

**STATEMENT OF HONORABLE WILLIAM P. JOHNSON
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO**

**BEFORE THE SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND
THE INTERNET OF THE
COMMITTEE ON THE JUDICIARY OF THE
UNITED STATES HOUSE OF REPRESENTATIVES**

**“GSA’S FAILURE TO MEET THE NEEDS OF THE JUDICIARY: A CASE STUDY OF
BUREAUCRATIC NEGLIGENCE AND WASTE”**

JUNE 19, 2014

Introduction

Chairman Coble, Ranking Member Nadler, and members of the subcommittee, my name is William P. Johnson, and since December of 2001, I have served and continue to serve as a United States District Judge for the District of New Mexico. I appreciate your invitation to appear today to discuss GSA's delivery of service to the federal judiciary.

For the seven year time period beginning October 1, 2006 and extending through September 30, 2013, I served as the Tenth Circuit's representative to the Judicial Conference Committee on Space and Facilities, and for this same time period I chaired the Tenth Circuit's Committee on Space and Facilities. Currently, I do not serve on any Judicial Conference or Circuit Committee so I am appearing today before this subcommittee by invitation, but I am doing so in my own capacity as a district judge in the District of New Mexico. My testimony concerns the "sustainable" landscape project initiated by the General Services Administration ("GSA") for the United States District Courthouse in Albuquerque, New Mexico. My involvement and interaction with GSA occurred during my time on the Judicial Conference and Circuit Space and Facilities Committees.

Background

During the 1980s and 1990s, the District of New Mexico, like the other federal district courts along the United States' border with Mexico, experienced an ever increasing criminal caseload such that the District Court in Albuquerque had outgrown the space it was occupying in the GSA federal building. Consequently, with strong bipartisan support from the members of the New Mexico congressional delegation, Congress authorized, and the President approved, funding for GSA to construct a new federal courthouse in downtown Albuquerque. This courthouse project was completed in the fall of 1998.

The Albuquerque Federal Courthouse was one of the first modern federal courthouses to utilize both the shared courtroom concept and the collegial floor concept, which created significant efficiencies for both courtroom usage and judicial interaction and thereby reduced construction costs. The top two floors (sixth and seventh) house a total of 15 judicial chamber suites (nine district and six magistrate) and the third, fourth and fifth floors house a total of 10 courtrooms. The remaining floors house the clerk's office and other court related agencies. The main block of holding cells for in-custody defendants and a secure parking area are located on the ground floor.

Significantly, the Albuquerque Courthouse was budgeted at \$43 million and was completed on time and under budget at a final cost right at \$41 million (approximately \$132/sq. ft.). Attached as Exhibit 1 is the architectural brochure outlining in more detail design specifics for the Albuquerque Courthouse. Exhibit 2A is a photograph of the courthouse taken at the opening ceremony, and Exhibit 2B is a 2007 photograph of the courthouse prior to the GSA landscape project.

The Albuquerque Courthouse facility includes 80 below grade parking spaces located under the front lawn of the courthouse. The landscaping of the courthouse during construction included a large front lawn sodded with Kentucky blue grass which, with taking into consideration the local climate, was not the best choice of grass for the courthouse lawn.

Albuquerque's elevation ranges from 4900 feet above sea level at the Rio Grande River to 6700 feet above sea level in the foothill areas at the base of the Sandia Mountains.

Albuquerque is on the northern tip of the Chihuan Desert, and its climate is usually sunny, dry and hot with little rainfall. While Albuquerque has four distinct seasons, the winters are

relatively mild compared to other parts of the country. "High desert" is perhaps the best way to describe Albuquerque's climate.

As a result of Albuquerque's "high desert" climate, the Kentucky blue grass lawn has required a huge quantity of water. I was informed that during the hot summer months as much as 300,000 gallons per month of water was used to water the courthouse lawn.

Water Leakage in the Garage

At some point after the courthouse opened, water from the sprinkler system used to water the front lawn started leaking into the underground parking garage. I cannot state with certainty when the water leakage and puddling started, but this leakage issue was certainly a matter of concern from my first summer as a member of the court which would have been in 2002. During summer months when temperatures were hot in Albuquerque and the Kentucky blue grass lawn was being watered extensively, there were occasions when excessive amounts of water would leak into the below ground parking garage resulting in water puddling in the lower portion of the garage. Since there was no drainage from the garage, GSA would have to bring in commercial work crews with industrial strength vacuums to remove the water in the garage.

The Albuquerque Courthouse had a water feature as part of the front landscape plan which included a fountain and a passageway for the water to flow down part of the front lawn area into a storage reservoir to be pumped back to the fountain. I believe some of the water that seeped into the garage came from this water feature because once the Court stopped running the fountain the amount of water coming into the garage decreased, although water seepage into the garage continued until GSA completed its landscape plan.

Aside from the immediate concern of water puddling and stagnating in the lower level of the parking garage, there was concern over possible structural damage to the walls and ceiling of

the parking garage if nothing was done to fix the problem. During this same overall time period, New Mexico, like other western states, was experiencing (and still is experiencing) a historic period of long term drought. The City of Albuquerque had implemented water conservation measures, and there was a general feeling among the judges that the Albuquerque Courthouse should not become, or be perceived as, one of the biggest water users in downtown Albuquerque. As stated earlier, watering the Kentucky blue grass lawn was not cheap.

At various times before GSA embarked on its landscape plan, requests were made to GSA to fix the water leakage problems in the garage. Additionally, court officials suggested to local GSA representatives that portions of the front lawn be xeriscaped with drought tolerant plants and shrubs native to New Mexico that would result in a significant decrease in water usage. Another suggestion that was conveyed to GSA was to replace the Kentucky blue grass with Buffalo grass, a grass native to the great plains of the western states and one that needs far less water to survive than Kentucky blue grass. I am not aware of any response from GSA to the Court's suggestions until GSA gave notice of its intent to embark on its "sustainable" landscape plan.

Judicial Concerns Over GSA's Landscape Plan

To the best of my recollection, GSA disclosed to Court officials in June or July of 2010 that there would be landscape renovations on the Albuquerque Courthouse. There were discussions between GSA and Court employees but I do not recall seeing the proposed landscape plan until the beginning of 2012. I discussed the landscape plan with my colleagues and then in March of 2012, I participated in a conference call with GSA officials and communicated the Court's concerns over the proposed landscape plan. The areas of concern I conveyed to GSA were as follows:

1. The judges wanted GSA to understand, in no uncertain terms, that all that the judiciary had requested from GSA was to fix the water leakage problem in the parking garage and to come up with a way to reduce water usage for the front lawn.
2. Considering that the judiciary was not consulted on the scope, magnitude and cost of the landscape plan, and considering that the landscape project was to be constructed at a time when the District Court was confronting budget cuts and potential employee furloughs, the judges could not and would not support a landscape plan so large in scope.
3. Considering the timing of the landscape project came at a time when Executive Branch agencies (including GSA) and the Judiciary had come under criticism for extravagant and wasteful spending of taxpayer funds, the judges questioned the wisdom of embarking on such an ambitious and costly landscape renovation project.
4. The front lawn had become the location of choice for various groups to assemble and exercise their First Amendment right of free speech on a variety of issues, and the concern was raised over how the landscape plan would affect the use of the front lawn for free speech assemblies.
5. Considering the budgetary issues confronting the Judiciary, GSA was told that the judges would aggressively fight any attempt to increase rent on the Albuquerque Courthouse to pay for maintenance and upkeep on the landscape project.
6. The location and size of the proposed planters near the front door of the Courthouse would preclude any future outdoor ceremonies on the front plaza such as the ceremony GSA hosted when the Courthouse was named after former New Mexico Senator Pete Domenici. Exhibit 3A and 3B are photos of the naming ceremony and the tents that GSA

rented and installed for that ceremony would not fit anywhere on the front plaza under the proposed landscape plan.

It was my distinct impression that GSA gave little consideration to the concerns raised by the Judiciary with one major exception: GSA agreed to move and reduce the size of the planters on the front plaza so future outdoor ceremonies could still be held in the area on the plaza in front of the courthouse. Additionally, GSA agreed that some of the trees could be repositioned so that people standing on the sidewalk at the bus stop on Lomas Boulevard could still see the name of the courthouse.

GSA proceeded with the landscape project beginning around August of 2012, and it was completed around May of 2013. Exhibit 4A is a photo of the courthouse taken before the landscape project was started, and Exhibit 4B is a photo of the courthouse after completion of the landscape project. Exhibit 5A and 5B are photos during landscape construction, and 5C is a wide angle view from the sixth floor of the courthouse looking down on the front lawn.

Exhibit 6A is a copy of the front page article written by Albuquerque Journal investigative reporter Mike Gallagher that appeared in the February 10, 2013 edition of the Albuquerque Journal. I consider the article to be factually accurate. On February 13, 2013, the Albuquerque Journal wrote an editorial on the landscape project and a copy of the editorial is attached as Exhibit 6B.

Conclusion

As the Albuquerque Journal reported, the landscape project cost 3.4 million in stimulus funds. To my knowledge, since the landscape project has been completed, there has not been any water leakage into the underground parking garage and the plants, shrubs and trees installed

as part of the plan consume far less quantities of water than the old Kentucky blue grass lawn. Additionally, GSA is set to receive some kind of an award this summer for the landscape plan.

When I was interviewed by the Albuquerque Journal reporter I expressed the view that the landscape project could very well enhance the beauty of the courthouse but, considering the budget climate confronting the judiciary, I could not help but wonder if the project was excessive in terms of cost. I concluded by stating “whether this GSA landscape project is a wise and efficient use of taxpayer dollars is an important public issue and one certainly subject to debate.” That was my view then and my view now.

Again, thank you for the opportunity to appear today and discuss these issues. I would be happy to answer any questions the Subcommittee may have.



U.S. DISTRICT COURTHOUSE, ALBUQUERQUE, NM

This new facility, consisting of 311,000 gross square feet including 80 below grade parking spaces, is intended to accommodate the U.S. District Courts, the United States Clerk's Office, the United States Marshals Service, U.S. Probation Office, U.S. Pre-Trial Service, Circuit Librarian and GSA Building support on-site requirements through the year 2005. Additionally, the building site identifies a means by which the initial nine District Judges, six Magistrate Judges and direct support elements will expand to meet 30-year future requirements of 21 judges and related agencies.

This is one of the first major Federal Courthouses utilizing both the *shared courtroom concept* and the *collegial floor concept*, maximizing efficiency for both courtroom usage and judicial interaction, as well as reducing overall costs. Judicial chambers on the sixth and seventh floors share a common lobby and conference area in the fashion of traditional law offices, overlooking a full-height atrium and rotunda complete with skylight, with daylit courtrooms on the third, fourth, and fifth floors.

Security issues for this complex are extremely critical given the increasing threats to the Judiciary. In-custody prisoners enter by van through a secure marshals parking area and prisoner sallyport which leads directly to holding cells on the first level. Secure elevators access all courtroom floors

via dual holding cells for each pair of courts. A secure Judges' elevator provides complete security from Judges' parking to Judges' chambers and courts on all floors. This facility incorporates state-of-the-art security systems and is one of the most secure courthouses in the Southwest.

This is one of the most cost effective courthouses in the country. Budgeted at \$43,000,000, this building was awarded to the low bidder at \$40,998,000 (\$132/SF) a savings to the taxpayers of \$2,002,000.



ARCHITECTURAL INTENT

Flatow Moore Shaffer McCabe's design approach respects and reinforces important traditions through the architecture, conceived to promote the appropriate and essential characteristics of this building type.

The use of "three", as a general ordering principal, symbolically depicts the multi-cultural aspects of New Mexico, and depicts the significance of the Courts as one of the three branches of government. The symmetrical composition is intended to represent "equal justice for all" and provides a three dimensional armature for the elements of the design.

The building uses native, natural materials relating to the earth and natural light as a way to complement our regional architecture. Changes in texture, materials and color distinguish major areas of the building, such as the courtrooms.



OPENING CEREMONY, EARLY 1999

EXHIBIT 2A



ALBUQUERQUE COURTHOUSE 2007

EXHIBIT 2B



COURTHOUSE NAMING CEREMONY, AUGUST 2004

EXHIBIT 3A



COURTHOUSE NAMING CEREMONY, AUGUST 2004

EXHIBIT 3B



EXHIBIT 4A



COMPLETED LANDSCAPE PROJECT, JULY 4, 2013

EXHIBIT 4B



LANDSCAPE CONSTRUCTION

EXHIBIT 5A



LANDSCAPE CONSTRUCTION EXHIBIT 5B



COMPLETED LANDSCAPE PROJECT, TOP VIEW, 2014

EXHIBIT 5C

Courthouse leak turns into \$3.4M project

Federal judges question whether it's a wise use of taxpayer money



DEAN HANSON/JOURNAL

An overview of the re-landscaping of the Pete V. Domenici U.S. District Courthouse on Lomas NW earlier this month that has judges concerned about the cost of the makeover.

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Story by **BY MIKE GALLAGHER** ■ *Journal Investigative Reporter*

All the federal judges wanted to do was to stop water from leaking into the underground parking garage at the courthouse in Downtown Albuquerque. They had no inkling they were tapping into a multimillion-dollar bureaucratic trifecta.

Their request was relatively modest: Turn off the fountain and consider replacing the Kentucky blue grass with Buffalo grass that would require far less than 300,000 gallons of water during the summer — some of which was leaking into the garage.

The response from the General Services Administration: a \$3.4 million plan for redoing the courthouse landscape, putting up solar panels and installing giant underground

cisterns.

GSA owns federal buildings, and the judges are, in effect, captive tenants with no control over projects like this. Nevertheless, they cringed at the expense — which is nearly 10 percent of the \$41 million it cost to build and landscape the seven-story high Pete V. Domenici Courthouse in 1998.



COURTESY OF RIOS CLEMENTI HALE STUDIOS OF LOS ANGELES

See **COURTHOUSE** on **PAGE A7**

An artist's rendering of what the makeover will look like.

Courthouse leak turns into \$

from PAGE A1

Judge William "Chip" Johnson said the work looks first rate and the project may well end up enhancing the beauty of the courthouse.

But he said judges wonder whether, during a time of threatened government budget cuts and potential furloughs for court employees, the entire project hasn't gone more than a bit over the top.

"Whether this GSA landscape project is a wise and efficient use of taxpayer dollars is an important public issue and one certainly subject to debate," Johnson said.

The GSA sees it differently. "It is a wonderful project," GSA spokeswoman Tina Jaegerman said. "This is one of those projects that they're already talking about awards for design."

Jaegerman, who is based in Fort Worth, said GSA's plan was to make the project a "showcase for innovation in sustainability and to further GSA's goal for a zero environmental footprint."

Trifecta

So how did the cash-strapped federal government find millions for an award-winning landscape project to fix a leak? That's where the trifecta comes in.

- The 2009 federal stimulus package meant there was money available.

- The Energy Independence and Security Act of 2007 approved by Congress ordered that federal buildings be made environmentally sustainable.

- An executive order signed by President Obama in 2009 increased the pace of the 2007 law.

So in fixing one leaky underground garage, the GSA could show it was following the president's orders and Congress' orders and didn't have to ask for extra money.

"The project presented a unique situation at a unique time," Jaegerman said.

Big leak

Before the leak repairs began, the front of the courthouse consisted of wide concrete sidewalks, stairs and courtyards, Kentucky bluegrass lawn and a fountain, all sitting on top of an underground parking garage.

When the lawn got watered at the fountain was turned on, water leaked into the underground garage.

Over time, it wasn't just a drip.

Commercial crews had to be brought in on a regular basis to vacuum out the standing water in the garage.

Judges were concerned the water would damage the integrity of the underground garage structure and require expensive repairs.



DEAN HANSON/JOURNAL

The landscaping makeover at the Pete V. Domenici U.S. District Courthouse has judges concerned about the project's price.

Since the federal judges don't own the courthouse at 333 Lomas NW, the site of the old McClellan Park, they asked the landlord to fix the leak.

Federal court buildings throughout the country are owned by the GSA, and the Judiciary branch pays rent from its budget. So modest or not, any fix was up to the GSA.

It began simply enough. The fountain was shut off and the judges asked about some

native grass needing little water to replace the water-guzzling Kentucky blue grass. But when they got a look at the GSA-approved plan, they were concerned.

Johnson is the representative for the judges in the 10th Circuit on the Judicial Conference Committee on Space and Facilities, which means he gets to deal with the GSA on a regular basis.

So, his colleagues asked him to relay their concerns, objec-

tions and questions.

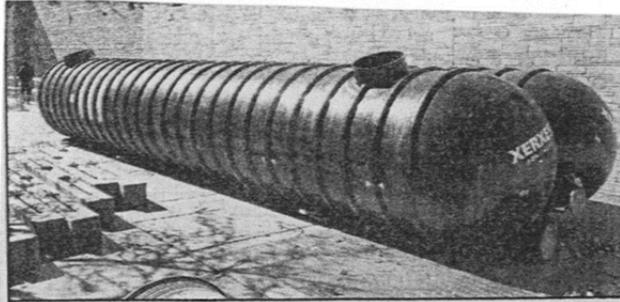
- The judges asked GSA only to fix the leakage into the garage and look at reducing water use on the lawn. They were not consulted and were not in favor of a project of this magnitude and cost.

- The judges were concerned about how the landscape changes would drastically alter the front of what they consider one of the most beau-

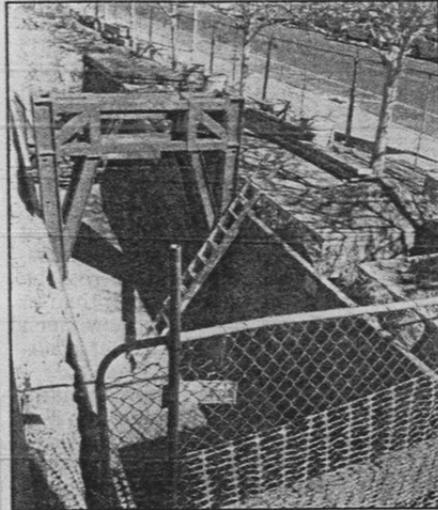
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NATI
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ABOVE: The landscaping makeover at the court building includes large underground cisterns to capture rain water from the roof and grounds to irrigate new plants and trees.



LEFT: A trench on the east side of the court building is the future home of the twin 8,000-gallon water cisterns.

tiful buildings in the state.

■ How would the landscape affect the public use of the front lawn for free speech assemblies?

■ Would the rent bill increase to cover maintenance costs for the project once it is completed?

So much for judicial input.

"Notwithstanding the concerns raised by judges of this district, GSA went full steam ahead with the landscape project," Johnson said.

'Reduce waste'

Jaegerman said that one of GSA's major goals "is to reduce resource waste in federal buildings."

The design calls for tearing out the Kentucky blue grass lawn and planting "native and adaptive plant species to reduce watering requirements." Large underground cisterns will collect and allow reuse of all site and building storm water runoff for irrigation.

Solar panels will be installed on the roof of the courthouse to provide most of the site's exterior energy needs.

The project was designed by Rios Clementi Hale Studios of

Los Angeles, and AIC General Contractors of Albuquerque won the \$2.8 million bid for construction.

Of the three Downtown courthouses, the federal courthouse has been involved in the least amount of controversy.

It was completed Nov. 23, 1998, and was built on time and on budget.

Of the three courthouses at the Lomas and Fourth NW intersection, it also cost the least. The Metropolitan Court project, including public garage, cost \$83 million, and the State District Court House cost \$45 million.

Both of the local court projects became mired in the kickback scandal involving former Senate Pro Tem Manny Aragon, D-Bernalillo, who is scheduled to conclude his federal prison term next summer for his part in siphoning money out of the Metropolitan Court construction project.

The biggest controversy surrounding the federal courthouse was where to put the "Madonna of the Trail" statue and the planting of the Kentucky blue grass during a city water conservation campaign.

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A6

Wednesday, February 13, 2013

EDITORIALS

Feds go over the top in fixing courthouse leak

A persistent leak in the underground parking garage at the U.S. Courthouse in Albuquerque has turned into a spending tsunami.

Judges at the Pete V. Domenici Courthouse just wanted to stop water used on the Kentucky blue grass on the roof of the garage from leaking down into it, replace high water use grass with low water buffalo grass and turn off the fountain in the entry. It seemed like a modest fix.

But to the U.S. General Services Department the leak presented an *opportunity* to come up with an over the top sustainable — and hopefully award-winning — landscape design to work toward the department's goal of a zero environmental footprint as set out in the Energy Independence and Security Act of 2007 approved by Congress and fast-tracked by President Obama in a 2009 executive order. Plus, no one had to beg for money to do it. Cash was available from the '09 federal stimulus.

Just one catch. The cost for what began as a repair: \$3.4 million — nearly 10 percent of the \$41 million it took to build the courthouse — for landscaping, solar panels and giant underground cisterns to recycle runoff.

The judges could holler “whoa,” but the GSA is the landlord and as tenants the judiciary has no say. GSA officials, undaunted by a government drowning in debt and potential cuts and layoffs, seemed delighted with the chance to show it's following the orders of Congress and the president to spend money on pet projects.

The GSA is notorious for its over-the-top largess with taxpayer money, and this is another example of it on steroids. This is the same agency that in November 2010 spent more than \$250,000 for a one-day employee reward and motivation event in Crystal City, Va., for around 200 people. Don't forget that lavish convention in Las Vegas, Nev., that cost taxpayers more than \$800,000.

After these abuses came to light, the Inspector General launched an investigation and the agency's new leadership started making changes. Meanwhile, judges and court staff can enjoy parking in a dry courthouse garage thanks to a \$3.4 million fix.

The landscaping will be pleasing to the eye. For that price, it should be.

WILLIAM P. JOHNSON BIOGRAPHY

U. S. District Judge William P. Johnson was born and raised in Roanoke, Virginia. He attended college at the Virginia Military Institute where he earned his B.A. degree in 1981. He accepted a reserve commission in the United States Army Reserve and after completing the Field Artillery Officer's Basic Course at Ft. Sill, Oklahoma, he returned to Lexington, Virginia to attend law school at Washington & Lee University where he earned his J.D. degree in 1985.

Judge Johnson started practicing law in Houston, Texas with the firm of Bracewell & Patterson and then moved to Roswell, New Mexico in 1986 and joined the firm of Hinkle, Cox, Eaton, Coffield & Hensley. Judge Johnson practiced law as a civil litigation attorney in New Mexico and Texas for ten years and then in January of 1995, he was appointed by New Mexico Governor Gary Johnson as a state district judge for the 5th Judicial District, which encompasses the southeastern New Mexico Counties of Chaves, Eddy and Lea.

As a New Mexico state district judge for almost seven years, Judge Johnson presided over a general jurisdiction docket consisting of criminal, civil, juvenile and domestic relations cases. Additionally, he devoted a significant amount of time and effort on matters and issues relating to delinquent and abused or neglected children by serving six years on the Governor's Juvenile Justice Advisory Committee and working with AMI-Kids, a nationally acclaimed non-profit organization that operates highly successful rehabilitative programs for delinquent youth in numerous states.

In August of 2001, President George W. Bush nominated Judge Johnson to a vacancy on the U.S. District Court for the District of New Mexico and in December of 2001, the United States Senate confirmed his nomination to the federal bench. As a federal district judge in a southwest border district, Judge Johnson carries a heavy criminal docket consisting of a large number of border related cases. While his duty station is in Albuquerque, since becoming a federal judge, Judge Johnson has spent significant time presiding over criminal cases including Indian Country cases. Additionally, he has sat by designation on the U.S. Court of Appeals for the Tenth Circuit in Denver, Colorado and has sat by designation in the U.S. District Courts for the Districts of Utah, Wyoming, Kansas and the Western District of Oklahoma.

From the fall of 2006 until the fall of 2013, Judge Johnson served as the Tenth Circuit's representative to the Judicial Conference Committee on Space and Facilities. During this same period, Judge Johnson chaired the Space and Facilities Committee for the Tenth Circuit. During the seven years he served on these two committees, he and the other committee members dealt with space and facilities issues at the national and circuit level including new courthouse projects, courthouse renovation projects, courtroom sharing issues, closure of non-resident judge courthouses, space consolidation and efforts to reduce the Judiciary's rent bill with the General Service Administration plus a variety of other issues arising between the Judiciary and GSA at the local, circuit and national level.