency, and mass production, and when you get away from that computer and hardware and consider the courtrooms must be available to any judge who wishes to use it, no judge can have the exclusive use of a courtroom.

In attempting to work out a combination of interchangeability, efficiency, or mass production, we take away the individual courtroom from the judge.

Then we find that the material hardware and the human factor lock horns.

In part of our problem, or all of our problem, because of the fact we would be changing the status quo?

Judge DEVITT. I guess I don't understand the question. Were you reading from what somebody said?

Mr. MILLER. This was a remark I made in a previous hearing of this kind where other judges were here wanting to hold to 40 by 60 feet. What I am attempting to find out is this—you are making a change for efficiency, or perhaps for mass production, to make things run smoother. In this case you are necessarily changing the status quo of each judge having his own courtroom.

Judge DEVITT. That is right.

Mr. MILLER. Is this one of the major problems?

Judge DEVITT. The major problem is, as I said before, Mr. Congressman, that we just plain don't need every courtroom to be 40 by 60. That is the whole thing in a nutshell.

Mr. MILLER. My question really is, "Is the human factor involved where the judge would not have his individual courtroom and he feels he would have to move from one to another and this would create problems for him?"

Judge DEVITT. I think there is some feeling like that on the part of some judges. I think many judges would feel better if they could say "That is my courtroom." Of course, that is not always true.

For instance, in the southern district of New York, when a judge comes to work in the morning he doesn't know what courtroom he will be in that day. However, there is some human factor there. There is a reticence by some judges to give up the old system where many of them could always say "This is my courtroom." I think there is something to that.

However, from the viewpoint of efficiency it does not make much sense.

We have 650 courtrooms in the United States, Federal trial courtrooms, and only 500 judges. We have plenty of courtrooms, and big ones, for all the judges we have. They are not always spaced around wherever we need them.

Mr. MIZELL. If that statement is true I need another Federal judge.

Judge DEVITT. Maybe that is true.

Mr. MIZELL. A few moments ago Mr. Kirks referred to the recommendations made regarding the situation in Baltimore, the complex about all the courtrooms.

Mr. KIRKS. That is right.

Mr. MIZELL. If I understood you, you said the situation in Winston-Salem had been worked out. Would you say what the recommendation was for Winston-Salem so we might see the approach you use not onlv for the complex of courtrooms but for an area where you are talking about only one courtroom and space reserved for an additional courtroom? The area is growing tremendously and we know we will need it in a couple years.

Mr. GRAY. If the gentleman will yield to me, I have some written statements from Chief Judge Eugene Gordon. I would have to take issue with our distinguished friends today when they say this has been worked out.

In a letter from Judge Gordon, he states:

> The judge now uses on occasion a 27 by 40 foot—which is 1 foot smaller than the 28 by 40 proposed—and finds it extremely difficult to work in. The room will not accommodate large exhibits. One counsel table is located too close to the jury, and he finds it necessary to excuse the jury to hold bench conferences. The judge does not consider the meeting capacity of the standard courtroom for use when impaneling a jury where a seating capacity of 40 people is necessary. The standard courtroom will not accommodate criminal cases which normally attract a large number of spectators in multi-defendant cases. Judge Gordon suggests that an intermediate size of approximately 35 by 50 would be adequate and solve all of the court's problems.

Therefore, the matter is not worked out. They have given him one 40 by 60 but the others will be 28 by 40 unless the committee changes its opinion. That is where I got the 35 by 50, from the judges polled.

As Judge Devitt pointed out, we do not need all 40 by 60 courtrooms but we need an intermediate size, something larger than the 28 by 40. That is what prompted the suggestion I made, poll all the judges, come up with some consensus. I am sure you cannot get them all to agree. You can however get a majority view, a consensus. Then make a recommendation, 35 by 50 or whatever, which would more adequately meet the needs of the judges complaining.

If we do not do it this way, this is what we will be faced with—we have in the pipeline now some 30 additional Federal buildings that

will be coming on for authorization. Every single one of these, if we go to a standard 28 by 40, we will have some Member of Congress coming over testifying against the bill asking if we would amend it. We will be put in the position of trying to legislate the size of courtrooms in this room every time a prospectus for a building is submitted to this committee. I am sure we don't want that. I am sure we all agree if Congress decided they wanted a 35 by 40 courtroom and authorized it it would be built that size, Judicial Conference not withstanding.

It would be much better to work this out administratively and come up with a recommendation which everybody can support rather than our having to legislate on every single courthouse we authorize in the Congress. That is an alternative face.

I cannot say to my friend, Mr. Van Deerlin, we will ignore your request. He speaks unanimously, not for one judge but for all the judges, in San Diego.

I cannot say to Mr. Garmatz, or Mr. Mitchell in Baltimore, who have talked to me, that we will ignore your request. This a duly authorized committee. It is our responsibility.

They are complaining as elected Representatives because the judges in those circuits have complained to them. The only way we will work this out is to agree that we can reconvene the Conference and come up with some consensus of judgment. Otherwise we will have to legislate the size of each one of these. We have no other alternative.

Mr. KIRKS. If I may respond to Mr. Mizell.

The situation in Winston-Salem is this: There is a requirement for one courtroom. That courtroom will be 40 by 60.

There is reserved space for a second courtroom which can be built either 40 by 60 or 28 by 40 depending on what the requirement is in the future. However, the courtroom is a single courtroom installation and it will be the large courtroom 40 by 60.

If there is some difficulty there——

Mr. GRAY. GSA told me two additional courtrooms were being planned and they would minisized, 28 by 40. That is what the judge complains about.

Mr. KIRKS. I can straighten this out and I will straighten it out. It will be on the basis that I have stated—if a single courtroom is to be built it will be 40 by 60. If there is a second courtroom to be built we will determine the requirements of the court as to whether it will be standard or large.

Mr. GRAY. Chief Judge Eugene Gordon wrote me without solicitation. I read from a synopsis prepared by GSA. I also have in my files a letter from Chief Judge Gordon unsolicited.

Mr. KIRKS. Apparently we can alleviate that concern because he will start with the large one. He needs only one courtroom now.

At such time as there is another requirement we will sit down and discuss the size of the second courtroom.

Mr. GRAY. I think he is concerned as a chief judge about other areas in the circuit.

Mr. KIRKS. If all the problems I am faced with were as easy of resolution as Winston-Salem I would welcome it, sir.

Mr. GRAY. The point we are missing is that these judges are not sitting at just Winston-Salem but elsewhere. We have requests for

other buildings in North Carolina. As a chief judge he is speaking for a standard he knows he will be faced with if additional buildings or courtrooms are built.

Mr. KIRKS. Certainly.

Mr. GRAY. I was trying to shed light on this. He is not satisfied with standards promulgated by the Judicial Conference.

Would either of you distinguished and eminent gentlemen have any idea as to what we might do to get out of this dilemma as far as going ahead with these 15 buildings? Without a doubt we have enough testimony to show there are no real savings if that is what the Chief Justice is trying to get at. Every day you delay this will eat up that $30.000 per courtroom.

Why couldn't we go ahead with the buildings now and then establish once and for all, after making a detailed survey of all the people affected, what the standard size should be? If you decide on 28 by 40 and that is what more than 50 percent of the judges want and their Congressmen want, so be it. I have not had that reading.

I know of now other way to do it without legislating on every individual courtroom. I certainly don't want to get into that.

I have a responsibility to my colleagues looking to this committee for help.

Judge Devitt, would you care to comment on the possibility of polling your ad hoc committee, getting a waiver on these buildings where the taxpayers' money already has been spent for design and we are ready to go out within 30 days to construct these buildings? It will mean additional cost to the taxpayer, delay, go ahead with those, and then establish in your later conference a permanent size for courtrooms? Would this be asking too much?

Judge DEVITT. No, I will be glad to discuss it with the ad hoc committee.

Mr. GRAY. We have an immediate emergency now with these 15. This is the real problem right now.

Judge DEVITT. Your problem is that you wonder whether you should put something in the bill about the size?

Mr. GRAY. No. We are going to send to the President's desk next week a bill which says go out immediately for construction bids on these 15 buildings where you propose to change the design on the affected courtrooms.

Judge DEVITT. Mr. Kirks has that authority.

Mr. GRAY. I know, but he has not given that authority and I can understand his position because the Judicial Conference says the standard will be 28 by 40. That is what GSA is doing now. They are redrawing plans. They said last night there will be a delay in most of these buildings because they cannot go out for bids 30 days from now.

I can tell you that change orders have escalated costs every place in the country.

Why not release these, go ahead with the original plans, have more deliberations at your Conference in October, and then whatever standard you set after polling and getting a consensus of what the people will have to say about this, then as far as I am personally concerned, we would abide by the consensus of the Federal judges around the country.

I offer this as a suggestion. If you have a better alternative I would like to hear it.

Judge DEVITT. If you read our report you will see it is made applicable only to new construction.

Mr. GRAY. But we are ready to go with these other buildings. If you had said "All those previous designed and henceforth" that would have excluded this group.

General Kirks testified he has a meeting, a preconference, to look over the preliminary sketches. Then if you agree to the preliminary sketches the architect has to draw the detailed design. That takes months.

Is this not correct, General, that you have a preconference scheduled regarding Baltimore?

Mr. Kirks. Yes, sir.

Mr. GRAY. This means to look over preliminary drawings?

Mr. KIRKS. That is correct.

Mr. GRAY. This bill we will pass next week, we can be out within 30 days with a contract on the Baltimore project. These are estimates given by GSA. It will be no more than 45 days. We can be under construction within 2 months in Baltimore.

We are just now talking about preliminary sketches on several courtrooms. How long it will take them to redesign the corridors, change plumbing, bathrooms, everything will be changed. It will cost the taxpayer on Baltimore project alone several million dollars if we have a delay.

Mr. KIRKS. Mr. Chairman, would you be kind enough to let us have the names of those 15 installations you referred to?

Mr. GRAY. I will be glad to.

Mr. KIRKS. If we can have the names of those from the staff it would be helpful to us.

Mr. GRAY. We will get them.

Do we have your assurance you will talk to the ad hoc committee?

Judge DEVITT. I certainly will.

Mr. GRAY. Any other questions?

We have the distinguished gentleman from California, Mr. Van Deerlin, very much concerned with this matter.

Mr. VAN DEERLIN. I hesitate to intrude in the record of a committee of which I am not a member.

Mr. GRAY. You are not intruding.

Mr. VAN DEERLIN. I do hope the ad hoc committee understands that in the case of San Diego we are not talking about all 40 by 60 courtrooms in the present design. The bulk would be 44 by 42, which comes out to about 1,800 square feet—even smaller than the recommendation of the 35 by 50 to which you have referred.

I would hope nothing in today's testimony suggests that the San Diego judges want all ceremonial courtrooms. They do not.

They do want to go ahead with the present plans rather than suffer a 6-months' delay on replacing a building which has stood since 1913.

Mr. GRAY. I am glad the gentleman made that point.

The original plans are already paid for by the taxpayer. They do not call for all ceremonial-type 40 by 60 courtrooms.

Mr. VAN DEERLIN. Good heavens, no.

Mr. GRAY. 44 by 42?

Mr. VAN DEERLIN. Yes.

Mr. GRAY. You can see this is not the case, and the judges out there have not been arbitrary. They want what was originally planned after long consultation with them and with the architects. They want to proceed with the construction of the building. That is why I think if we take these that are ready to go for bids now and get that out of the way with the original plans, then have a long hard look at it, deliberately over the next several months, we can at least please a consensus of opinion throughout the country.

If we can have that assurance. Does that meet with your approval, General Kirks?

Mr. KIRKS. I am quite responsive to whatever the committee does.

Mr. GRAY. I understand Judge Devitt would have to poll the ad hoc committee and recommend a waiver since that was agreed to by the full Judicial Conference, that the Administrative Office of the Courts would have the authority. I can see your reluctance to give blanket authority without direction from the ad hoc committee. That is why I made that recommendation.

Judge DEVITT. I had an inference that you were getting to the point where you suggested we have three-sized courtrooms.

Mr. GRAY. No. After you deliberate this matter and come up with a standard size after talking to all the judges, if it is 28 by 40, that will be the standard size.

I think the original recommendations have been challenged to such a degree that we ought at least to hold that in abeyance until we take a hard look at it and talk to all the people affected. That is all I am saying.

If we can have that assurance and no further comments and questions, thank you very much.

Judge DEVITT. Thank you for asking us to come, Mr. Chairman.

Mr. KIRKS. Thank you, Mr. Chairman.

Mr. GRAY. The subcommittee stands adjourned.

(Whereupon, at 12:20 p.m., the hearing was adjourned.)

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