

JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

**JUDGE ROBERT JAMES CONRAD
CHIEF DISTRICT JUDGE
WESTERN DISTRICT OF NORTH CAROLINA**



BEFORE

THE SUBCOMMITTEE ON COURTS AND COMPETITION POLICY

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

ON

**“COURTROOM USE: ACCESS TO JUSTICE,
EFFECTIVE JUDICIAL ADMINISTRATION,
AND COURTROOM SECURITY”**

SEPTEMBER 29, 2010

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HONORABLE ROBERT J. CONRAD, JR.
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Introduction

Good afternoon, Mr. Chairman, and members of the Subcommittee. I am Bob Conrad, Chief District Judge of the United States District Court for the Western District of North Carolina. As Chief Judge, I have been responsible for the day-to-day management of my district court for the past four years. Both in this administrative capacity and in my work as an active district court judge, I have had to tackle the many challenges posed by the lack of space, deteriorating condition, and security deficiencies at our courthouse in Charlotte. I appreciate the opportunity to appear before the Subcommittee today to discuss with you how these critical issues adversely impact our ability to administer justice effectively and to ensure the safety and security of all of the participants in the judicial process. I would like to thank the Subcommittee for holding this hearing today on this very important issue.

I am here today to talk about the impact of a lack of adequate courtrooms in the Charlotte courthouse and the difficulties this causes for the judges of our court, the litigants, attorneys, and most importantly, the public in the Western District of North Carolina. My district has been on the Judiciary's Five-Year Courthouse Project Plan (Plan) for a new courthouse for almost twenty years. This Plan is a prioritized list of the Judiciary's courthouse construction needs, as determined by long-range facilities planning policies. However, because of delays in funding

and authorizing projects ahead of Charlotte on the Plan, construction of the new Charlotte courthouse has been delayed. This has affected access to justice for the citizens in our district in several ways that I will outline later in my statement.

Federal Courts Are Places of Dignity and Deliberation

A federal courthouse should be a place where matters of importance are handled with professionalism and propriety – where justice is pursued for those who are affected by the Court’s actions. It is a place where criminal defendants and victims of crimes should be treated with the respect and dignity that is inherent in their status as fellow human beings. It is a place where the courtroom surroundings can assist the court in delivering the message that actions have consequences and that serious matters are resolved here (much like the hearing room we are in today). A defendant, in particular, ought to receive the message that he is not just a statistic, but that he will be given time for him or his representative to argue his case in a safe and secure facility. In a federal courthouse, an otherwise powerless pro se litigant will receive a fair hearing before a neutral judge. It is a place where jurors are called to perform a vital yet often challenging task in our constitutional democracy. All of the participants in the judicial process are human beings – not widgets on a conveyor belt – who are entitled to gather in a dignified manner in a safe facility with adequate and appropriate space.

The Courtroom is an Essential Tool in the Judicial Process

The federal judges of the Judicial Branch are responsible for the effective operation of the federal courts. But adequate access to justice requires that the Judiciary have the tools it needs to operate effectively. These tools include the intellectual capital of experienced judges and their staffs, as well as the dedication of prosecutors and defense and other attorneys who argue before

the court. They include the indispensable services of the U.S. Marshals Service, probation officers, and members of the Clerk of Court's Office. One of the most important tools is the availability of a courtroom.

As you know, district court judges have broad judicial responsibility to conduct a wide range of judicial proceedings, including hearings, bench trials, and jury trials. Proceedings occur in both civil and criminal cases. In my experience, maximum flexibility in the ability to use courtrooms is essential for effective judicial administration. Rescheduling one hearing to allow another event to occur in a courtroom (such as a trial that lasted longer than expected) creates inefficiency and extra costs for all, often with lengthy delays because of the need to accommodate the schedules of multiple parties. And many civil cases are finally settled only because a date certain has been set for the trial with the assurance that the courtroom will, in fact, be available on that date. Any experienced attorney will tell you that access to a courtroom for trial hastens resolution of disputed matters more than any other single factor.

Courthouses Must Also Be Safe and Secure

In addition to having sufficient and accessible courtroom space, a safe and secure courthouse is another tool essential to a judge's functioning. In this era of heightened security threats, courthouse design must take into account the safety of judges, court staff, and the public. Where the physical space forces judges and the public to share hallways with sometimes violent criminal defendants, as is the case in Charlotte, security is a concern. Where a victim testifying for the government is forced to sit on a witness stand only five feet from the criminal defendant, as is currently the case in Charlotte, security is worrisome.

Because the Charlotte courthouse is an older building, its deterioration also affects the safety of those in the building and the dignity of the proceedings. I sit most often in our special proceedings courtroom. Beside me, five feet to my right, are two buckets to catch the leaking rain water from our ceiling. Problems relating to the courthouse's deterioration are upsetting to court participants, particularly in light of the understandable tension inherent in just being involved in federal court proceedings.

The Charlotte, North Carolina Courthouse

Let me tell you more about our courthouse, which is located in the Charles R. Jonas Federal Building in Charlotte, North Carolina. This historic building was originally constructed in 1915 to house the Charlotte Post Office. In 1934, the building was expanded, and it currently houses the United States District Court for the Western District of North Carolina, its Bankruptcy Court, the Clerk's Office, part of the United States Marshals Service, and small on-site working offices for the United States Attorney's Office and Federal Defender's Office. Our district currently has three active district judges and one senior district judge, with one district judge vacancy. We also have two magistrate judges and two bankruptcy judges in Charlotte. Because of our heavy docket and because this year one of our Article III judges will be deployed in a reserve capacity at Guantanamo Bay, we frequently have visiting judges assist us. In 2009, due to increases in bankruptcy caseloads, the Judiciary requested one additional bankruptcy judgeship that is expected to be located in Charlotte.

Given the docket demands, the growth in the number of judges requiring court space, and the seriousness and complexity of cases over which we preside, our courthouse is simply out of space, and has been for decades. Let me talk about some of the issues arising from this situation.

Courtroom 3 (Our "L" shaped Courtroom)

We have only two regular sized courtrooms (#1 and #2) usable for jury trials. Therefore, when both of these courtrooms are in use, our district court judges, for jury trial purposes, have had to commandeer our magistrate judges' "L" shaped courtroom. It is inadequate in several respects. Although it has a three-level jury box, the unique shape of this courtroom means that counsel and the parties sitting at one of the counsel tables cannot see all the jurors in the jury box. The witness box is within arm's reach of the only slightly elevated bench where the judge sits. Within arm's reach the other way is an exit door. The distance between the witness box and the defense table is a matter of feet. Because of the design of the courtroom, some jurors have trouble even seeing the witness, who sits on the other side of an oval bench.

It is difficult to put in words the logistic, security, and condition concerns that arise from having to conduct criminal and civil jury trials here. Oftentimes, criminal trials involve cooperating witnesses testifying against criminal defendants in the hope of receiving a lesser sentence. In these cases, you can imagine that great tension exists between the two. The witnesses are subject to defendant intimidation that the Court from its vantage point cannot always see. Sometimes these witnesses, as well as the defendant when he testifies, are dangerous people. Yet they testify almost on top of the judge, near the defense table, and nearer still to an exit door. Because the well of this courtroom is so small, electronic presentation of evidence must be conducted from a podium behind counsel tables, closer to the spectator section than the bench. Since we are a district that attempts to try cases in paperless fashion, this affects almost everything we do, and the presentation is far less persuasive when attorneys have to get up from their tables and walk back to their presentation podiums.

This courtroom is unsafe, inefficient, and lacking in the dignity that defendants, victims, and jurors ought to experience in a federal courtroom.

Courtrooms One and Two

The problems associated with the usage of these courtrooms is less about design and function and more about the difficulties inherent in courtroom sharing in busy districts. We attempt to schedule usage in a way that minimizes intrusion upon each other's dockets. But courtroom sharing is an art, not a science. It is simply impossible to anticipate the length of some trials and other matters; nor is it possible to plan ahead of time for emergency hearings, which at times can be quite lengthy. There are many federal statutes that require "prompt" or "immediate" action, a Speedy Trial Act requiring courts to try criminal matters expeditiously, and many fact patterns which by their nature require access to immediate resolution.

Let me share a few examples of the scheduling and security problems that have occurred recently.

Within the last year I had scheduled Courtroom 2 for two jury trials in one week because a colleague was beginning a jury trial in the same courtroom the following Monday. I anticipated that I could begin the first of two trials scheduled that week on Monday and complete it in three-to-four days; then start the second trial and finish it before my colleague needed the courtroom the following Monday. It sounds (and is) hectic, but this is what we do on a regular basis. The first trial involved two defendants charged with seven bank and Hobbs Act robberies. It was a complex case involving two masked and gloved perpetrators with little or no forensic evidence, and at least one shooting with injuries. Although we worked late into the night each day of trial, it went longer than the time allotted. This caused me to start the second jury trial (involving an

armed drug dealer with a lengthy record) in the “L” shaped courtroom down the hall while the jury was deliberating on the first trial in Courtroom 2. The second trial involved the same judge, court personnel, probation officers, and marshals. We ran back and forth as the jury in the first case deliberated. In the course of their deliberations, they would send the Court a written note, posing various questions they needed answered. To do so, we would have to recess the second trial, gather court personnel, transport defendants in custody, and move between courtrooms. When the jury’s question was answered, we would reverse the steps and return to the second trial. As the day proceeded, this activity reoccurred many times.

The toll such efforts impose cannot be underestimated. The court reporter and other court personnel were exhausted. The marshals were stretched too thin. For example, we have one elevator used to transport incarcerated defendants, witnesses, jurors and judges as well as other court personnel. Whenever the jury in the first trial had a question, the marshals had to transport the defendant in the second trial downstairs to the holding cell, then transport both defendants in the first trial from the downstairs holding cell upstairs to Courtroom 2.

As efficient as the marshals are, this took time. Juries in both trials were kept waiting. Family members of the defendants and the numerous victims attending the trial were inconvenienced. And quite frankly, the Court’s ability to focus on the issues arising in two cases was tasked to the utmost.

My colleagues report similar compromises with the performance of their duties. One judge reports difficulties when a trial with a dangerous and belligerent defendant took too long, and because of a second trial scheduled in Courtroom 2, he was forced to finish his trial in the “L” shaped courtroom we’ve just discussed. This judge was anxious throughout the proceeding

with concern for the safety and security of the trial participants and public. Another colleague reports the difficulty of cramming numerous out-of-state lawyers into the “L” shaped courtroom for a complex civil matter.

Sharing courtrooms requires us to frequently “double schedule” a courtroom. This is where we schedule two trials for the same date and courtroom, assuming one of the trials will settle. When this assumption did not materialize on one occasion, the judge had to move his federal trial to a county courthouse.

Security Concerns

It is similarly difficult to describe our security concerns sufficiently. We have an old courthouse that was designed with postal needs in mind, rather than modern court security concerns. In the second floor courtroom where I most often sit, there are two ways to leave the building. The first way is out the main doors of the courtroom and down the stairs. There are court chambers to the left and right as you leave. Court personnel share the public restrooms with families of defendants, attorneys, and law-enforcement agents, as well as grand jurors and anyone else who might be in the courthouse at the time. Particularly during sentencing hearings, where emotions may run high, these logistics can create a recipe for disaster, and there have been numerous times where our marshals have had to break up shouting matches that have occurred.

But this doesn't begin to compare to the security exigencies that result from the other exit, which I most often must use. When I leave the bench to return to chambers, I exit into the public hallway behind the courtroom. The adjacent door is where the marshals escort incarcerated defendants and witnesses to the elevator leading to the first-floor holding cell. In one recent case, the gang-member defendant I had just sentenced and I emerged from our

respective doors at the same time. We walked together in the same direction down the hall. As I heard him ask the Marshal how much of the twenty-year sentence he would have to serve, I was relieved that I had reached the corridor corner, which went in another direction, before the Marshal could answer that there is no parole in the federal system. In a capital murder case involving a defendant who had attempted to smuggle a knife into court during jury selection, there were several instances of my near-simultaneous exit with the defendant. On another occasion, my son came to visit me one day during court proceedings. When he pressed the button for the elevator, it opened revealing an orange jumpsuit-clad defendant I was about to sentence – fortunately, escorted by a Marshal. Encountering at the elevator incarcerated defendants, whom a court has found to be a flight risk or a danger to the community, is a daily occurrence for our court staff.

Everyone who comes to the building – judges, staff, prisoners, jurors, victims, defendants’ families, and other members of the public – use the same elevators and the same public corridors. There is no secured space. This results in the risk of victims, jurors, attorneys, agents, and other members of the public encountering sometimes dangerous defendants or members of their distressed families. As if this weren’t bad enough, the prisoner van, which transports incarcerated defendants and witnesses to and from the courthouse, parks two spaces away from the judges’ cars. There is no vehicle sallyport – a secure entry way for vehicles – for transporting prisoners to and from the courthouse.

Condition concerns

We are in an old building. Because decades ago it appeared we were headed toward construction of a new courthouse, the courthouse was swapped to the City of Charlotte for prime

real estate in uptown Charlotte, where we anticipated a new courthouse would be built. But a courthouse construction moratorium, lack of funding, and other delays have delayed our progress in moving up on the Judiciary's Five-Year Plan. In the meantime the building, which was not designed in the first instance with modern litigation concerns in mind, grows older still. The landlord is no longer the General Services Administration (GSA) and maintenance issues are compounded. Buckets to catch the newest leaks are strategically located. Plaster falls from different places regularly. Recently at a criminal sentencing hearing, the house came down on the defendant – literally: a piece of ceiling plaster fell on the defense table in front of the defendant. It is not unusual to come in after a rainy weekend and find pieces of plaster on the floor and the roof leaking.

Due to the lack of space at our courthouse, we have had to locate parts of the court family – which is comprised of critical participants in the judicial process – to leased space in other buildings. A part of the U.S. Marshals Service Office, most of the U.S. Probation/Pretrial Office, most of the U.S. Attorney's Office, and the Bankruptcy Administrator are currently in other facilities. A portion of our Clerk's Office will soon also be moved to leased space. This dispersion results in inefficiencies and increased costs to the government.

These examples illustrate our critical need for a new courthouse. As a result of the significant space shortages, deteriorating condition, and major security deficiencies I have described in the existing structure, my district was identified in 1992 as needing a new courthouse. As previously stated, the proposed Charlotte courthouse is currently on the Judiciary's Five-Year Plan. The design of the new courthouse is now underway, and

construction is scheduled to begin in fiscal year 2013, pending congressional funding and authorization.

Although I have described incidents that reveal the deteriorating condition of the courthouse, this testimony should not be taken as a criticism of GSA. In fact, GSA's regional administrator and his staff have been responsive and courteous throughout. Because of the process that has resulted in our court being near the front of the line for a new courthouse, the GSA has been understandably reluctant to invest scarce federal funds in repairs to the building at this time.

Conclusion

Chairman Johnson, and members of the Subcommittee, I am extremely grateful for the opportunity to appear before you and talk about these critical issues. The problems we have experienced in Charlotte are not unique – similar challenges no doubt occur every day in other courts around the nation where space is short. What I hope is that the examples I have provided will give the Subcommittee a better understanding of what could happen to the judicial process if rigid, inflexible standards regarding courtroom sharing among active district judges were imposed upon the Judiciary. And so, while we seek the authorization and funding from Congress to repair the sorry and aging state of our national courts and their infrastructure, we also plead that the courts be allowed to determine how to administer justice most effectively in terms of courtroom allocation.

The Constitution has charged the Judicial Branch with the administration of the nation's courts for over two hundred years, during which time this branch has developed unmatched expertise in how to faithfully, and efficiently, meet this calling. Yet while it is an independent,

co-equal branch of government, the Judiciary is unable to do its job without the Congress, which allows it to operate, and the Executive Branch, which enforces the nation's laws in the courts.

As Alexander Hamilton once stated, "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit." Again, we ask that the Judiciary continue to have the flexibility we need to administer the judicial process efficiently and the tools we need to fulfill our core responsibility – providing those who come to the federal courts with timely and fair access to justice.