

STATEMENT OF
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OF NEW YORK
CHAIR, COMMITTEE ON SPACE AND FACILITIES
on behalf of
THE JUDICIAL CONFERENCE OF THE UNITED STATES



BEFORE THE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC
BUILDINGS, AND EMERGENCY MANAGEMENT
UNITED STATES HOUSE OF REPRESENTATIVES

“FEDERAL COURTHOUSE DESIGN AND CONSTRUCTION:
EXAMINING THE COSTS TO THE TAXPAYER”

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Administrative Office of the U.S. Courts, Office of Legislative Affairs
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Chairman Perry, Ranking Member Stanton, and members of the Subcommittee:

Good morning, I am Glenn Suddaby, District Judge for the U.S. District Court for the Northern District of New York and chair of the Judicial Conference Committee on Space and Facilities. I am appearing today by designation of the Secretary of the Judicial Conference of the United States and on its behalf. I appreciate your invitation to appear today to discuss the federal Judiciary's courthouse construction program and *U.S. Courts Design Guide*.

As members of the Subcommittee know, federal courthouses play an instrumental role in allowing the Third Branch to carry out its constitutional mission. Every day in these buildings across the country judges preside over hearings and trials; litigants appear in courtrooms to present their cases to juries; and the public is able to observe the administration of justice. In so many communities across the country, these buildings are symbols of the federal government and our democracy, and, accordingly, these buildings serve as visible reminders of the government's commitment to upholding justice.

I say this not to overstate the role of the Judiciary in our government, but to underscore the importance the federal Judiciary places on its courthouse construction program. Simply put, courthouses are unique buildings, and they serve a vital and distinct purpose to the communities in which they are located.

The Judicial Conference last testified before this Subcommittee in 2016 after Congress had graciously appropriated \$1 billion in fiscal year (FY) 2016 for new courthouse construction. Since that time, many of our fundamental policies and practices have remained consistent. One example is our Asset Management Planning (AMP) process which was adopted in 2008. The AMP process is used to identify and prioritize, on an objective basis, the space and facilities

needs of the federal Judiciary. The AMP process is a “good government” measure that was developed to: (1) achieve cost-containment goals; and (2) provide an objective and consistently applied methodology for identification of space needs, prioritization of those needs, and development of solutions for all Judiciary buildings. By applying this methodology, we ensure that only the most urgent project recommendations are approved by the Judicial Conference.

To enhance long-range facilities planning, the AMP process integrates costs, space needs, and functionality. AMP analysis is more detailed and robust than was the previous long-range facilities planning process – a process that was criticized by the Government Accountability Office (GAO) and Congress. The AMP process assesses facilities in a holistic and objective manner. It identifies space alternatives and strategies, considers the costs and benefits of space housing strategies, and thereby determines the best strategy to meet the current and future needs of the court. Under the AMP process, each district and circuit adopts a long-range facilities plan which entails an evaluation of each courthouse location for urgency of space needs. The AMP process evaluates the building condition and its security needs. An Urgency Evaluation Results List is then developed each year, placing each courthouse location in rank order. This objective ranking reflects the urgency of the Judiciary’s space needs.

Using this information, courthouse projects are prioritized and transmitted to Congress in the *Federal Judiciary Courthouse Project Priorities* list (*CPP*). The *CPP* is the Judiciary’s planning instrument that details its funding priorities for new courthouse construction projects as approved by the Judicial Conference. The *CPP* is structured in two parts. Part I lists the Judiciary’s “current year” courthouse construction priorities—projects for which the Judiciary will request federal funding in its annual budget submission. The priority order of all projects on Part I is maintained until a project has been fully funded, at which point the funded project will

be removed from Part I. Part II of the *CPP* lists out-year courthouse construction priorities. Each year, the priority of projects on Part II is reviewed and updated based on the AMP calculated Urgency Evaluation rating for each location, the addition of new locations, and the elevation of locations from Part II to Part I of the *CPP*.

Since FY 2016, Congress has provided approximately \$2.12 billion for courthouse construction projects. This includes \$1 billion for 10-plus projects, the largest one-time appropriation ever made for courthouse construction. In total, this has resulted in full funding for 13 different courthouse construction or acquisition projects, and partial funding for three others. Of those 13 fully funded projects, nine have been delivered, and the remaining four should be completed in the next two years. Working together with the General Services Administration (GSA), the Judiciary has managed all of these projects successfully, delivering state of the art facilities that meet the needs of local courts and communities. The Judiciary works together with GSA and other federal stakeholders to track the status of every project; identify risks; develop a portfolio management plan; participate on the National Courthouse Change Management Board (which reviews and oversees potential changes that could impact scopes, schedules, and budgets for each project); and execute communication strategies that support transparent and timely sharing of information with project stakeholders. The Judiciary is appreciative of the funding to date and is hopeful Congress will continue to support this program and provide additional resources to the projects that have received partial funding as well as those projects identified on the Judiciary's *CPP* that have not yet received funding.

In addition to the progress the Judiciary has made in managing the funding provided for new courthouse construction projects, we have also made great strides over the past decade in managing our existing space portfolio. In 2013, the Judiciary set out on a five-year goal to

reduce its nationwide footprint by 3 percent. By 2018, the Judiciary surpassed its goal, reducing over 1.1 million rentable square feet which equated to an annual cost avoidance of \$36 million and cumulative cost avoidance of over \$100 million during the time of space reduction. Since the conclusion of that space reduction effort, the Judiciary has maintained a No Net New policy, whereby any space increase within a circuit must be met with a corresponding and equal space reduction. Courts today are still finding innovative ways to do more with less - closing underused non-resident courthouses and leveraging open office workspace strategies to gain greater efficiencies.

Additionally, the Judicial Conference endorsed the Capital Security Program (CSP) in 2010. The CSP provides funding to ameliorate security deficiencies in existing courthouse buildings where physical renovations are viable and the construction of a new courthouse is not needed or expected in the foreseeable future. The CSP's goals include utilizing existing building assets and government resources in a cost-effective manner; addressing security deficiencies that put the public and government staff at risk; and providing a lower cost alternative to higher cost capital investments or even a new courthouse. Typical improvements funded through the CSP include constructing secure and/or restricted corridors; adding or reconfiguring elevators to provide secure and/or restricted circulation; enclosing prisoner drop-off areas to create sallyports; creating visual barriers for judges' parking areas; and reconfiguring security screening areas. This cost-effective program has reduced the need for new courthouses in many locations across the country.

The Judicial Conference has also continued to implement three separate courtroom sharing policies, as requested by this Subcommittee. Currently, courtroom sharing is required in all new construction projects for senior, magistrate, and bankruptcy judges. The Judiciary also

requires sharing policies to be followed when a court needs to build out additional space in an existing facility as a result of a newly authorized judgeship or because a judge has taken senior status. Additionally, in response to direction given by both this Subcommittee and recommendations from GAO, the Judicial Conference eliminated the inclusion of projected new judgeship space needs from the project requirements for new construction. These policies balance the Judiciary's obligation to be good stewards of taxpayers' funds along with our duty under the Constitution to provide access to justice and ensure that cases are handled in a fair and expeditious manner.

An important tool in implementing our courthouse construction program is the *U.S. Courts Design Guide (Design Guide)*. Appropriate courthouse design must balance the need for secure and restricted spaces with public access. At the same time, it must address a local court's present space needs while incorporating opportunities for future growth. Courthouse designs must accomplish these goals in a thoughtful, effective, and cost-conscious manner to deliver buildings that can serve communities for generations. These values are prioritized in the Judicial Conference's management and oversight of its courthouse construction program and the development, update, and application of the *Design Guide*.

The *Design Guide* sets forth the Judiciary's unique and essential requirements for the design, construction, and renovation of federal court facilities. As noted above, the buildings are occupied daily by federal judges and judiciary personnel, litigants from both the public and private sector, federal law enforcement and security personnel, in-custody defendants and other individuals who are appearing before the local court, and members of the public. Because of the varied business of the court, there is a need for a variety of different spaces and supporting infrastructure in a federal courthouse. To this end, the *Design Guide* is intended to be used by

judges, court administrators, architects, engineers, the United States Marshals Service (USMS), and GSA personnel that are involved in federal court construction projects.

In March 2017, the Judicial Conference approved undertaking a comprehensive review and revision of the existing *Design Guide* last updated in 2007. Recent congressional funding at the time of nine new courthouse construction projects highlighted the need to examine the usefulness of the then-current *Design Guide* to all stakeholders to glean best practices from the large influx of new courthouse projects. It was determined that the 2007 *Design Guide* was outdated in terms of industry standards and practices and did not reference critical Judicial Conference policies including courtroom sharing or the elimination of build-out space for projected judgeships, another policy requested by this Subcommittee. The review and update would serve to increase the clarity and ease of use of the *Design Guide* as well as the Judicial Conference policies and industry standards and practices that were missing.

This effort was a comprehensive, multi-year process that sought a broad range of technical and practical expertise. The Administrative Office of the U.S. Courts (AO) established a working group of relevant stakeholders within the Judiciary, including court personnel and judges that had recently undertaken a significant new courthouse or alteration project. The Judiciary also sought feedback from our external service partners, GSA and USMS. This process was overseen entirely by the Committee on Space and Facilities, and the Committee's approved revisions were submitted into a draft 2021 *Design Guide*. At its March 2021 session, the Judicial Conference considered the recommendations of the Committee and approved the 2021 *Design Guide* for publication.

Upon approval of the new *Design Guide*, the Judiciary informed all stakeholders of the final product highlighting the significant changes made to the previous *Design Guide* including

incorporating all Judicial Conference courtroom sharing policies and increasing design flexibility. Additionally, the *Design Guide* was also posted on USCourts.gov along with several videos informing stakeholders on changes and how to use the document. Finally, the Judiciary began its work on a Best Practices Guide, a companion document that demonstrates the need for, and applicability of, the *Design Guide* by providing examples of past projects, lessons learned, and case studies on how the *Design Guide* may be implemented. This document was published in 2021. In addition to this work, after the Judicial Conference approved the updated *Design Guide*, the AO conferred with staff at the Office of Management and Budget to explain significant changes to the updated *Design Guide* and respond to staff inquiries.

At the time of its approval, the Judiciary intended for this *Design Guide* to be applied to all projects that had not yet received federal funding. Accordingly, the first new courthouse project where the new *Design Guide* would apply is the project in Bowling Green, Kentucky. The new courthouse projects in Hartford, Connecticut; Chattanooga, Tennessee; and Hato Rey, Puerto Rico have all been designed using the former 2007 *Design Guide*.

In its report on the development of, and standards put forth by, the 2021 *Design Guide*, the GAO makes three recommendations. The recommendations address: (1) the definition of a *Design Guide* exception; (2) the Judiciary's collaboration with other federal stakeholders; and (3) the new circulation factors incorporated into the updated *Design Guide*. The Judiciary appreciates the time and careful consideration that GAO has given to its review and is currently in the process of addressing the recommendations.

With regard to the first recommendation on the definition of a *Design Guide* exception, GAO reports that GSA officials have difficulty finding information in the 2021 *Design Guide* about which changes constitute exceptions. Previously, the Judiciary had published an

Exceptions Appendix, which listed specific exceptions to the standards and planning assumptions, that was agreed to by both the Judiciary and GSA. This document, however, was not updated after its publication and quickly became outdated when considering updated practices and new Judicial Conference policies. Moreover, the document actually created confusion about which requests would qualify as an exception and the level of approval that was necessary. Accordingly, in 2017, the Judicial Conference approved eliminating the *Exceptions Appendix* and reported that any item not identified in the program of requirements in the *Design Guide*, would be an exception and require a certain level of approval depending on the nature of the exception.

This approach to identifying exceptions, in the Judiciary's view, has proved workable, and until the GAO report, the Judiciary was unaware of GSA's critical commentary in this regard. Since the issuance of GAO's report, the Judiciary has evaluated options for clarifying the exceptions policy, including whether to add specific examples in the *Design Guide* or a new *Exceptions Appendix*.

It should be noted that detailed information about exceptions and the necessary approvals needed are included throughout the 2021 *Design Guide*. Further, neither the criteria of what constitutes an exception nor the process for review and approval of exceptions were changed from the 2007 to the 2021 *Design Guide*. Regardless, the Judiciary is in the process of developing a report which identifies all items from the previous *Exceptions Appendix*, where the same items are found in the 2021 *Design Guide*, and what level of approval is required for each exception. This report will be shared with GSA to ensure a mutual understanding of *Design Guide* exceptions. Defining exceptions is critical because not only must they be approved by the Judicial Conference, but exceptions must be included in all GSA prospectuses submitted to

Congress for authorization for the project. I can assure you that the Committee on Space and Facilities and the Judicial Conference takes their consideration of exceptions very seriously due to the implications of them for a project.

With respect to GAO's second recommendation regarding improved collaboration, throughout the Judiciary's review process, the Branch sought input from all relevant stakeholders, as referenced above, including GSA. Indeed, during the revision process, the Judiciary sought broad input from GSA at two separate times in 2018 and again in 2019. In response, GSA provided 560 comments—all of which the Judiciary reviewed and addressed, including comments about *Design Guide* exceptions and circulation factors. In 2020, GSA's Public Buildings Commissioner, Daniel Mathews, and his staff met with the Chair of the Space and Facilities Committee, Judge Jeffrey Helmick, and the Chair of the Space Standards Subcommittee, Judge David Keesler, and AO staff to discuss GSA's most significant comments related to the draft *Design Guide*.

While good faith efforts were made to solicit, consider, and incorporate comments from GSA, the Judiciary agrees more could have been done with follow-up communications including improved documentation on the resolution of all comments. This same improvement can be made with the Branch's collaboration with our security partners as well. The Judiciary believes it has already made progress on addressing this recommendation with regard to our conversations with GSA on *Design Guide* exceptions as detailed above. Certainly, we will endeavor to do so in the future.

Finally, with respect to GAO's third recommendation for the Judiciary to collaborate with GSA to reassess the need for increased circulation requirements, the Judiciary has been collaborating with GSA regarding a mutually acceptable methodology. As the Subcommittee

knows, a courthouse contains three distinct circulation paths: public, restricted (for judges and court employees), and secure (for in-custody persons and designated staff). For the safety of the public, judges, and staff, all three circulation paths must remain separate, and only intersect in a courtroom. The 2007 *Design Guide* used different departmental circulation factors to help designers and GSA estimate the necessary square footage for a given courthouse project. These circulation factors increased the net square footage of a room to take into account space for walls and the hallways and vestibules needed to get to those spaces. Because the 2007 *Design Guide* and GSA used different standards to plan for and measure space, the 2007 *Design Guide* did not accurately account for the total circulation area needed. As a result, the Judiciary reduced square footage in multiple projects from other court areas to align the design of the courthouse with the square footage included in the prospectus program. The increased circulation factors in the 2021 *Design Guide* attempt to fix this problem by better aligning with how GSA measures space during the design phase of construction projects.

While GSA may disagree with the circulation information cited by Judiciary experts, the Judiciary did consider feedback from all stakeholders as noted above. Although GAO states that construction costs will increase as a result of new circulation factors, the Judiciary ultimately determined that the incurred costs are a necessary and defensible expense so that federal courthouses are appropriately sized to ensure the safety of the public, judges and court staff.

That being said, the Judiciary has committed to re-evaluating the need for the circulation multipliers included in the 2021 *Design Guide*. This review will include the potential impacts on safety and function as well as future construction cost and size. The Judiciary will confer with GSA and other stakeholders during this review.

Ultimately, the Judiciary looks forward to continuing to work together with this Subcommittee and its executive branch service partners to design and construct courthouses that meet the Branch's unique needs and enable it to carry out its constitutional mission. In the spirit of good stewardship, we will be working hard to deliver these projects so that they meet all of the individual courts' needs, and in an effective, cost-efficient manner befitting the trust that Congress has placed in us by appropriating these needed funds.

Chairman Perry, Ranking Member Stanton, and members of the Subcommittee, thank you again for the opportunity to appear today to discuss our courthouse construction program and the *U.S. Courts Design Guide*. I would be happy to answer any questions the Subcommittee may have.