

STATEMENT OF  
HONORABLE JOSEPH BATAILLON, CHAIR  
COMMITTEE ON SPACE AND FACILITIES OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
BEFORE THE SUBCOMMITTEE ON  
FINANCIAL SERVICES AND GENERAL GOVERNMENT  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE

June 16, 2009

**INTRODUCTION**

Good afternoon, Mr. Chairman, Senator Collins, and members of the Subcommittee. I am Joseph F. Bataillon, Chief Judge of the United States District Court in Nebraska and Chair of the Judicial Conference Committee on Space and Facilities. I appreciate the opportunity to appear before this subcommittee today to discuss the Judiciary's courthouse construction needs, the process for identifying and prioritizing these needs for federal construction projects, as well as lease-construction projects which are an alternative approach for acquiring smaller courthouse facilities.

Before addressing those issues, however, I want to convey the judiciary's gratitude to this subcommittee for supporting and furthering the administration of justice through appropriating monies from GSA's Federal Buildings Fund for the construction of new courthouses and for the renovation of existing courthouses. We understand that there are many federal needs competing for scarce capital resources in government, and we deeply appreciate the subcommittee's willingness to champion the needs of the judiciary in terms of the real estate infrastructure necessary to conduct the work of the courts and administer justice. We are particularly grateful for the subcommittee's appropriation of additional funds for the San Diego Courthouse in the 2009 appropriations bill, and for its support of courthouse construction with American Recovery and Reinvestment Act (ARRA) funds.

**FIVE-YEAR COURTHOUSE PROJECT PLAN PROCESS**

I would like to begin by describing the process and criteria used to develop the Judiciary's Five-Year Courthouse Project Plan. On April 1, 2009, James Duff, Director of the Administrative Office of the U.S. Courts, on behalf of the Judicial Conference, transmitted to this subcommittee, other cognizant congressional committees, the White House, the Office of Management and Budget, and the General Services Administration, the Five-Year Plan for Courthouse Projects as approved by the Judicial Conference of the United States on March 17, 2009. An advance copy of the Plan was provided to GSA earlier in the year for its use in developing the 2010 Federal Buildings Fund Budget request. The Five-Year Plan is a key output of the Judiciary's Long-Range Facilities Planning process. The Plan consists of an ordinal-ranked list of new courthouse construction projects for which the Judiciary is requesting authorization, funding and execution from the Executive and Legislative Branches. With one minor exception, all of the federal-construct courthouse projects on the Judiciary's current Five-

Year Courthouse Project Plan are projects that were not affected by the moratorium on new construction described below, because they all had received either authorization or funding from the Congress. These projects were evaluated by the Judicial Conference and its Space and Facilities Committee, and placed on the Plan on the basis of the following four weighted criteria: 1) year out of space (weighted 30%); 2) security concerns (30%); 3) operational concerns (25%); and 4) judges without courtrooms (15%).

In terms of the courthouse projects that populate the Five-Year Plan, it is important to note that a project is removed from the Plan once it receives the requested construction funding. Should a previously funded construction project require additional funds due to a budget shortfall (e.g., cost overrun), it is not placed back on the list. Thus, the Plan no longer lists the Los Angeles courthouse project, even though this remains the Judiciary's top priority among new courthouse projects. In 2005, Congress appropriated the full construction amount requested by GSA for the Los Angeles courthouse; but when the time came to put the project out for bid, GSA determined that it could not be delivered for the appropriated amount. Several years later, even with a substantial reduction in scope, GSA awaits sufficient funding for this much needed court project.

As part of its cost-containment effort which I will discuss later in my statement, the Judicial Conference has recently adopted changes to its long-range facilities planning process. I will briefly describe these changes, because they include revisions to the way new projects not previously authorized or funded will be scored for placement on future Five-Year Plans. Again, none of the projects on the current Plan were placed there under the new, revised scoring methodology. Under the new methodology, however, courthouse locations will be ranked in order of urgency of need, based on four criteria: 1) judges without chambers (30%); 2) judges without courtrooms (20%); 3) facility assessment (40%); and 4) caseload growth (10%). Building security issues are included in the facility assessment criteria. We are in the process of completing plans for approximately 30 districts, representing nearly a third of our courthouse inventory. The Long-Range Facilities Plan includes short- and long-term statistical projections of caseload and personnel in order to estimate future facilities needs, a comprehensive assessment of each courthouse building to see how it meets the needs of the court, and a set of strategies, some involving real estate and some operational solutions, to address current and projected space deficiencies. Security remains an important factor in the determination of urgency of need, but it is now part of the facility assessment criterion, rather than a stand-alone criterion.

## **COST CONTAINMENT**

In 2004, the federal Judiciary looked into the future and saw that its "must pay" requirements, such as GSA rent, would increase at a pace that would exceed projected appropriations within a few years. Budget projections indicated that rental costs for existing and new facilities would increase six to eight percent annually, outpacing budget growth. The Judicial Conference recognized that controlling rent costs was absolutely critical to avoiding personnel reductions. As part of that effort, a national moratorium on courthouse construction was imposed from 2004 to 2006. The moratorium lasted 24 months and gave the Judiciary time to re-evaluate its space planning policies and practices and to enhance budgetary controls.

The long-range facilities planning methodology for the Judiciary was re-evaluated resulting in a greater emphasis on the ability of a facility to accommodate additional space requirements rather than the physical attributes of a facility in determining whether or not to recommend a new courthouse construction project. If a building has sufficient space, functional issues such as security concerns would then be addressed through repair and alterations and technology strategies. An emphasis on cost, which was the key driver in the development of the new rating methodology, has resulted in a realignment of the criteria for ranking projects, giving greater weight to when a building is out of space and less weight to security and operational concerns.

While the Judicial Conference undertook many other initiatives to reduce rent costs, which I will not enumerate at this time, the moratorium and changes to space planning policies and practices affect the Five-Year Plan process most directly.

### **LEASE-CONSTRUCTION PROJECTS**

While GSA has utilized two execution strategies for the acquisition of new courthouses—federal construction and lease-construction—the Judiciary has never placed lease-construct projects on the Five-Year Plan. Federally constructed courthouse projects have to be ranked and prioritized because federal construction dollars are scarce, and in any given year, only so much money is available to be appropriated for these projects. Lease-construct projects, on the other hand, do not compete with each other for funding from a limited pool of government construction capital, because they are privately financed. Hence, there has been no need for the Judiciary to rank or prioritize lease-construct projects. Moreover, federal construction has been and remains, the principal means by which the GSA provides new space for the courts; lease-construction has only ever played a minor role, for small (one or two courtroom) courthouse projects in low population density areas where a large court presence is not needed. Use of the lease-construct method has been very modest.

I do want to note, however, that lease-construction is clearly a secondary means of new courthouse execution, running far behind federal construction in terms of overall capital value. Nonetheless, the Judiciary is mindful that these projects add to the overall rent burden of the courts. Accordingly, it is Judicial Conference policy that each lease-construct project be subject to approval by both the Space and Facilities Committee and the Judicial Conference, and if the project is approved, it is with a specific dollar rent cap.

We now understand that the Office of Management and Budget has raised objections to lease-construct courthouses, even for modest project scopes. If the lease-construct execution strategy will no longer be accorded to GSA as an alternative to the federal construct method for the delivery of new courthouses, then the Judiciary will need to revisit its courthouse prioritization method. However, the Judiciary urges the subcommittee to support retaining lease-construction as a legitimate, valuable and appropriate alternative strategy to federal construction, especially in locales where the court space need is modest, acute and of possible indeterminate duration. GSA has the authority to use this procurement method, which is a widely accepted practice in the private sector. Furthermore, lease construct courthouse projects are delivered in a

fraction of the time that it takes the government to construct a federal courthouse. This expedited delivery feature is a key benefit of the lease-construct alternative. From Judiciary project approval to completed construction, the lease-construct alternative takes approximately three years; the federal construction alternative takes over 10 years, which includes time waiting to place the project on the Plan, and then time expended waiting for funding once it is on the Plan.

### **GSA FEDERAL BUILDINGS FUND 2010 BUDGET REQUEST**

The President's Fiscal Year 2010 Budget Request for the Federal Buildings Fund does not include any projects from the Judicial Conference-approved Five-Year Courthouse Project Plan. Instead, funding is included for federal construction of projects in Yuma, AZ, and Lancaster, PA, which GSA and the Judiciary had previously determined should proceed as lease-construction projects. In the case of Yuma, AZ, a critically needed facility in a very busy southwest border location, GSA had already begun the procurement process of preparing solicitations for offers.

The Judiciary was not consulted prior to this change in execution strategy. We are disappointed that these projects, which we believe were appropriate for the lease-construct path, have now been re-directed to the federal construct path, apparently at the expense of projects on our Five-Year Plan, since no Plan projects were included in the President's FY2010 budget request. With regard to the projects on the Five-Year Plan for 2010, if they are not funded in 2010, these projects and all projects in subsequent years would be delayed at least a year.

### **CONCLUSION**

Again, the Judiciary is grateful for the past and continuing support shown by this Committee for the facilities needs of the federal courts. It is clear that while many projects have been successfully executed, much additional work remains to be done. I will be glad to take any questions you have at this time.