

Passing Judgement: The Interaction Between Local and Federal Design Review

By

Thayer Donham

B.A., Art
Wesleyan University, 1981

M. Architecture
University of Oregon, 1986

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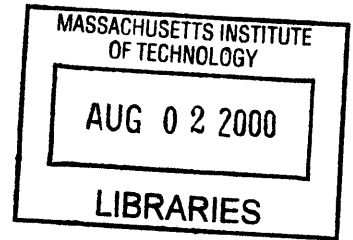
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Author _____
Department of Urban Studies and Planning
May 18, 2000

Certified by _____
Professor J. Mark Schuster
Department of Urban Studies and Planning
Thesis Supervisor

Accepted by _____
Associate Professor Paul Smoke
Chair, MCP Committee
Department of Urban Studies and Planning

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ABSTRACT

How do local design review processes affect the design of federal buildings? By law, the federal government is only required to consider local ordinances, but, nevertheless, it sometimes chooses to engage in the local design review process. This study looks at why the federal government makes the choice to participate in a local review, what factors influence that decision, and how that design review is likely to affect the design of the federal building.

Since the 1990's, the Courthouse Construction Program of the General Services Administration has been actively building and renovating federal courthouses in the downtown of cities throughout the United States. Four federal courthouses, located in Portland, OR; Boston, MA; Concord, NH; and Santa Ana, CA, were chosen as case studies. These cases represent four different attitudes toward design review ranging from a legally binding design review to no design review at all. In each case, it was determined that factors other than the local jurisdiction's zoning ordinance influenced whether the federal government allowed a local design review to occur. The local jurisdiction's commitment to urban design, the state of the local economy, and the politics of the courthouse design group all contribute to the decision to involve the local government in a review of courthouse design.

Thesis Supervisor: J. Mark Schuster

Title: Professor of Urban Cultural Policy

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Table of Contents

I.	Introduction	1
II.	The General Services Administration and Federal Regulation	5
III.	Design Review	14
IV.	The Mark O. Hatfield United States Courthouse: Portland, Oregon	26
V.	The United States Courthouse at Fan Pier: Boston, Massachusetts	35
VI.	The Ronald Reagan United States Courthouse: Santa Ana, California	43
VII.	The Warren Rudman United States Courthouse: Concord, New Hampshire	49
VIII.	Conclusion	52
IX.	Bibliography	60

I. Introduction

I became interested in the topic of design review when I worked as a City Planner in Portland, Oregon. At the Bureau of Planning, city planners with no design background were conducting design reviews, and they also were revising the zoning code in ways that affected the shape and form of the city. I was the historic preservation planner, so neighborhood groups would approach me about designating their neighborhoods as historic districts in order to qualify for zoning regulations that they thought would preserve the character of their neighborhood. Neighborhood associations were actively pursuing forms of zoning that would allow the neighborhood to have control over the aesthetics of new development proposals. Historic design review and design review, more generally, were becoming popular tools among neighborhood groups in order for them to gain control over new development activities.

At the Bureau of Planning, I also worked in the Permit Center assisting the public with making their development proposals compliant with the zoning code. I began to question the burden of restrictive design regulation on an individual property owner (as opposed to a corporate developer). Then I noticed a new building under construction across the park from the Bureau of Planning office building. Jeff Joslin, the Senior Planner of Urban Design for the Bureau of Planning, told me that it was a federal courthouse and that the federal government was exempt from most local zoning and design review. But I noticed that the building was interesting, modern yet contextual, and I was curious to learn more about the process that shaped its design and allowed it to be built in such an important location without local development review.

This thesis is an investigation of the interaction between the design of federal buildings and local design review. The research questions I have are; does the local design review process affect the design of federal projects? If so, how?

When I began this thesis project, I thought that any interaction between federal design review and local design review would be statutorily based though also

influenced by the political climate of the local government that presides over the proposed site for the federal project. My research has shown that the economy of the locality also has an influence over how restrictive local design review will be. If the local community's economy is strong, the jurisdiction has leverage and power to be more demanding about the design qualities desired for a new construction project. But if the local economy is suffering, local government has a vested interest in ensuring that any project that will boost the local economy goes through the design development process expeditiously and without delay from the local government. I also found that if the local government has a strong commitment to urban design and that commitment is reflected in the local zoning regulations, then the federal government will be more inclined to participate in the local design review process.

I have used the United States Government's Courthouse Construction Program of the 1990's as the basis for my investigation. The Courthouse Construction Program is under the auspices of the General Services Administration (GSA). The GSA has two mandated review procedures that influence the design of federal projects before a project might be brought to a local jurisdiction's design review process. These mandated procedures are the architect selection process and the Environmental Impact Statement process. The GSA's architect selection process is conducted in two stages with a peer review committee making the final decision about who will design the building. The generation of an Environmental Impact Statement (EIS) is required of all federal projects and is mandated by the National Environmental Protection Act (NEPA) of 1970. The EIS addresses all the environmental issues that might constrain the design of the project and the project area. The process of generating an EIS involves several public hearings on the potential impacts of the project. In addition, the GSA has recently instituted a peer design review process during the schematic and design development phases of the project that is not a mandated review but is part of the GSA's program to improve the design quality of its buildings.

After the GSA has selected an architect and the EIS has been completed, then the review process for each building diverges depending on issues of local politics and

economics. Three of the case studies I have selected for this paper are located in communities that suffered significantly in the economic recession of the late 1980's. The city governments of Boston, MA; Concord, NH; and Santa Ana, CA were quite pleased to get new federal facilities built in their city's downtown as a stimulus for economic development. The new federal courthouse projects offered construction jobs and new federal employment opportunities that were well received especially by local elected officials. This is not to say that there were no objections to the federal courthouse projects by local residents, but the dissenters did not have the economic backing to support alternative development options.

I initially selected the four case studies based on what I had perceived as variations in the local design review process. The range of types of design review would be represented by the four jurisdictions of Portland, OR; Boston, MA; Santa Ana, CA; and Concord, NH; with Portland as the most restrictive and Concord as the least restrictive. However, after some research, it seems that the local design review process is, in many ways, irrelevant in the design review outcome for federal buildings. It also appears that the intensity of the design review process is lessened when a local government wishes to attract new development since the local government will not create political pressure to require a substantial review. Local community activists are probably less likely to intervene if the project offers substantial financial benefit to the community without much detriment to the neighborhood.

Contrary to my expectations, the federal courthouse in Boston received the most local design review of all the case studies. This occurred because of an overlap in federal and state environmental regulation and also because of the insistence of the two district judges on the courthouse design team. The judges, Stephen Breyer (now a Supreme Court Justice) and Douglas Woodlock, both have an interest in architecture and were committed to getting the best possible design for their new courthouse. Woodlock saw the judges' role in the new courthouse project as that of "...guardians of a very special building type. As such, they must educate and nurture the actual designers in the culture of the law and the federal courts, and they must encourage

design review processes that will not compromise the integrity of the resulting design.”¹ Breyer and Woodlock invited design review by the Boston Civic Design Commission on what they saw as their project.

I have organized this thesis to begin with a description of the General Services Administration, how they operate and what their legal responsibilities are, as well as a description of federal law that constrains federal building projects. Next, I define design review and outline the possible range of review mechanisms demonstrated by the case studies. The section on design review is followed by the four case studies: the Mark O. Hatfield United States Courthouse in Portland, OR; the United States Courthouse in Boston, MA; the Ronald Reagan United States Courthouse in Santa Ana, CA; and the Warren Rudman United States Courthouse in Concord, NH. The individual case studies are followed by a conclusion about the lessons learned from the cases, observations about the interaction of federal and local design review, and recommendations for ensuring a design review process for those projects least likely to undergo design review.

¹Brown, J. Carter, *Federal Buildings in Context: the Role of Design Review*, p. 55.

II. The General Services Administration and Federal Regulation

"I'd hate to be judged by the government buildings of 10 to 15 years ago. Now it's not just a question of dollars and cents, but good design and quality-of-life issues, too."²

*William Hellmuth, Principal, Hellmuth, Obata &
Kasselbaum, Architects, 1995.*

This chapter describes the elements of federal project management and federal law that impact the design of federal buildings. These elements affect the ability of the local government and the local community to review the design of federal projects. I begin with a description of the GSA's building program, then look at Title 40 of the Federal Code, and end with the National Environmental Policy Act.

The General Services Administration

In 1990, the government began an aggressive program to build and renovate federal courthouses in urban locations throughout the United States. The government agency in charge of the construction of federal facilities, the General Services Administration (GSA), commissioned and constructed 25 new courthouses during the 1990's with an additional 134 courthouses in process.³ When complete, the Federal Courthouse Building Program is expected to have cost the federal government approximately \$8 billion.⁴

President Carter signed an executive order in 1978 that encouraged the location of federal facilities in urban areas to prevent the decline of center cities and to provide an economic development tool for poor inner cities. Under Presidents Reagan and Bush, the executive order was not strictly followed and the government followed "private sector trends", building new federal facilities in suburban locations rather than

² Mays, Vernon, "Federal Buildings and Campuses", *Architecture*, January 1996, p. 86.

³ Brown, J. Carter, *Federal Buildings in Context: the Role of Design Review*, p. 55.

⁴ <<http://www.gsa.gov/>>

downtown.⁵ Under President Clinton and Bob Peck, the current Commissioner of the Public Buildings Service, the division of the GSA responsible for constructing, leasing and operating 8,000 buildings across the nation⁶, the current GSA policy is to build new federal facilities and restore historic government buildings within the central city. It is hoped that this federal policy to locate federal facilities in the central city will have a beneficial effect on the urban redevelopment of downtown districts in American cities by spawning reinvestment.

Under the leadership of Bob Peck and Ed Feiner, the GSA's Chief Architect, the GSA has instituted a number of programs to improve and manage federal facility construction throughout the country. Specifically for the design of courthouses, the GSA created the Courthouse Management Group and established design teams that include the federal judges that preside over the district where the courthouse will be located. Additionally, for all new (and newly renovated) federal facilities, the GSA instituted the Design Excellence program and thereby reactivated a federal design awards program that had been dormant for 15 years.

"By coincidence, the government's building boom began during the economic recession of the early 1990's when even widely published architects were short of work. Since the 1960's, the number of federal judges had nearly quadrupled; criminal cases alone had increased by nearly 200% between 1980 and 1990."⁷ The existing courthouse facilities were in need of repair, hard to secure (especially after the bombing of the federal office building in Oklahoma City) and not adequately configured for the way trials are conducted today. The federal government appropriated funds to build and renovate courthouses in order to support the third branch of the United States Government, the Judiciary, and to help them function more effectively.

⁵ Dean, Andrea O., "Right Place, Right Time", *Preservation*, July/ August 1996, p. 17.

⁶ Ibid.

⁷ Dean, Andrea O., "The Nation's Biggest Landlord Just Found Style", *Architectural Record*, February 2000, p. 63.

The Courthouse Management Group

During the 1990's, the GSA created the Courthouse Management Group, a team of professionals whose focus is the construction and renovation of federal courthouses. The goal of the Courthouse Management Group "is to improve the management and delivery of courthouse construction, [and to] ensure nationwide consistency in the program's implementation."⁸ Each courthouse must be designed to meet the projected programmatic needs of the court for 10 years with consideration for accommodating the court for 30 years.

The Courthouse Management Group published a United States Courts Design Guide that has evolved throughout the 1990's. The Courts Design Guide is given to each architectural firm before they begin to design a new federal courthouse. The Courts Design Guide sets standards for courthouse construction and design and gives "policy guidance for the overall planning, programming and design of federal court facilities through the United States and its territories".⁹ While the primary focus of the Courts Design Guide is to suggest cost-effective solutions to design problems, the guide is a "performance document, not a prescriptive document that dictates the means of achieving an end".¹⁰ The Courts Design Guide gives performance recommendations for all aspects of the courthouse including aesthetics. In the section on Aesthetics, the Courts Design Guide states,

"The architecture of federal courthouses must promote respect for the tradition and purpose of the American judicial process. To this end, a courthouse facility must express solemnity, stability, integrity, rigor and fairness. The facility must also provide a civic presence and contribute to the architecture of the local community.... To achieve these goals, massing must be strong and direct with sense of repose, and the scale of design should reflect a national judicial enterprise. All architectural elements must be proportional and arranged hierarchically to signify orderliness. The materials employed must be consistently

⁸ <<http://www.gsa.gov/>>

⁹ *US Courts Design Guide*, 1998, p. 31.

¹⁰ *US Courts Design Guide*, 1998, p. 33.

applied, natural and regional in origin, durable, and invoke a sense of permanence. Colors should be subdued and complement the natural materials used in the design.”¹¹

The Court Design Guide prioritizes issues of importance for the GSA and reminds the architect of the civic importance of a federal courthouse and the need for the building to instill a sense of dignity and presence to the city.

The Courts Design Guide also focuses on security, which affects how the buildings can become integrated into the pedestrian realm of the city. Robert Peck says, “A big design issue is providing security without sacrificing openness –a huge opportunity for architects. It’s up to them to help us prevent security from overwhelming everything else, to the point that buildings aren’t attractive or friendly or inviting. If failure results, a time will come when the public reacts with those damn bureaucrats are walling themselves off from the people they’re supposed to serve. We can’t let that happen.”¹² The conflict between being open to the public and having tight security can dominate the building design.

The Design Excellence Program

The proposed United States Courthouse in Boston was the catalyst for restructuring the federal process for hiring architects and ensuring high quality design for all federal construction projects under the purview of the GSA. District Judges Douglas P. Woodlock and Stephen Breyer were involved in the design process for the new courthouse, and they wanted an architecturally distinguished building. They noted that the federal selection process for architects was cumbersome, discouraged innovation and did not attract architects who had professional recognition as leaders in design. Woodlock and Breyer worked with Ed Feiner at the GSA to streamline the architect selection process, diversify the pool of potential designers, and encouraged the GSA to advertise their new emphasis on design in the architectural trade journals like *Architecture*, *Architectural Record*, and *Progressive Architecture*.

¹¹ *US Courts Design Guide*, 1998, p. 79.

Ed Feiner named this effort to change hiring practices the “Design Excellence Program” and has used the program to attract architects of note for all federal construction projects. The Brooks Act of 1972 is a “federal law requiring that architects’ qualifications be considered before their price.”¹³ The screening process for architects was simplified within the constraints of the Brooks Act, with the intention of attracting emerging architecture firms. However, there is concern that the program attracts only architects with national and international stature like Kohn Pederson Fox, Pei Cobb and Partners, Robert A.M. Stern and Richard Meier, who all have won multiple government contracts. Bradford McKee wrote, “Since the federal building program is frequently politicized by members of Congress as pork-barrel spending, the GSA is sticking to well-known architects, who, presumably, are less likely to violate public tastes and budgets.”¹⁴

As part of the Design Excellence Program, the GSA has instituted a program of peer review by volunteer architects, both practicing and academic. The peer reviewers participate during the architect selection process and sometimes participate in peer design review as the design architect is developing the design. It is the intention of the GSA to have every project that costs over \$10 million undergo a peer design review. Ed Feiner wrote, “Regarding Peer Reviews on these [four] projects; there was only one Peer Reviewer on these projects; me. They all predated private sector reviews and yes, my comments were considered and often forced major modifications to the concepts and designs. Peer reviews by private architects are non binding but they generate good ideas. The ideas become more “binding” when GSA asks them to be incorporated into the designs.”¹⁵

Ed Feiner re-established an awards program in 1994 to acknowledge the high quality design work done by these architects, and he received sponsorship for the program from the National Endowment for the Arts. The government had had an

¹² Dean, Andrea, “The Nation’s Biggest Landlord Finds Style”, *Architectural Record*, February 2000, p. 65.

¹³ McKee, Bradford, “Federal Design Excellence”, *Architecture*, January 1996, p. 60.

¹⁴ McKee, Bradford, “Federal Design Excellence”, *Architecture*, January 1996, p. 63.

¹⁵ E-mail correspondence from Ed Feiner, May 10, 2000.

awards program for design, but it had been defunct for 15 years. The new awards program was the GSA's method of remaking their image after decades of constructing nondescript federal buildings across the United States. In 1971, Daniel Patrick Moynihan wrote: "...Twentieth-century America has seen a steady and persistent decline in the visual and emotional power of its public buildings, and this has been accompanied by a not less persistent decline in the authority of the public order."¹⁶ By the 1990's, the GSA was determined to turn this trend of mediocre design around and to re-establish the reputation of the GSA as a contributor to the good design of cities. The GSA is extraordinarily concerned about money and cost of the buildings because they do not want the public to think they are excessive and extravagant in their building projects. They must combat the public sentiment that all government projects are wasteful of public funds, yet they also must provide outstanding design.

Each courthouse design team includes representatives of the regional GSA office and the architects as well as the senior federal judges who preside over the district in which the courthouse sits. "Federal judges, as members of the judicial branch of government, are responsible for the efficient operation of the federal courts"¹⁷ and that responsibility includes participating in the design of a new facility. In her article on the GSA's design aspirations in *Architectural Record*, Andrea Oppenheimer Dean wrote, "Another weakness in GSA's push for design excellence is inescapable: the staffs of the agency's 11 regional offices are not uniformly knowledgeable or interested in design. For example, when asked of his opinion of GSA as a client, Richard Meier remarked, "The judges were the client."¹⁸ "In courthouse design, observes William Pedersen, GSA's attitude toward aesthetic expression is, however, often sabotaged by "more conservative judicial clients," namely judges."¹⁹ In other words, the judges wield a lot of power in the design of the courthouse projects and can be the dominant voice in the design process.

¹⁶ Ibid. p. 541.

¹⁷ *US Courts Design Guide*, 1998, p. 47.

¹⁸ Dean, Andrea O., "The Nation's Biggest Landlord Finds Style", *Architectural Record*, February 2000, p. 66.

It would appear that within the courthouse design team itself there are power struggles that have nothing to do with the local jurisdiction and have everything to do with the relationship between the architect, the GSA staff and the federal judges on the design team. This would suggest a political variable in the federal courthouse design process that is out of the purview of regulation, irrespective of whether that regulation is of federal or local jurisdiction. Despite the political dynamics of the design team, the GSA staff in Washington DC has the ultimate approval authority for the design of the federal courthouses. In response to a question about his role in the review of GSA projects, Ed Feiner wrote, "I review the "Final Concept" before it is presented in Washington DC and I either recommend to the Commissioner that a design be approved or I approve it for the Commissioner."²⁰ Therefore, the Commissioner of the GSA or his representative, the Chief Architect, has the final design review authority.

Title 40 of the United States Legal Code

According to Title 40 of the United States Code, the GSA must **consider** all zoning laws and other laws that would be applicable to the development proposal if the federal government was not building the project. The GSA does not have to consider procedural requirements, such as hearings for a variance or non-conforming use review, when they do not wish to comply with a regulation. Local officials may make suggestions and comments about a proposed federal project, but the GSA does not have to comply with those suggestions and the GSA cannot be sued for noncompliance. Title 40 essentially allows the GSA the freedom to choose what local requirements it wishes to take into account in each project.

Although the GSA legally has the right to ignore local government regulations and recommendations, there can be political fallout from ignoring the local jurisdiction. I would venture to guess that Congressmen and Senators would be contacted in Washington if the GSA were to proceed with a building project with total disregard for

¹⁹ Ibid. p. 65-66.

²⁰ E-mail correspondence with Ed Feiner. May 10, 2000.

local government rules, regulations and procedures. Typically, the GSA works with local government on an informal basis and tries to reach a consensus about appropriate design considerations for a particular project. My interviewees have confirmed that the GSA works hard at being a good neighbor and tries to anticipate possible sources of conflict between what the GSA wants to do and what the local government would like to see. Yet, the GSA holds the power position in the relationship between the federal and local governments because the federal government can ignore the local government. This relationship requires tact and care on the part of the local government if it wishes to be heard.

The National Environmental Policy Act

Another way in which the GSA is required to take account of the design attributes of its projects is through the filing of an environmental impact statement (EIS), which is the only federally mandated process that can address design issues and might lead to a design review process. The National Environmental Policy Act (NEPA) was enacted in 1970 and necessitates an environmental review for every federal construction project. NEPA requires the preparation of an EIS that documents all potentially significant environmental impacts of a proposal, an alternative to the main proposal and a no action alternative. Generally, an EIS is prepared by consultants working for the federal agency responsible for the proposed federal project; in the case of federal courthouses, the GSA is the client for whom the consultants prepare their report. In some cases, the EIS actually recommends a design review by the local jurisdiction in order to mitigate the potential environmental impact on the neighborhood of the proposed federal development project. In other cases, the design of the building is not found to have adverse environmental impacts and additional review is not indicated in the EIS.

The EIS is the only process that is duly completed as a legal review during the pre-design phase of federal courthouse projects. After the EIS is complete, any other design review is at the discretion of the GSA and the other members of the courthouse

design committee. Whether the EIS addresses issues of importance to design review would depend on the site for the federal building and whether it has certain environmental constraints that would affect the design. For example, the courthouse design team in Boston was required to consider the requirements of the Federal Coastal Zone Management regulations in their EIS. Federal Coastal Zone Management law is managed by the State Coastal Zone Management offices and in Massachusetts that office is within the Executive Office of Environmental Affairs. State Coastal Zone Management law is required to be consistent with federal regulations and in Massachusetts Chapter 91 is one such law. The EIS for Boston required a Chapter 91 Tidelands Review for the design of the courthouse at Fan Pier, and, as part of that Chapter 91 review, the GSA was required to participate in an advisory design review with the Boston Civic Design Commission.

Typically, after a draft EIS is prepared, a series of public meetings is held over a six-week period when public comment (either written or oral) is accepted. Public testimony can address any issue in the EIS, including design issues like massing and siting. After public commentary is received, a final environmental impact statement (FEIS) is prepared that incorporates the public's testimony and any changes in the proposed project that resulted from that testimony. Although the EIS process is not a formal design review process, it fits within the definition I am utilizing for design review: third party scrutiny of a development proposal.

As part of the NEPA/ EIS process, the Environmental Protection Agency reviews the EIS and rates the impact of the proposed action as well as the adequacy of the impact statement on a scale determined by the EPA. In other words, the EPA evaluates the development project and its environmental impact, and also rates the EIS as a successful study of environmental impacts. As a reviewer of the EIS, the EPA becomes another federal agency scrutinizing the project and potentially commenting on issues that could impact the design of the proposed project. It would be interesting to know if the EPA had ever exerted meaningful pressure through this EIS review mechanism that resulted in the GSA participating in a local design review.

The EIS process is an important review process for all federal projects. Although a design review is not a guaranteed part of each EIS, the EIS process makes the project subject to public review. When the public is invited to comment on any additional development within the city, then the project is more integrated into local civic life.

III. Design Review

“Design review must, I think, respond to and strengthen the sense of a place of a city, a town, and indeed, a culture. That sense of place is, by necessity, a combination of tradition and memory joined with hope and aspiration for the future. To be effective, design review must be about not simply the preservation of an agreed-upon past but also a commitment to pushing and challenging a not-so-agreed-upon future.”²¹
William L. Rawn III, Architect

What is design review? In order to establish a framework for discussing the four case studies that are detailed in subsequent chapters, I begin this chapter with a working definition of design review. This definition of design review is followed by a discussion of the legal basis of design review, a brief description of the various types of design review, and, lastly, how design review has been adopted by each of the jurisdictions in which the cases studies are located.

Definition of Design Review

The term “Design Review” is used to mean many things; however, I will utilize the definition created by Schuster in his report entitled “Design Review: The View from the Architecture Profession”. In that document, Schuster defines design review as:

“...a process by which private development proposals are presented for, and receive, independent, third-party public scrutiny. These design review processes range from citizen groups commenting in an adhoc manner: through project-specific, citizens’ advisory committees; to more formalized processes such as review by historic preservation commissions or city design review boards. Thus, in this definition, design review encompasses many of the ways in which a public interest is taken into account and given some standing in the design process. In design review particular attention is paid not only to the architectural and urban design aspects of a proposed project, but often also to broader environmental and neighborhood impact issues.”²²

²¹Brown, J. Carter, *Federal Buildings in Context: The Role of Design Review*, p. 95.

²²Schuster, J. Mark, *Design Review: The View from the Architecture Profession*, p. 3.

Since I am interested in the relationship between federal projects and local design review, I will broaden this definition of design review to include the public third party scrutiny of **public** development projects. Since it is within the public interest to review private development, it follows that it is also within the public interest to review public development. In fact, since public development projects are built with public funds, used for public purposes, and are often sited in prominent locations, one could argue that there should be even more public interest in a public development project than in a private development proposal.

Because of a surge in development activity during the 1990's, design review has become a popular zoning tool. Many urban and suburban communities throughout the United States have adopted design review to affect the aesthetics of new development within their city or town. Quite often, rapid change or large-scale development proposals have been the catalyst for a community group or local government to adopt design review within their zoning code.

The Legal Basis of Design Review

In the United States, the federal government gives considerable powers to the fifty individual state governments and zoning is one of those powers. In the 1920's, every state legislature adopted either the Standard State Zoning Enabling Act or the Standard City Planning Enabling Act or some variation thereof.²³ Through the Zoning Enabling Act, each state government gives individual local jurisdictions the authority to control land-use and zoning by delegating police power from the state government to the local government. The autonomy of local government has allowed each jurisdiction to create its own form of zoning controls, and typically these controls are written into the municipal code. Various forms of design review ranging from stringent controls to no review at all are incorporated into the zoning ordinance section of the municipal code.

²³ Lai, Richard, *Law in Urban Design and Planning*, p.85.

Zoning regulations themselves are a simple form of design review because they determine use, bulk, setbacks, height and parking standards. Most zoning regulations affect the form, design and character of a community without directly commenting on aesthetics. Zoning is generally limited to dimensional characteristics, and it can be difficult for a jurisdiction to address character issues like materials, building details, and neighborhood compatibility without design standards or design review. The process of assuring that the proposed project meets the zoning code is actually the closest that the jurisdiction can get to conducting a design review.

The United States Supreme Court became the testing ground for the limitation on the police powers transferred to the local government from the state government. The court upheld the constitutionality of zoning in the landmark cases of *Pennsylvania Coal v. Mahon* (1922) and *Ambler Realty v. Euclid* (1926).²⁴ In the 1954 United States Supreme Court case, *Berman v. Parker*, the court determined that it was within the purview of local government to regulate design. In the decision for the case, Justice Douglas wrote: “We emphasize what is not in dispute.... this court has recognized, in a number of settings, that States and cities may enact land-use restrictions or controls to enhance the quality of life by preserving the character and desirable aesthetic features of a city....”²⁵ Therefore, at the highest level of the judicial branch of the federal government, it has been decided that local government has the right to manage the design of development within a community because beauty contributes to a public purpose. Justice Douglas wrote, “The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”²⁶ However, lower levels of government do not have the right to impose design review on higher levels of government.

²⁴ Lai, Richard, *Law in Urban Design and Planning*, p. 85.

²⁵ Mandelker, Daniel, *Planning and Control of Land Development*, p. 706.

²⁶ Lai, Richard, *Law in Urban Design and Planning*, p. 241.

The Review Itself

Planning boards, design review boards and other citizen review boards for land use issues are part of the participatory democratic process. Yet, three rights guaranteed by the United States Constitution define local zoning regulations and limit the power of citizen review boards. The First Amendment to the United States Constitution guarantees free speech and freedom of expression, the Fifth Amendment guarantees that private property will not be taken for public purposes without just compensation, and the Fourteenth Amendment guarantees due process and equal protection under the law. Taken together, these constitutional rights mean that any design review or zoning decisions must not be “arbitrary and capricious”, must be fair, and must protect the rights of individuals. Any amendments to the zoning code itself must be adopted through a legislative process; however, design review itself differs in that it can be a quasi-judicial process that allows for appeals to other review bodies.

Since design review deals with aesthetics rather than with attributes that are more easily subject to rulemaking, it becomes a challenge to the local jurisdiction to set up a system of design review that meets the law governing aesthetic review, yet is fair and also preserves the community’s character. Many jurisdictions accomplish this by creating design guidelines that design review bodies can use to determine whether or not development proposals meet design criteria desired by the community. It is important that design guidelines come out of a planning effort that evaluates the qualities of and future goals for the city because, without consideration for the larger context, design guidelines cannot be tailored to preserve and sustain design qualities particular to that place. A planning process helps to establish a consensus about community values and design principles.

For jurisdictions that have not adopted design guidelines, the applicant has the burden of trying to determine what the review board is looking for and the review board has the burden of explaining its goals. This opens the possibility that the

jurisdiction is not providing due process by which every applicant is treated equally. Due process suggests that the rules and criteria for obtaining a building permit are known in advance of submitting an application. Design review processes can also allow some discretion to the review body in their review; however, it is important that the review body does not abuse discretionary power.

Design Review in Four Cities

In this thesis I look at four case studies that represent very different models of local design review. Portland has a quasi-judicial review process with design guidelines; Boston, MA is a case of advisory design review; Santa Ana, CA has a staff review; and Concord, NH has no local design review. To provide some context for the cases that follow in the next chapters, I have outlined the design review process in each of the four cities below from the most restrictive process (Portland) to no design review process at all (Concord).

The Portland Model

In Portland, Oregon, the city's politicians, citizens and planners are committed to urban design through mandated design review districts and explicit guidelines that are incorporated into the Portland Zoning Code. Portland's Zoning Code has a clear process for design review as well as a process to appeal any design review decision. In Oregon, design review is considered a land use review. Oregon state law requires any land use review to include findings of fact which makes any design review subject to scrutiny for consistency with statewide and citywide planning goals. A finding of fact, requires that the local government document how each planning goal is fulfilled (or not) by the development proposal. By requiring a design review decision to fulfill planning goals and requiring documentation as to how it complies with those goals, there is less of a chance of a decision by the review body being arbitrary or completely subjective.

In Section 33.825.035 of the Portland Zoning Code (Title 33 of the City of Portland Municipal Code), the parameters of the design review are laid out. "The

review may evaluate the architectural style; structure placement, dimensions, height and bulk; lot coverage by structures; and exterior alterations of the proposal, including building materials, color, off-street parking areas, open areas and landscaping.”²⁷ In other words, the reviewer may address every external aspect of a development project.

If an applicant is proposing a building in the Central City or a district designated for design review, the applicant is required to have a pre-application conference in which the applicant discusses his proposal with urban design staff and other planning staff that specialize in some aspect of the project review. The applicant is also required to contact the appropriate Neighborhood Association and schedule a meeting within 30 days so that the neighborhood is informed about the project at the beginning of the permitting process. Next, the urban design staff writes a staff report recommending design revisions to better comply with the design guidelines and the zoning code. The staff report is released to the public (abutters and interested parties) and to the Design Commission. There is a period for public comment, and then there is a scheduled public hearing before the Design Commission. At the public hearing, first, the planning staff makes recommendations, then the applicant presents the project, next the public can testify and comment, and, finally, the Design Review Commission discusses the proposal and makes a decision. The design review decision is appealable to a hearings officer or to the Portland City Council. The decision of the hearings officer and the City Council is appealable to the State of Oregon’s Land Use Board of Appeals (LUBA). Therefore, Portland’s design review process is a quasi-judicial review with a clearly laid out process and set of criteria that the design must meet.

With that said, there is a certain amount of discretion and flexibility allowed within the intent of the design guidelines. In the Developers Handbook issued by the Bureau of Planning, it says:

“Design Guidelines work differently than the Land Use Regulations or Development Standards stated in the Zoning Code.

²⁷ Title 33 of City of Portland Oregon Municipal Code, Section 33.825.035

Design Guidelines provide a design guidance system that is helpful and flexible but which leads one through a process that creates desired results. Design Review also provides a means of granting adjustments to many of the Zoning Code Development Standards.

The Design Commission may waive individual guidelines for specific projects based on findings that the waiver will better accomplish the goals and objectives for Central City Design Review. Likewise, the Design Commission is not limited to the Design Guidelines in its review."²⁸

This system allows the Design Commission discretion in its decision-making provided that it incorporates the intent of the design guidelines and a substantive case can be made that any exemptions to the guidelines will still result in an improved development project that adds to the urban quality of the central city. Since there is an appeals process that is quasi-judicial in nature, the discretionary powers of the Design Commission are used carefully when reviewing a project.

Carl Abbott, a Portland urban historian wrote about the City of Portland Bureau of Planning: "The urban design bureaucracy.... operates within fixed and understandable rules, it gathers data before action, and it relies on trained specialists. To a substantial degree it treats all persons alike on the merits of their development proposal. This process of rationalization has channeled the high level of public interest that was apparent by the 1970's into a series of accepted procedures that have so far proved capable of implementing a broad community consensus."²⁹ The Portland Design Commission and the urban design staff are highly regarded within the architectural community and the understandable system within which they operate helps to reinforce the notion that they are working for the public good.

The Boston Model

The Boston Civic Design Commission (BCDC) is an advisory committee formed in 1986 but first convened in 1989, to review large projects and plans, and to ensure that

²⁸ Bureau of Planning, Portland, OR. *Central City Developers Handbook*, 1990.

²⁹ Punter, John, *Design Guidelines in American Cities*, p. 74.

the city's public realm is favorably impacted by new development within the city of Boston. The development proposals that the BCDC reviews must be subject to the jurisdiction of the Boston Redevelopment Authority (BRA) as delineated in the zoning code for the city of Boston. The design recommendations the BCDC makes are only advisory and are not statutorily binding decisions.

The BRA design staff also reviews the development proposal for compliance with the zoning code and district guidelines and makes recommendations to the BCDC. There is a concerted effort for the BRA staff and the BCDC to coordinate their reviews especially since Article 28 of the Boston Zoning Code requires that the BCDC comment during the schematic design phase of a project. Schematic design is when a project's relationship with the surrounding buildings and open spaces is being developed, and it is the phase where advisory commentary is most likely to be considered and incorporated into a design by the architect and client.

The Commission is charged with reviewing the following types of projects:

1. Any large-scale project over one hundred thousand square feet of floor area.
2. Any project of "special significance", including those:
 - a. within five hundred feet of a landmark building, specified architectural district, or National Register District;
 - b. visually prominent from significant open space or significant right-of-way;
 - c. in an area of special historic interest;
 - d. situated in a way to have a significant impact on the visual quality of the surrounding area.
3. Civic space, including open space, cultural centers, and monuments.
4. Design District Guidelines.³⁰

These four project types address how the design proposal affects the street and the fabric of the neighborhood at large rather than focussing on the interior design of the individual building. Design District Guidelines establish design parameters for special

³⁰Brown, J. Carter, *Federal Buildings in Context: the Role of Design Review*, p. 96.

precincts within the city and set the tone for future development in those districts that may then become the criteria for future design recommendations of the BCDC.

In their 1993 annual report, the BCDC outlined the urban design issues that were at the forefront of their reviews and continue to be important today. The major issues were the design of streets and public walkways, the design of public space and the preservation of the character of Boston. “The BCDC noted that the success of Boston’s public environment is the result of well-defined streets, shaped by a continuous street wall, the small scale of its blocks, well-used public alleys and passageways, and active ground floor uses... The combination of 350 years of continuous development and change as well as its unique topographic features give Boston its special character.”³¹ These issues are the overarching urban design criteria that the BCDC uses when evaluating the compatibility of a design within the fabric of the city of Boston. Since the BCDC is relatively new, it continues to redefine its mission by incorporating new urban issues into its future vision for the city of Boston.

The BCDC welcomes public comment during its review process and is supposed to function as a forum for the design community and neighborhood residents, where they can address issues of the design and the effect of a development project on the public realm of the neighborhood. Although the BCDC’s review is advisory, the commissioners’ comments are taken seriously by the architects, developers, the BRA and the community. If the BCDC does not approve a project, which to date has only happened once, the recommendation is sent to the mayor or the BRA Board, depending on who initially forwarded the project to the BCDC, and they have final approval authority. If they do not follow the BCDC’s advice and approve a project that the BCDC recommends should not be approved, the BRA or the mayor is required to put in writing why they are overriding that advice.

The Santa Ana Model

The Santa Ana Zoning Code does not have a design review provision or design guidelines, but the downtown area of Santa Ana is designated as a special economic

³¹ The Boston Civic Design Commission, *Annual Report*, October 1993.

development district which has a city staff member assigned to manage it. Typically, the Downtown Development Manager would conduct a staff review of any new large project within the downtown area. If the city staff were to review a federal development project, they might only review the plans for compliance with setbacks, parking standards, and other typical zoning considerations. The Downtown Development Manager might use discretionary judgement and provide feedback to the architect and the GSA that is not based in community consensus, but rather that is based on his or her personal opinion.

The weakness of this model of review is that the staff member assigned to review the project is not necessarily trained in design. Usually, the staff member that manages an economic development district is well versed in economic development, finance and marketing rather than design. Thus, the local government representative is not a good advocate for design issues of local concern because his or her focus and expertise is not building design or urban design.

The Business District of Santa Ana is also in a National Register Historic District and new development within the district would be required to go through a review with the State Historic Preservation Office if it uses federal historic preservation funding or federal historic preservation tax credits. The courthouse site is adjacent to the National Register Historic District and although one small piece of the site is within the district boundary, the architect chose to leave that part of the site as open space.

The Concord Model

The state of New Hampshire's state motto is "Live Free or Die", which sums up the residents attitude about regulation succinctly. While Concord, New Hampshire does have a zoning code, it does not include a design review provision. Therefore, if the city were to review a federal development project, it would only review the plans for compliance with setbacks, parking standards, and other typical zoning considerations.

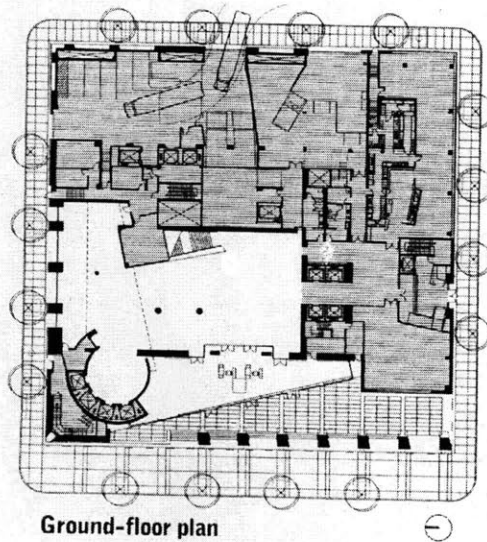
This case provides a uniquely interesting test of the extent to which the federal government would involve the local government in a discussion about design issues

when the jurisdiction is not committed to urban design and has no urban design policy. The Concord case is clearly an example of the lack of interaction between the local government and the federal government during the design development process of a federal building.

Summary

The four cases represent the spectrum of local zoning regulation for design review from no review, Concord, to an extensive design review, Portland. Portland has design guidelines and a quasi-judicial authority to impose design controls, Boston has design guidelines but the Boston Civic Design Commission has an advisory capacity for influencing design decisions, Santa Ana allows for the discretion of the planning staff and Concord has no design controls at all. This variety in design review mechanisms is typical of the range of design review regulation found across the United States. With this understanding of design review and its multiple forms, I now turn to a consideration of how courthouse design played out in each of the four cases, with a particular emphasis on the impact that local design review had in each case.

IV. The Mark O. Hatfield United States Courthouse: Portland, Oregon



“Even though this year we are celebrating the 150th Anniversary of our Oregon Trail, I think some of those pioneers would probably string up some of these planning and zoning people if they had to go through all the paperwork and procedures and everything.”³²

Hazel Peterson, Marion County resident
complaining about Oregon’s land-use
laws. 3/23/93

The Mark O. Hatfield United States Courthouse is visible from the Hawthorne and Morrison Bridges, which are two of the four major river crossings into the central city from the east side of Portland, Oregon. The federal courthouse, which was completed in 1997, faces a formal park that is three blocks long and is the center of an ensemble of government buildings in the fabric of downtown Portland. The Old City Hall, new City Hall (also known as the Portland Building, designed by architect Michael Graves), the Justice Center, a federal office building and the Multnomah

³² Staff, “Lawsuit Attempts to Halt Construction of US Courthouse”, *The Oregonian*, March 24, 1993.

County Courthouse all front the park blocks and create a distinct governmental precinct centered around a public civic open space.

The courthouse was built on a typical downtown Portland block with dimensions of approximately 200'-0" by 200'-0". The GSA purchased each lot on the block separately, once they determined that their program requirements for a new courthouse would necessitate utilizing the entire block. The use of the entire block for the courthouse required demolition of two SRO hotels, the Hamilton Hotel and the Lownsdale Hotel, a commercial building dating from the turn of the century, the Peterson Building, and a parking garage built in the 1920's. The hotels and the commercial structure were typical of what the older city fabric had been — four story brick buildings with commercial space on the ground floor and offices or apartments above. The Hamilton Hotel was an excellent example of its building type and potentially could have been designated a historic landmark by the city or listed on the National Register of Historic Places.

In March of 1993, while drilling test borings on the site for the courthouse, items of archaeological significance were found. The test borings revealed items of Chinese origin behind the Hamilton Hotel. The GSA signed a memorandum of understanding with the State Historic Preservation Office (SHPO) to allow completion of a HABS/HAER study and report as required by federal law. The HABS/HAER study slowed down the demolition schedule for the existing buildings on the block because a team of archaeologists was working to uncover and document artifacts of a Chinese population that had lived on the site during the late 19th century. The demolition delay also necessitated a Portland Landmarks Commission hearing to approve the archaeologist's report.

On April 7th, the City of Portland joined a class action suit to delay the courthouse construction due to the lack of affordable replacement housing for the 194 housing units that would be lost because of the demolition of the SRO hotels. The State of Oregon has a no-net-loss-of-housing provision that requires the physical replacement of any housing units lost because of development. The City Commissioners felt that the

GSA was not going far enough to replace the affordable housing units. The federal government was putting money into a housing fund and gave each long-term hotel resident around \$5,000 to defray the cost of relocation, “however, city officials and housing advocates said that the federal Housing and Urban Development agency also had promised 194 Section 8 housing certificates.... But that promise was never put in writing and the administration that made it is long gone”³³. Without the housing certificates, the affordable housing units could not be replaced, and the city council felt that it was the federal government’s responsibility to replace the units if not physically at least financially. City Commissioner Gretchen Kafoury stated in an op-ed article in the *Oregonian* that, “This spring, the City Council took a courageous and politically risky stand by filing a lawsuit against the GSA. This suit stated our position – that federal law requires the replacement of the housing.”³⁴

The result of filing the lawsuit was that the city attorney took out a restraining order against the GSA and would not allow any contact between the GSA and the staff of the Bureau of Planning. The restraining order made it impossible for the City of Portland’s Historic Landmarks Commission to sign off on the archaeological findings of the HABS/HAER study and the urban design staff was directed not to speak to the GSA until further notice unless they had permission from the City Attorney. The GSA’s project manager, Gerry Takasumi, was upset that what had been an open congenial review process had become adversarial and fraught with tension. Eventually, the lawsuit was dismissed by a federal judge who ruled that, “the government was only legally obligated to relocate the tenants, not replace the housing.”³⁵ Meanwhile, the design review process had resumed with the lawsuit pending.

A public hearing in front of the Design Commission was scheduled for June 3rd, 1993. On May 31st, after reviewing a set of preliminary drawings and the applicant’s design concept narrative, Edgar Waehrer, the Bureau of Planning staff to the Design Commission, issued a memorandum to the Design Commission in advance of their

³³ Mayer, James. “City Joins Lawsuit Against the Feds”, *The Oregonian*, April 8, 1993.

³⁴ Kafoury, Gretchen. “City Pursues Low-Income Housing”, *Oregonian*, July 27, 1993.

³⁵ Smith, Bryan. “No Place To Call Home”, *Oregonian*, May 5, 1995.

hearing. Waehrer's memo outlined the features of the proposed design that did not comply with the regulations of Portland's Zoning Code, while also acknowledging that the GSA did not have to comply if they did not want to. In the memo, Waehrer wrote:

"As noted at the start of the Concept Design narrative, the Federal Government is not legally required to meet local codes and ordinances. However, the General Services Administration has been very cooperative in seeking the City's counsel regarding our regulations and guidelines and in trying to meet the intent, if not the letter of our regulations. The narrative generally outlines the code conditions, indicating they are either fully met or almost met. Regrettably, they are not quite as close to compliance as they suggest."³⁶

The narrative that accompanied concept design drawings addressed individual zoning regulations, their applicability to the courthouse design and whether the design met the city's regulations. Waehrer was concerned that three major design elements warranted further refinement and needed to respond better to the Central City Design Guidelines: (1) the design of the roof, (2) the design of the stair tower in the northwest corner of the building, and (3) the design treatment of the ground floor.

The zoning code limited the allowable building height to 300'-0" in order to preserve a view corridor between the Vista Bridge to the west of downtown and Mt. Hood to the east. The proposed building design showed a roof at 317'-0" with an elevator penthouse rising to 350'-0". The architects argued that "the design meets the spirit of the requirements. The design is less obtrusive than other designs that would be allowed within the height limit, while providing an attractive roofscape more appropriate to other City design guidelines."³⁷ Waehrer responded, "The discussion of building height is accurate except in the implication of latitude for allowing excess height in exchange for amenities. No latitude would be permitted to any applicant except the Federal Government. That being said, as the view photograph toward Mt.

³⁶ City of Portland Bureau of Planning Memo from Edgar Waehrer to Design Commission, May 31, 1993.

³⁷ US Courthouse Portland Oregon, *Concept Design Manual prepared by BOORA with KPF*, March 15, 1993.

Hood shows, the proposed building retains the important parts of the view.”³⁸ In other words, since the view was preserved, the city was not going to do battle over the height, however, the city wanted to go on the record as pointing out that the building height did not comply with the local zoning regulations.

The stair tower on the northwest corner of the site was designed without windows. Both Thom Hacker of the Design Commission and Edgar Waehrer agreed that the stair tower seemed “too stiff and rigid even as an anchoring element”.³⁹ They recommended that the corner element be made lighter to complement the “nimble quality” of the rest of the design.

The design issue that Waehrer and the Design Commission were most concerned about was the treatment of the ground floor. They were worried about the three garage doors on the east elevation and the severity of the ground level walls. Portland’s Zoning Code requires at least 50% of the ground floor wall area to be window in order to provide variety, transparency and visual interest for pedestrians. “The east and north elevations are very deficient in meeting the ground floor window requirements. This particular issue, on these elevations, is worthy of further examination/ discussion regarding ways in which to add liveliness and energy to the sidewalk... Staff is also disappointed that the current design has three separate vehicle openings and curb cuts on the east wall. There had been some consideration of combining two of these into one.”⁴⁰ The architects concept design narrative indicated that the programmed space on the first floor should facilitate meeting the ground floor window requirement, but they acknowledged that the design scheme did not meet the city’s zoning code regulations for the central city.

Waehrer concluded his memo to the Design Commission with general remarks and a tactful plea to the GSA for the revision of some of the building elements. “This building could and should be a highly successful addition to Portland’s urban core.

³⁸ City of Portland Bureau of Planning Memo from Edgar Waehrer to Design Commission, May 31, 1993.

³⁹ City of Portland Bureau of Planning Memo from Edgar Waehrer to Design Commission, May 31, 1993. Annotated by Thom Hacker.

⁴⁰ Ibid.

Hopefully the Design Commission will use my remarks as a jumping off place for more comments and hopefully the General Services Administration will find the comments helpful in fine-tuning the design."⁴¹

When the Design Commission convened on June 3rd, they concurred with Edgar Waehrer's recommendations. In the Design Commission hearing, no members of the public offered comments or submitted written testimony about the design proposal. Waehrer summarized the Commission's review of the courthouse building design in a memo to the GSA dated June 21, 1993. "In general, the Commission was very supportive of the conceptual design, and look forward to its construction. The Commission especially encouraged the applicants to meet code requirements related to ground floor window provisions."⁴²

It is clear from Edgar Waehrer's memos and the lack of public debate that the planning staff, the Portland Design Commission, and the public felt powerless in the face of the federal government. While the city's representatives clearly expressed their concerns about the building design relative to the zoning code and design guidelines, it was up to the GSA and their team of architects, BOORA and KPF, as to whether they would modify the design as suggested by the city. In fact, the finished design is nearly identical to the concept design, and it is apparent that the design review of the Portland Design Commission was largely ignored with the exception of the addition of more ground floor window area along the south, east and north facades. The new ground floor windows brought the building into compliance with the ground floor window standards of the zoning code. However, the three automobile entries remain on the east façade of the base creating a hard wall for pedestrians. The form and height of the roof and the windowless stair tower remain similar if not identical to the concept design drawings.

Obviously, when placed in an advisory role, a person or an institution like the Portland Design Commission must pick its fights and determine what single message it

⁴¹ Ibid.

⁴² City of Portland Bureau of Planning Memo from Edgar Waehrer to GSA, June 21, 1993.

needs to convey. In the case of the Portland Courthouse, the Design Commission concurred that the single issue of importance to the urban design of the central city was meeting the ground floor window standards. By complying with the zoning code, the building design improved and the Courthouse Design Team acknowledged the validity of the opinion of the planning staff and the Portland Design Commission.

Because the design architect, Kohn Pederson Fox, did not respond to my correspondence I am unable to corroborate the architects' point of view. It is evident that programmatic requirements requiring the separation of circulation for judges, lawyers and prisoners kept the architect from adhering to all the suggestions made by the Portland Civic Design Commission. Most importantly, the architects did not have to comply with the Central City Design Standards or the Portland Zoning Code, and they opted to pick and choose what worked with their scheme for the building.

I find it interesting that Portland, which has a regulatory structure that gives the Portland Design Commission and its staff in the Planning Bureau a lot of power over private development, was rendered virtually powerless in the process that created the Mark O. Hatfield United States Courthouse. I see two factors that contributed to the lack of interaction between the federal government and the local government. The first factor is the lawsuit brought by the city against the GSA. The lawsuit upset the working relationship between the city and the GSA. The second factor I am forced to speculate about. I think that the principal architects, Kohn Pederson Fox (KPF) might not have been interested in working with the Portland Design Commission and Bureau of Planning staff or perhaps got off on the wrong foot. KPF, working with BOORA, had addressed each of the City Center Design Guidelines in their Concept Design submittal. They argued to the GSA and the Bureau of Planning that they met the city's goals in the spirit if not the letter of the regulation before design development proceeded. Why should they continue to be constrained by the desires of the city if legally they weren't bound to comply? John Meadows, BOORA's principal in charge, told the *Oregonian*, "The city (planning department) wanted a symmetrical building like all the other buildings on the government campus...That would have forced us to shape the outside

first and then fit the program inside. The building form we came up with has a deliberateness and rationality, not frivolous logic. It takes its form from the real forces that exist: Where is the sun? Where are the views? How do you fit the functions on the footprint?"⁴³

This building demonstrates competing design priorities. On the one hand, the GSA's Courthouse Design Guide calls for buildings that are clearly representative of the Judiciary and exude tradition. On the other hand, the GSA is pursuing design excellence. Ed Feiner commented on the Portland Courthouse, "This is contemporary architecture that is comparable to the Parthenon. But it's more like abstract art — you have to look for the tradition."⁴⁴ I agree with the assessment of Randy Cragg, the Oregonian's architecture critic, who wrote, "Indeed, viewed from the exterior, the last thing you'd probably imagine is that the building is a courthouse... It looks more machine than building... The building certainly has some questionable flourishes: its airfoil roof; the eyelash crown of the elevator shaft; and various metal pipes, slots and pins that suggest that, if pulled, the whole building would tumble down. But the quality of the detailing and construction in the interlacing of stone, steel, glass and wood has an intricacy seldom seen in contemporary buildings."⁴⁵ If it weren't for the large letters carved in stone, one might just think it is an interesting, yet private, office building.

In their design review, the GSA and the Portland Design Commission did not address what has turned out to be one of the major criticisms of the courthouse: that the bulk of the building is too great for the site. The floor-area-ratio of the new courthouse is 13:1 and the Portland Zoning Code called for a maximum floor-area-ratio of 9:1. John Meadows, a principal at BOORA, said, "When we made the first massing model, it looked like the Mike Tyson of the government district. So we created an asymmetrical massing that responds to its setting."⁴⁶ Although the architects purposely broke down

⁴³ Cragg, Randy, "Judging the Courthouse Architecture", *The Oregonian*, May 4, 1997.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Betsky, Aaron. "Search for Justice", *Architecture*, November 1997, p. 124.

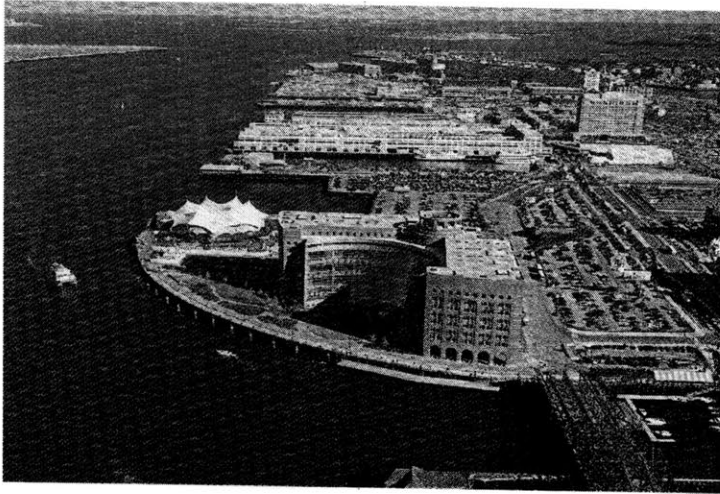
the massing to disguise its bulk, the building still seems too chunky for the site especially when compared to the slimmer towers on nearby blocks.

Ed Feiner felt that KPF and BOORA presented an elegant architectural solution to the considerable program required on the small site. In the words of Ed Feiner, it was, "An extremely difficult site of 200' by 200' to hold over 500,000 s.f. of building and yet create a graceful profile and massing. Potentially, a very clunky mass was sculpted into a very elegant form that truly establishes a base, trunk and crown. The "crown" or "sail" is repeated throughout the building within each Courtroom. The building can be seen from many miles around and establishes its presence on the skyline but at the pedestrian level it is very deferential to City Hall Park and the other important civic buildings around the park (even Michael Graves' Portland Building!)."⁴⁷

Despite the lack of legibility of the building as a courthouse, the building design is quite impressive and stands out among the towers of downtown Portland because of its unique massing and the use of fine quality of materials and construction details. The project received a GSA Design Excellence Honor Award in 1995 and the Portland American Institute of Architects Chapter Award in 1997. The building continues to be appreciated for its design vitality. In my opinion, the ground floor of the building still does not integrate well with the pedestrian realm on the sidewalk, and I wonder how much the GSA's heightened concern about security have rendered the streetscape design issues nearly impossible to solve in a pedestrian-friendly way.

⁴⁷ E-mail correspondence with Ed Feiner. May 10, 2000.

V. The United States Courthouse at Fan Pier: Boston, Massachusetts



“This most beautiful site in Boston does not belong to the judges, it does not belong to the lawyers, it does not belong to the federal government. It does not belong to the litigants. It belongs to the public. And if the public cannot use this site and see it as their own — if every man, woman, and child in Boston cannot take a walk on this pier and see it as theirs and use it so that they can look out across the city and enjoy that beautiful site and enjoy this public space — if they cannot do that then we shall have failed to achieve an important function of the courthouse project.”⁴⁸

*Douglas P. Woodlock, US District Court for the
District of Massachusetts*

The new United States Courthouse in Boston is located on the Fan Pier in the soon to be redeveloped South Boston Waterfront District facing the city of Boston across the Fort Point Channel. The site is a 4.56-acre parcel shaped like a quarter circle that was acquired by the GSA through “friendly” condemnation procedures. The Fan Pier’s prominent location along Boston’s waterfront and the fact that the courthouse is the first new building in the redevelopment area of the South Boston Waterfront District made the project a prime candidate for public attention and scrutiny.

⁴⁸ Brown, J. Carter. *Federal Buildings in Context: The Role of Design Review*, p. 61.

The Fan Pier site itself had had a charged political history with prior development proposals being ditched due to squabbles within the development corporation that owned the parcel. There had also been active citizen groups advocating for use of the site for housing or a waterfront park rather than usurping the parcel for a federal courthouse. This debate over the use of the parcel is significant because earlier in the century there might not have been a discussion about where such an important federal civic monument would have been built. The authority to build a federal project in a prominent location was seen as a right of the government and, in fact, according to Lois Craig, "Towns everywhere clamored for federally funded buildings as an indication of stature."⁴⁹ Especially at the turn of the century, federal buildings were symbolic of membership in the union of the United States and conveyed a sense of civic and national pride.

The decision to build the courthouse on Fan Pier instead of near the rest of the governmental institutions was a bold political move. Lawrence Kennedy wrote:

"The choice of this site for a new courthouse is merely one of the latest of countless decisions in Boston's history that have shaped the city. One may challenge the soundness or origins of the decision to site such an important government building away from downtown but it offers another example of the process of determining the physical appearance and land use of the city. It is a physical process, only in this case it is more obvious and direct. Planning involves politics, land, money, competing interests, and visions, and it creates futures problems and opportunities.... In the final analysis, the federal courthouse on Fan Pier may be evaluated on the basis of aesthetics and the transportation developments associated with it, but support for it and the drive to complete it are to be found in the mixture of politics and economics."⁵⁰

Political support for the courthouse on Fan Pier was based on the fact that Boston needed to provide jobs and future development strategies in the South Boston Waterfront District.

⁴⁹ Craig, Lois. *The Federal Presence*, p.163.

During the 1980's, the Boston Redevelopment Authority envisioned the South Boston Waterfront District as a continuation of the downtown business district in terms of the form and type of development that they saw as desirable. The BRA staff had developed design guidelines for high-rise towers and large-scale development projects. "Those designs were big, in response to a fairly substantial market demand," said Homer Russell, the BRA's director of urban design. "After it was clear the Fan Pier (projects) wouldn't work, it made sense to begin replanning those areas in a context that more reflects what that area was historically."⁵¹

As the design for the Fan Pier Courthouse was being developed, the South Boston Waterfront District went through another planning effort by the BRA that envisioned the area as a medium scale mixed-use district that would be compatible with existing development in the area. The new courthouse reflected the scale and materials of the new district guidelines; however, the debate about the placement of the building on the site and issues of accessible public open space became quite contentious.

This debate about the open space and the relationship of the building to the harbor were important because they were the issues that, through a fluke of State and Federal law, brought the project to the Boston Civic Design Commission (BCDC) for an advisory design review. The EIS explains:

"Although the General Services Administration, as a Federal agency, is exempt from state and local regulations, it is the intention of the proponent to be as consistent as possible with such regulations in order to contribute to a harmonious development of the area in which the site is located. Local zoning and the State's waterways regulations are linked in that the Boston Redevelopment Authority as the local planning authority may submit a recommendation to the Massachusetts Department of Environmental Protection as to whether the project serves a "proper public purpose".⁵²

⁵⁰ Kennedy, Lawrence. *Planning the City upon a Hill*. p. 240-241.

⁵¹ Ackerman, Jerry. "Image for Fan Pier changes from New Glitz to Old Boston", *The Boston Globe*, May 14, 1992.

⁵² *Final Environmental Impact Statement Federal Courthouse Boston, MA*, September 1992, Section 3-92.

The project reviewer from the Massachusetts Coastal Zone Management Division determined that, “The Courthouse project serves a proper public purpose by providing greater public benefits than detriments to the public’s proprietary rights,”⁵³ especially, in light of the fact that the GSA intends to improve the dock on site to enhance public transportation to the inner harbor and beyond.

Since the Fan Pier site, and all other waterfront sites in Boston, is within the jurisdiction of the Federal Coastal Zone Management regulations, the federal courthouse was subject to a review that looked at the impact of the project on Boston Harbor. The federal government requires the state government to conduct the Federal Coastal Zone Management review for compliance with both state and federal regulations rather than conducting the review themselves. In this case, the state of Massachusetts required that the Environmental Impact Statement pay special attention to Chapter 91 of the Massachusetts State Laws. Chapter 91 is the Tidelands Review process.

Most of the City of Boston is considered a tidelands due to the extensive fill of Boston Harbor that began as early as 1641.⁵⁴ “Fan Pier has been used for maritime purposes since the Commonwealth of Massachusetts began filling the land at the site in 1869. By the early 1890’s, railroad and shipping interests had developed the newly constructed piers in the area as an important cargo terminal in South Boston.”⁵⁵ The use of Fan Pier for shipping purposes continued until about 1960. Since then the site has been primarily used as a parking lot due to the decline of the maritime businesses in the South Boston Waterfront District.

In Massachusetts, public access is regulated by Chapter 91 of the Massachusetts Public Waterfront Act of 1866, which protects the right of the public to access and use natural resources. “The law stipulates that the public has the right of access around fill or structures built below the historic high-water mark. Because Boston’s periphery is

⁵³ Ibid. Appendix.

⁵⁴ Whitehill, Walter M., *A Topographical History of Boston*, p. 11.

⁵⁵ *Final Environmental Impact Statement Federal Courthouse Boston, MA*, September 1992.

almost entirely built on landfill, its wharves are subject to the law...".⁵⁶ In 1990, Chapter 91 was amended, and today it is still the regulation that governs waterfront redevelopment in Massachusetts. Chapter 91 is the tool that allows the local government to require private developers to provide public walkways and other public amenities along Boston's Harborwalk, a planned continuous public pedestrian path along the entire Boston harbor waterfront.

The BCDC was asked to review the proposed courthouse on Fan Pier as part of a State of Massachusetts Chapter 91 Tidelands Review Process. Massachusetts Chapter 91 has three basic requirements for development within the fill area: first, public access to the ground floor; second, 50% open space on the site; and, third, the provision of facilities of public accommodation which requires public uses within the ground floor of the building. The BCDC took care to study the building's relationship to the edge of the harbor and to keep the edge of the harbor open to the public.

There was a public debate over the conflict between large setbacks required by Chapter 91 and the desire to maintain an accessible pedestrian-friendly walkway along Boston Harbor. Traditionally, Boston Harbor has had wharf buildings at the harbor's edge, and BCDC felt the continuity with that traditional urban form was an important precedent to set in the South Boston Seaport District. "The Commission supported the siting noting that harbor cities with successful waterfronts had a close relationship between buildings and water's edge."⁵⁷ Vivian Li, of the Boston Harbor Association, testified in the FEIS public hearing that her advocacy group felt that the minimum setback from the harbor should be 35 feet and that the Harborwalk, a public path providing continuous access to the harborfront, should be incorporated into the Courthouse design. The Boston Harbor Association supported "creation of a real, underline real, park destination along Fan Pier. Merely adding benches, shrubs, a statue and a simple fountain will not succeed."⁵⁸

⁵⁶ Ackerman, Jerry, "Ins and Outs Along the Waterfront", *The Boston Globe*, March 15, 1998.

⁵⁷ Boston Civic Design Commission, *Annual Report*, October 1993.

⁵⁸ *Final Environmental Impact Statement Federal Courthouse Boston, MA*, September 1992, Testimony.

Chapter 91 requires a larger setback from the harbor edge than BCDC wanted to see, so the GSA had to balance the interests of all the parties when deciding on the setback. In the FEIS, the architect's initial study of the implication of the Chapter 91 regulation was reprinted. The literal interpretation of Chapter 91 made for "irrational geometry", awkward massing, poor quality public open space and views, and the form was unable to contain the programmatic requirements.⁵⁹ The final design complied with the spirit though not to the letter of the law. Most of the building is below the height limits set by Chapter 91; however, the western wing is above the allowed height, and it is sited closer to the edge of the harbor than the law allows.

When asked about the decision to undergo design review for the United States Courthouse in Boston, Harry Cobb, the architect, remarked, "That the local ordinances are not being ignored in our case is owing to the specific aspirations that have been set for this building – aspirations that can be realized only if consultation with the community is indeed substantive and not just a procedural formality."⁶⁰ Cobb was also willing to engage in a public discussion with his peers on the BCDC because he saw the advantage of cooperating with a group that, while it does not have statutory power, does have prestige and renown within the field of architecture. He felt that the power of a peer review by a prestigious panel superceded any regulatory power.

On February 2, 1993, the chair of the design subcommittee of BCDC, Architect Bill Rawn, submitted a report recommending approval of the building. The BCDC recommendation of approval listed 10 design ideas with which the design subcommittee agreed in very broad terms.

1. We endorse the basic decision to build a low-rise structure — rather than a high-rise structure — on this site.
2. We strongly endorse the design idea of relating the courthouse to the urban-fabric qualities of the Fort Point Channel community.
3. We endorse the efforts to make this building fit its setting without resorting to purely historical responses.

⁵⁹ *Final Environmental Impact Statement Federal Courthouse Boston, MA*, September 1992, Section 5-7.

⁶⁰ Brown, J. Carter, *Federal Buildings in Context: the Role of Design Review*, p. 82.

4. We endorse the efforts of the building to approach, if not touch, the water.
5. We endorse the placement of public exhibition/ restaurant space on the park side of the building.
6. We support the general massing of the Northern Avenue side.
7. We support the street-level design of the Northern Avenue façade.
8. We think the revised entrance – the garden rotunda—looks promising, so long as it continues to emphasize appropriately the importance of public access to and the openness of the building.
9. We are happy that there is a strong pedestrian movement through the building to the second-level public spaces facing the park.
10. We endorse and applaud the covered arcade as a public statement about the water as edge and as a symbol to the public spaces beyond.⁶¹

The ten design issues listed above are critical to the urban design of the South Boston Waterfront District and will affect the future development patterns of the neighborhood. The comments, although general, reinforce the positive aspects of the building and site design and attempt to influence design revisions without being too critical.

Another reason that the Fan Pier Courthouse was actively reviewed by BCDC was due to the insistence of Federal Judges Stephen Breyer and Douglas Woodlock, who felt that design review would promote a public dialogue about design that would result in a better design for the courthouse and for the city of Boston. “However, real and perceived limits on the Commission’s authority and a fractious and contentious community prevented the Commission from providing more than thoughtful advice — some of which, such as its view that our original arcade setback along the Harborwalk was right and that anything more would be wrong, we declined to follow in the face of competing community concerns.”⁶²

⁶¹ Brown, J. Carter, *Federal Buildings in Context: the Role of Design Review*, p. 101-103.

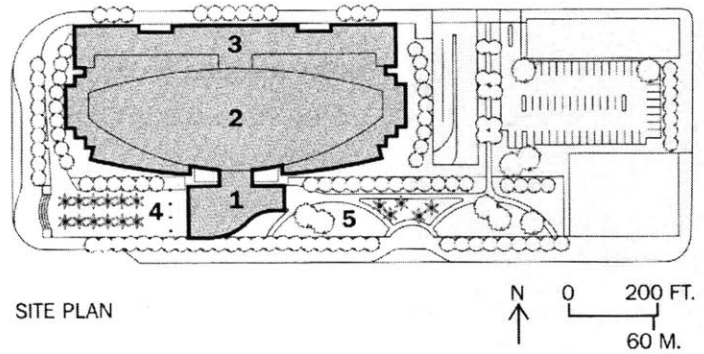
⁶² *Ibid.* p. 75.

In Ed Feiner's view, the site itself was the major influence on the design of the building. "The view of the bay directed a design that had to "share" this feature between the public galleries and the Judicial Chambers. This forced some inefficiencies (and costs) onto the Project. It also opened up great opportunities for both internal and external drama."⁶³ His perception of the shared public/private space within the building sounds wonderful if you can overcome the obstacle of the uninviting entrances and actually enter the building.

The Boston Courthouse is an example of how federal regulation ultimately caused a federal building to undergo local design review. The local review with BCDC was purely advisory; however, the design architect was willing to engage in a serious dialogue with the BCDC incorporate their suggestions into his design. Nevertheless, from a public interest point of view, the prominent nature of the Fan Pier site should have provoked a design review despite the NEPA requirement because any new development in the South Boston Waterfront District will set the tone for future development there.

⁶³ E-mail Correspondence from Ed Feiner, May 10, 2000.

VI. The Ronald Reagan United States Courthouse: Santa Ana, California



"The evolution of this design has been very beneficial, particularly regarding the improved efficiency of the plans and the resolution of complex urban design and site issues. The final concept has achieved a good balance between the internal operational needs of the courts and the interests of the surrounding community."⁶⁴

Robert J. Diluchio, Assistant Commissioner, GSA.

The Ronald Reagan United States Courthouse is located in Santa Ana, California, which is the county seat for Orange County, a sprawling county consisting of suburbs of Los Angeles. What remains of Santa Ana's central business district is adjacent to a civic district primarily composed of government buildings. In order to attract the lucrative and prestigious federal courthouse project for its downtown, the city government of Santa Ana donated a 3.94-acre parking lot in the central business area to the GSA for the site of the courthouse. The donation of the courthouse site to the federal government was indicative of the fact that the City of Santa Ana was facing political pressure to get the federal courthouse built in the central business district of the city without delay.

In the late 1980's, Santa Ana had been hard hit by the depressed economy and deep recession that had been felt all over Southern California. Prior to the recession,

⁶⁴ Zimmer Gunsul Frasca, *Promotional Sheet*. March 2000.

Orange County had experienced rapid growth in the form of sprawl, and downtown Santa Ana had been abandoned for suburban job locations. In 1988, the conservative citizens of Orange County rejected county growth management controls. Urban Historian Carl Abbott explains:

“A housing construction boom in San Diego in 1985 and 1986, for example, put intolerable pressures on sewers, freeways, and other public facilities. It forced a multilateral debate, which was still in progress in the early 1990’s, in which citizen groups offer stringent growth-control proposals, the development industry counters with token proposals, and the city council waffles somewhere in between. The debate in Orange County effectively pitted the Industrial League of Orange County against local community activists. Since 1970 the Industrial League has represented such Orange County giants as Rockwell International, Northrop, and the Fluor Corporation. Its local agenda has been to preserve the ability of its members to expand when and where they wanted.”⁶⁵

The local government of Santa Ana was pro-business and wanted to attract any kind of development to the downtown that would shore up its economy. Since the large corporations operating within Orange County preferred suburban locations, a new federal facility in the central business area of Santa Ana was a welcome addition to the city. In fact, other cities within Orange County were competing for the opportunity to host the federal government within their borders. The City of Irvine offered to donate land to the federal government if they would build the courthouse there, and in Laguna Niguel federally owned land was also considered for the project site.⁶⁶

Although the available site in Santa Ana was separated from the Civic Center by a wide street, the city and the GSA felt that the new courthouse could help to form the basis for a better urban design scheme for downtown Santa Ana. The city planning representative for Santa Ana wanted the new building to have a strong relationship to the government civic center even though the urban design consequences of that

⁶⁵ Abbott, Carl. *The Metropolitan Frontier*, p. 147.

⁶⁶ *Draft Final Environmental Impact Statement for Ronald Reagan United States Courthouse*, April 1994.

relationship would be detrimental to the downtown commercial district. The lead architect, Zimmer Gunsul Frasca Partnership (ZGF), did not agree with the local planner and together with the GSA created a scheme for the site that differed from the one the city planner would have preferred.⁶⁷ The ZGF scheme responded to the commercial district rather than the Civic Center.

The site for the Ronald Reagan United States Courthouse was on the edge of the Downtown Santa Ana Historic District, which was placed on the National Register of Historic Places in 1984. The nomination form for the Downtown Santa Ana Historic District lists 99 contributing buildings and 18 non-contributing buildings that were constructed from the 1870's to the 1930's exemplifying a variety of commercial architectural styles, particularly the Spanish Colonial Revival style. Although most of the project site was not within the boundaries of the Santa Ana Historic District, a point of controversy in the EIS process was the City of Santa Ana's intent to demolish the Phillips Hutton Block for future expansion of the courthouse facility. The Phillips Hutton Block is a contributing structure to the district and is on the southeast corner of the site. Heritage Orange County, Inc. objected to the omission from the EIS of the city's intent to demolish the Phillips Hutton Block. They were concerned that the omission was deliberate so that nothing would impede the FEIS review process for the courthouse and subsequently delay the start of construction. A separate EIS drafted for the city of Santa Ana about the demolition of the Phillips Hutton Block had already determined that the demolition of the Phillips Hutton Block would result in significant impacts to the integrity of the Downtown Santa Ana Historic District.

Heritage Orange County was also concerned that the parking lost to the construction of the courthouse would adversely impact the Historic District placing more of demand for parking on the nearby streets. They were also concerned that a twelve-story courthouse building would erode the historic quality of the district and

⁶⁷ I was unable to interview the Downtown Development Manager of the city of Santa Ana, Roger Kooi, because he is deceased.

that the possible presence of archaeological artifacts on the site was not being monitored adequately.

The EIS hearings were sparsely attended and no public testimony came forth during the review period other than the concerns of Heritage Orange County. The action resulting from their testimony was that Heritage Orange County was invited to concur in a Memorandum of Agreement between the GSA and the California State Historic Preservation Office (SHPO). The Memorandum of Agreement allowed SHPO and Heritage Orange County to monitor all excavation for archaeological artifacts. Also, the GSA agreed to design a project that "...is, to the extent feasible, compatible with the historic and architectural qualities of the Downtown Santa Ana Historic District in terms of scale, massing, color, and materials.... Although the design for the new construction will be responsive to the Downtown Santa Ana Historic District, it will clearly reflect contemporary architectural style."⁶⁸ Thus, regulation other than design review regulation did allow some design review to take place.

There was no design review conducted by the City of Santa Ana. Although the Downtown Development Manager, Roger Kooi, represented the City of Santa Ana in meetings of the Courthouse Design Team at the beginning of the design phase, there was no design review required or requested. Once the EIS process was complete, the architect "went on without the city. It was not an issue for the city...There were significant plan review costs for this process (for the GSA) and the city did not have the staff or expertise to handle the project. It was all non-binding if it did happen."⁶⁹ The design was developed by ZGF working with the GSA and the federal judges.

The project manager at ZGF told me that Ed Feiner from the GSA was the person who had had the most influence on the form of the building other than the architects themselves. According to the project manager, Ed Feiner flew in from Washington DC for a courthouse design team charrette and made a positive

⁶⁸ *Draft Final Environmental Impact Statement for Ronald Reagan United States Courthouse*. June 1994. Appendix.

⁶⁹ E-mail correspondence with Allyn Stellmacher, Associate Partner at Zimmer, Gunsul, Frasca Partnership. February 2000.

contribution to the site plan and the ultimate form of the building. Feiner recommended that the building get set further back from the edge of Fourth Street than the architect's scheme had shown. The architects followed Feiner's advice and the building be set back from the edge of the street allowing for a pedestrian mall with trees and benches in front of the building.

In the schematic design analysis report by ZGF, the architect had studied the building typology of American Courthouses, which traditionally had been set on a square or other public open space in order to set them off from other buildings as icons of the American Judicial system. Their design tried to address this building typology; yet, the building at twelve stories is the tallest building in Orange County so the demands of the program required a modern interpretation of traditional forms.

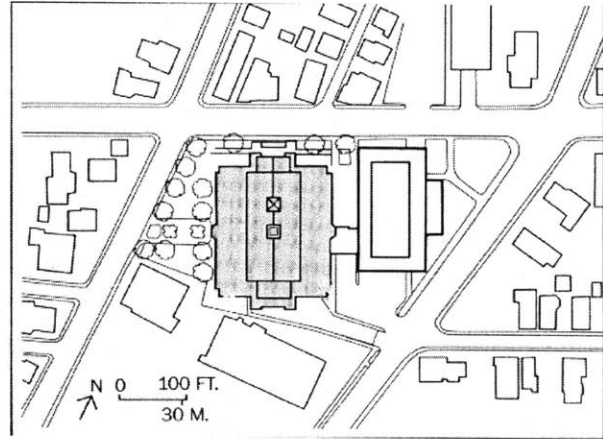
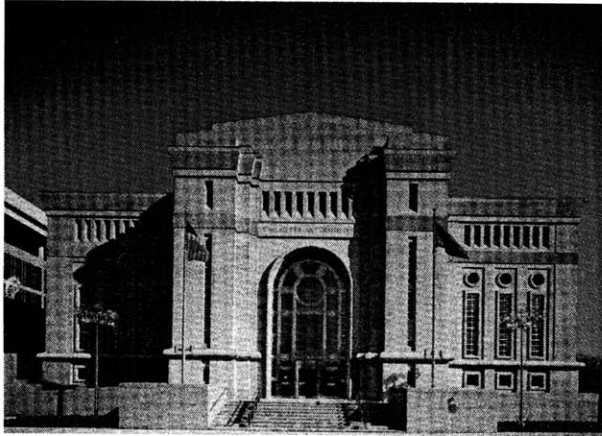
Ed Feiner was pleased with the Santa Ana courthouse and its response to its site in the central business district. He wrote, "Reagan Santa Ana.... A building that deals with 2 scales very beautifully.... pedestrian and skyscape. Set in a 1950's Civic Center (with some Neutra) the building has established its own version of a Courthouse Square and is inviting and friendly to the community while still maintaining its dignity of purpose. It also establishes its presence in the skyscape which is critical in the fast, automobile based culture of Southern California."⁷⁰

The Ronald Reagan United States Courthouse is an example of a building that was designed with little input or interest from the local community. The economy of southern California had crashed, and the City of Santa Ana was desperate to encourage economic development within the downtown. The city donated a large site and did not want to stand in the way of expediting the construction of the new courthouse by imposing regulations and other obstacles to development. However, through the FEIS process, the "public", in the guise of Heritage Orange County, was able to reach an agreement with the GSA to make the design of the new building responsive to the adjacent historic district. The FEIS process, therefore, had a subtle influence on the

⁷⁰ E-mail Correspondence from Ed Feiner. May 10, 2000.

design of the new courthouse and was effectively an advisory schematic design review without a detailed design review process.

VII. The Warren Rudman United States Courthouse: Concord, New Hampshire



Justice is a serious business...A courthouse has a different purpose than an office building, school, or house. We wanted people to recognize instantly that they were entering a court of law.”⁷¹

Jean Paul Carlhian, FAIA, Partner, Shepley Bulfinch Richardson and Abbott Architects.

The information available on the design development process for the Warren Rudman United States Courthouse is sparse, but the case still represents a particular form of interaction between the Courthouse Design Team and the local government. I interviewed the Project Architect, Kevin Triplett, of Shepley Bulfinch Richardson and Abbott, Architects (SBRA) an established Boston-based architectural firm. I also spoke with Steve Henninger, a planner for the City of Concord. These interviews are the primary source of information in this section. I was unable to view the FEIS because there was not enough time to receive a copy from the Northeast Regional GSA office based in New York State once I realized the critical importance of the EIS process to the development of federal buildings.

According to Steve Henninger, there was no review of the project by the city of Concord. His view was that the GSA could do whatever they wanted, and they did not want to listen to the concerns of local government. The city government was concerned

⁷¹ Phillips, Todd S., “Courthouses: Designing Justice for All”, *Architectural Record*, March 1999.

about the elimination of on street parking spaces and the construction of a non-residential building on the edge of a residential neighborhood. The State Historic Preservation Office thought that the Courthouse would have an adverse impact on the adjacent National Register Historic District, although they did acknowledge that the neighborhood is in transition and that fact might give their concern little weight.

Kevin Triplett at SBRA said that they did present the design to the planning agency of the city of Concord and that the city was given a chance to voice their opinion on the project. Triplett said that despite the fact that the GSA “wants to throw their weight around, they want to be good neighbors”⁷², and they do solicit input about their projects. The desire to be a good neighbor comes from the paradigm shift in all levels of government to give the customer what he wants, with the customer being “the public”. There is pressure on the architects from the GSA to expedite the building design in order to save money, yet the Courthouse Design Team must consider the opinion of the local government and the public. It seems to me that there is a delicate balance between engaging the local government in a meaningful advisory review and going about the design expeditiously without incorporating any of the local government’s suggestions.

On this project, Triplett felt that the judges were “probably the best client ever”.⁷³ They guided and tempered discussions of the Courthouse Design Team in a manner that resulted in a thoughtful and better design. He was impressed by how the judges were trained to absorb large quantities of information and make intelligent decisions based on the integration of many variables, and that they were able to use those skills to learn about architectural design and construction issues. Triplett thought that they had useful recommendations that were directly applicable as design ideas.

According to Triplett, the Concord courthouse did have a peer review by a New York firm as part of the Design Excellence Program. In Triplett’s view, the peer review system can be effective when the reviewers make good suggestions; however, the reviewers feel they have to say something, and their comments are not necessarily fair

⁷² Telephone interview with Kevin Triplett, April 11, 2000.

⁷³ Ibid.

or constructive. Triplett did not find the peer review in this case worthwhile, and the peer reviewers suggestions were ignored in the formulation of the design. I would imagine that the peer review system has an uneven outcome since it is dependent upon the personalities of the building designers and the peer reviewers, and on the resolution of professional power struggles between the two parties. I wonder how much the design architects resent a peer review system if, to begin with, they are not open to a design review process. I think many architects have a problem with peer design review that does not take place within the confines of a formal process. General peer design review seems like an arbitrary process that could get politicized before it would provide a useful dialogue about design. Also, peer review would be difficult for the GSA to monitor for effectiveness unless the GSA were to participate in the peer review and establish criteria for review.

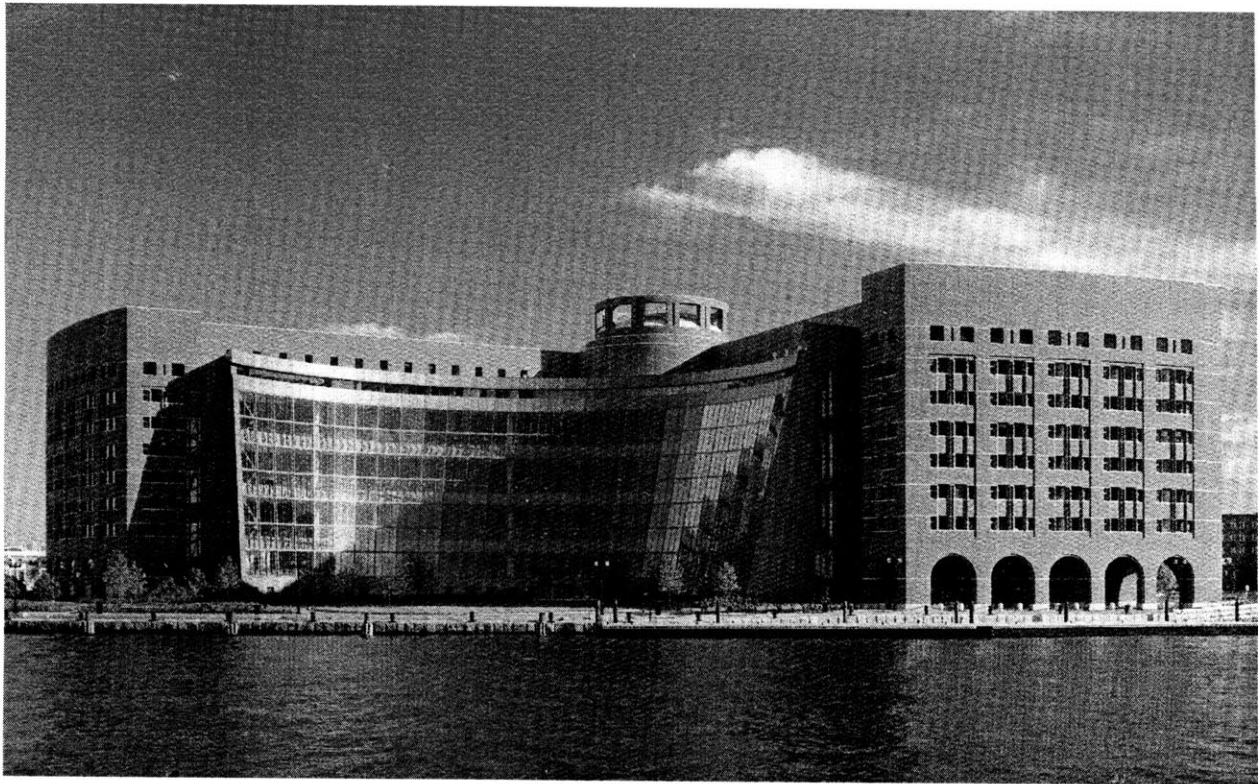
According to Ed Feiner, there was no peer review of the Concord courthouse.⁷⁴ I am unable to rectify this discrepancy in the memories of Feiner and Triplett, but I would like to present Feiner's comments. As noted previously, Feiner wrote in an e-mail to me that the only peer reviewer on these four projects was Feiner himself. Feiner wrote that the "the major influence on.... [the Warren Rudman United States Courthouse was the]... site that was not on a major street, and even worse, [it was] behind a very ugly 1970's box. The building had to establish its own identity and dignity without any help from the existing building. It is somewhat of a surprise of a major building that you just "find" within the town fabric without any vistas, sight lines, or external assistance."⁷⁵

Since, according to his version of events, Ed Feiner was the only peer reviewer, the Concord courthouse was designed by the Courthouse Design Team consisting of the architect, the judges, and the Chief Architect, Feiner, without any formal design review process. This would imply an insular design process for the courthouse that did not accommodate or ask for the opinion of the local community.

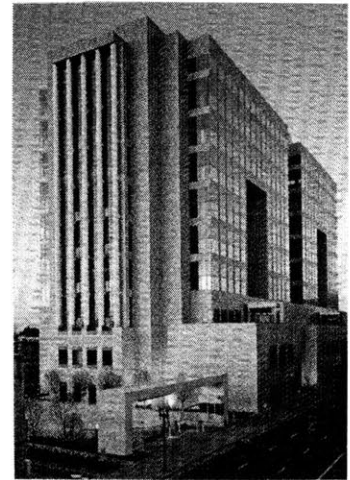
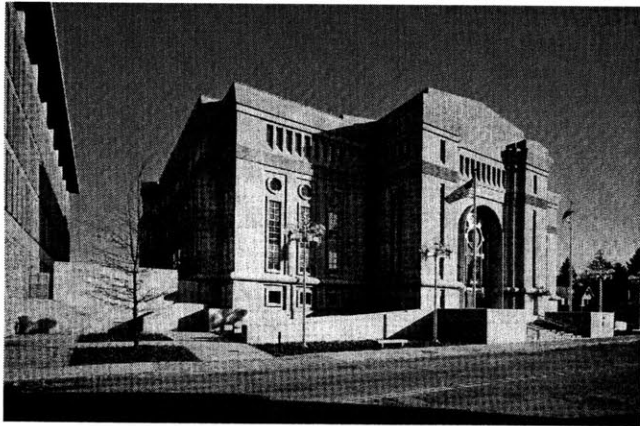
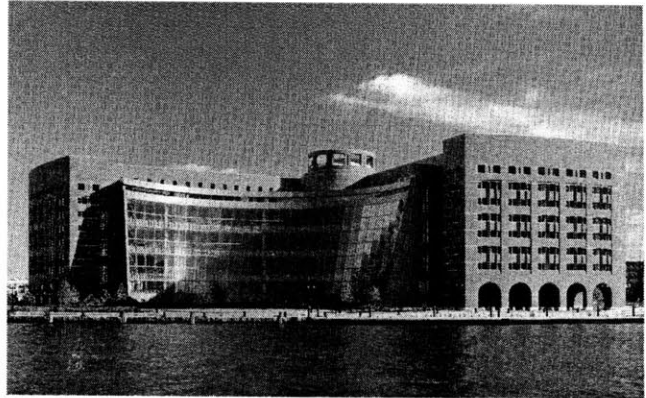
⁷⁴ E-mail Correspondence from Ed Feiner, May 10, 2000.

⁷⁵ Ibid.

The resulting courthouse design has a clearly Beaux-Arts style and is legible as a courthouse. The legibility of the building as a courthouse distinguishes it from the rest of the cases I studied; it resulted from the design convictions of Jean-Paul Carlhian, Partner at SBRA. Also, the smaller program requirements allowed the building to be designed in a more traditional courthouse form that does not dominate the adjacent residential neighborhood.



VIII. Conclusion



"Our goal is to build 20th-century courthouses that subsequent generations will want to preserve."⁷⁶

Ed Feiner, Chief Architect, GSA

The GSA's Courthouse Construction Program is an example of how the federal government can impact design in cities across the United States with or without the guidance of the local government. The GSA is making a conscious effort to build new federal facilities and renovate existing federal facilities within cities rather than building anew in the suburbs and contributing to sprawl. Cities are using these new federal facilities as economic development tools to stimulate economic growth and generate

interest in downtown areas especially in the wake of the recession of the early 1990's. Given this renewed emphasis on urban development by the GSA, the issue of who makes the decisions regarding the design of federal buildings becomes relevant to the study of the development process in American cities.

Throughout this thesis, my inquiry into the nature of the interaction between the federal and local governments with respect to design review has been based on the premise that it is better to have a local design review of a federal project than to not have a public review of the design at all. I believe that the public design review process, besides being integral to the democratic system, is more likely to produce a building that is responsive to its location within the city. As a society we are better off for having had a public discussion about projects that affect our civic space even if (or, especially if) they are federal projects. The design of federal projects is critical to the development of our cities because public buildings should set standards for good design, and, usually, the large scale and the siting of the public building within the city make the new development project a predominant feature of the cityscape. The identity of the government institution and its representation in built form is an essential piece of the legibility of the urban fabric. Since cities are using the federal buildings of all types as economic development tools, it is critical that the building designs be exemplary since they will set the standard and determine patterns for subsequent development.

Design review is way of reaching consensus about the aesthetics of the community. The nature of the democratic process is such that issues of local concern dominate the public discussion in a local forum and make it necessary for people to establish and communicate their point of view. By bringing design issues to the local community for review, the special qualities that make the locality unique and desirable are more likely to be maintained and/or reinforced. I would expect that a building is more likely to be responsive to its context if the project is subject to public scrutiny in the community where the building will be built.

⁷⁶ Landeker, Heidi, "Courthouses", *Architecture*, January 1996, p. 66.

Since design qualities are difficult, if not impossible, to measure, I cannot speculate on whether participation in design review has helped to create a better building in those cities that have had design review as compared to those buildings that were built in cities without a local design review. However, it would seem that by engaging in a public review, the architect would be challenged to design a better building by having the project scrutinized in a public forum. In the Boston case, Cobb appreciated the BCDC's comments, and all the parties involved in the review felt that the design outcome was better because of the design review. The Portland courthouse and the Boston courthouse were both modified in response to comments from the design review bodies that studied each project, so in those two cases the design review process, although advisory was still effective.

The federal government is only bound to **consider** local ordinances and has the authority to decide what regulations they will honor. In its powerful role, the GSA has a choice as to how much it will interact with local government and what the nature of that interaction will be. This makes the development process of the federal government much different than that of a private developer since private development projects require a building permit from the local government and are therefore, at the very least, reviewed on the basis of the municipal zoning and building codes. When a private developer proposes a project, the local government has the authority to enforce the codes and thereby influence the final design of the project; however, the GSA can work autonomously and without input from the local government if they so choose.

I expected that the nature of the relationship between the federal government and the local government would be primarily political once the jurisdictional responsibilities had been sorted out. It was not clear to me when I began this project what the legal hierarchy of authority was between the local and federal governments, although I was fairly certain that the federal government could operate independently from local laws. Once I established that the federal government had the ability to self-select applicable local regulation, I wondered what situations would motivate the GSA to engage in a design review by a local design review body.

Based on what I have observed in my four cases, I can predict that the GSA would be likely to engage in a local design review under two circumstances. The first circumstance would be when the environmental review process mandated by NEPA uncovered a conflict with federal regulation that would be mitigated or is required to be mitigated through design review. The second circumstance is when the jurisdiction is committed to urban design and has a regulatory framework that supports its commitment through design review. When a jurisdiction has a prestigious design review body, the political pressure to participate in a local design review can overwhelm the inclination of the GSA and the architect to avoid the lengthy design review process. Although the design review in all cases would be advisory to the Courthouse Design Team, at least a public discussion would take place addressing issues of concern to the local community.

There are other situations that could provoke a local design review when the local government has a design review process to which it is committed. One such situation occurs if the site where the courthouse is located is controversial because of the proposed land-use, impending demolition or its location within the city, then the GSA's proposed building is likely to generate interest and push the project into the political arena.

Based on the cases I have studied, if there is no commitment to design review on the part of the local jurisdiction and/or the architect and/or the regional GSA representative, it is quite likely that there will not be a design review by the local government. If the local jurisdiction is not a city known for its design review, its design review commission, or its urban design qualities, then it is unlikely that an architect, especially a big name architect, would feel the necessity to engage in a review of the project with the local government. Also, it is unlikely that the GSA would encourage the architect to do so. When the GSA staff responsible for the project is not educated or interested in design, the decision to participate in local design review would fall on the architect. The architects I spoke with were not inclined to participate in design review unless required to do so by the GSA. Neither the architect nor the GSA has any

incentive to voluntarily participate in design review because it can be a lengthy process and therefore can add significant expense to the design budget. An architect who already has budget constraints has no motive to participate in a voluntary design review process especially since federal projects are carefully scrutinized for excessive costs.

Despite the apparent lack of constraint on the GSA, there are processes in place to monitor the development activities of the federal government and prevent them from running amok. The primary regulation that limits the authority of the federal government is NEPA. Since the definition of environmental impact “has expanded to include the project’s impact on the social and economic well-being of a community, housing, economic development, and such design issues as scale, style, and context,”⁷⁷ the EIS becomes a venue for the discussion of design issues. The EIS process is a community review process, and, although its primary goal is not to review design, design is one aspect of a project that can be reviewed at length and in a public forum.

Moreover, the EPA also reviews the EIS for the quality of the government’s proposal as well as the quality of the environmental analysis and the science in the document. If the EIS is deemed “inadequate” by the EPA, the project is subject to further review by EPA staff and the public. This system of having the EPA check the EIS is a safeguard against the government constructing potentially problematic projects without adequate environmental study and public scrutiny. This EPA review may affect the quality of design and the ultimate configuration of the building and site.

Having determined that design review has a positive role in the design of buildings, it seems tragic to depend upon NEPA to be the sole monitoring process of the design of federal projects. The NEPA process is obscure to most citizens and is better set up to monitor other environmental issues like traffic and stormwater than urban design issues. When the EIS does have an effect on building design, it does so indirectly, and, therefore, the EIS should not be relied upon as the primary means to review design issues. I would think that it would benefit the design development of

⁷⁷ Bender, Richard, and Bressi, Todd. *Design Review A Review of Processes, Procedures, and Potential*. p. 6.

federal projects to have a locally based (as opposed to federally based) review process in place that would ensure local community participation in the design review. I would recommend a mandatory local review when the community already has design review and a mandatory peer committee review (as opposed to a peer architectural firm review) when the community does not. By mandating design review, although advisory, the project would still benefit from public scrutiny of one kind or another.

It turned out that the GSA has two other indirect forms of design review within its project management system. The first review is the architect selection process, which is biased toward large architectural firms and, some would say, biased toward a few “big name” architects. By making the architect selection process somewhat onerous, the pool of available designers is limited and, thus, small local architects are unlikely to team up to design a federal building. While the Design Excellence Program has streamlined the hiring process allowing for a wider range of qualifications to be considered during the hiring process, the architectural firms that have been hired for the federal projects are the most frequently published firms. While it is not a deliberate system of design review, it in fact functions as a review of designers, which one could argue is a subtle form of design review.

Once the architect is selected, the GSA has also set up a peer review system under the auspices of its Design Excellence Program. The peer review system is intended to challenge the architect of record to produce the best design possible for the site throughout the design development phase of the project. Not every GSA project has a peer review for design though it is the GSA’s intention to have peer review on all projects that cost more than \$10 million. According to Ed Feiner, the cases I selected predated the peer review program and did not have peer review except by Ed Feiner himself.

The architects I interviewed had participated in peer review on other federal projects, and they were not enamored of the peer review process as they felt that it set up a confrontational dynamic in which the peer reviewer felt he or she had to be critical and authoritative rather than a contributing member of the design team. I got the

impression that many architects are uncomfortable with the peer review system and that for them it was not an effective type of design review system. Therefore, as I stated above, I would suggest that the peer review system be modified to be a committee of peers rather than having one firm perform a peer review. Additionally, this peer review system would only occur when there is no local design review process that can be utilized for a critique of the design of the building and site.

Based on these four cases, it is apparent that sometimes the catalyst for local review is the selection of the site itself. For example, in Boston there was considerable public debate about where in the city the new federal courthouse would be located. Some people thought that a site in the government center of the city made the most sense for the federal courthouse, and others thought that a location near North Station where other government redevelopment activities were planned was the best location. The Sierra Club thought that the Fan Pier site should be preserved for a large public waterfront park and any large-scale development should be prohibited on the site.

This study demonstrated that if there is significant political/public interest in a federal development project then the federal government will be more inclined to put the project out in the public realm for public scrutiny and/or design review. I observed that the opposite is true as well. If the site is not controversial, or perhaps even donated to the federal government by the city, as in the case of Santa Ana, then the local government will prefer to expedite the review process and will not pressure the federal government into letting them review the project. The Fan Pier site in Boston was controversial before it was selected for the courthouse, and therefore it became a lightning rod for public scrutiny when the GSA selected the site for the courthouse. The Portland site became controversial, not because of the location but because of the politics behind the demolition of SRO housing and the inability of the local and federal governments to replace it with housing of similar affordability. In the Portland case, therefore, it was prudent of the GSA to schedule a public hearing with the Portland Design Commission to allow a venue for public comment and to deflect probable criticism of the GSA that might affect future government projects in Portland.

The other issue affecting local review of federal projects that was evident in the case studies is the health of the local economy. When the economy is weak, the local government wants the project for its community regardless of its potential impact because it is seen as an economic stimulus to the local economy. The local government is under political pressure to expedite or waive any local review process that might exist to ensure that the project gets completed. The Santa Ana and Concord cases demonstrated the lack of involvement by the local government in practically any part of the development of the design. By limiting the public discussion to the EIS process on these two projects, the design outcome was less likely to be influenced by the residents of the city where the building was being built. While these two cases were in the design development stage, the local governments stepped aside and allowed the federal government to proceed without interference.

When the local economy is doing well, the local government has some leverage to engage the federal government in design review. In this case, the local government would not be dependent upon the project to stimulate economic growth in their community and it might be willing to publicly state opposition to the project or become openly critical of the design of the project and its impact on the city.

How does the health of the local economy affect the behavior of the GSA when it approaches a new project? The local economy has no impact on the GSA's decision to engage in design review, because the GSA prefers to expedite all projects to minimize project costs. The pressure to reduce project costs on federal projects can compete with the pressure to provide a high quality design that is sensitive to issues of local concern.

While studying the four cases for this thesis, it became apparent that the GSA is affecting the design of cities throughout the United States with the Courthouse Construction Program and other federal building initiatives. The nature of the interaction between the local and federal governments is primarily based on the level of commitment that the local community has to design review. When the local community has design guidelines or a review process in place, then the federal government might utilize design review in an advisory capacity. When the local

government is not equipped with design review, then the GSA and the Courthouse Design Team do not look to the community for guidance. If some design review is better than no design review, it would benefit all federal projects and all local communities to institute a system of design review that can be enacted when local review is non-existent.

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