

## COURTHOUSE CONSTRUCTION IN THE COMMONWEALTH

*John D. Minton, Jr.\**

Fifty years ago, Harry M. Caudill, a lawyer from Whitesburg, Kentucky, wrote the book *Night Comes to the Cumberlands: A Biography of a Depressed Area*.<sup>1</sup> The book brought national attention to Appalachia—a part of the country few Americans had ever considered—with bleak images of the economic and environmental damage plaguing the region.<sup>2</sup> In chapter sixteen, “From Bust to Boom Again,” Caudill colorfully described the state of public facilities in Appalachia during the era following the Great Depression and World War II as being “deteriorated to a level so low they could scarcely be imagined as existing in a civilized country.”<sup>3</sup>

Most significant to this article is Caudill’s depiction of county courthouses, which he described as:

crumbling, dilapidated structures which would have been condemned as threats to public safety in any of the nation’s major cities. Some leaked like sieves and all of them were tobacco-stained and filthy. Year after year they crumbled and moldered without even rudimentary maintenance. Their custody was vested in elected jailers who saw little need for windows clean enough to permit the sun’s rays to filter through.<sup>4</sup>

Unfortunately, Caudill’s dreary description of county courthouses was not limited to the Appalachian region of Eastern Kentucky; nor was it limited to the post-war era of the late 1940s and 1950s. As recently as the past decade, many of Kentucky’s decaying courthouses threatened the health and safety of the employees and public who entered the buildings each day. Among the most

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\* Chief Justice, Kentucky Supreme Court.

<sup>1</sup> HARRY M. CAUDILL, *NIGHT COMES TO THE CUMBERLANDS: A BIOGRAPHY OF A DEPRESSED AREA* (1963).

<sup>2</sup> See John Cheves & Bill Estep, *Chapter 1: Meet the Man Who Focused the World on Eastern Kentucky’s Woes*, LEXINGTON HERALD-LEADER (Dec. 16, 2012), <http://www.kentucky.com/2012/12/16/2442971/chapter-1-he-brought-the-world.html>.

<sup>3</sup> CAUDILL, *supra* note 1, at 242.

<sup>4</sup> *Id.* at 241.

noteworthy anecdotes is a story about a courthouse that was without an operating restroom, forcing employees and the public to use the facilities across the street at a fast food restaurant. More than one courthouse lacked an elevator, requiring disabled litigants to be carried up the stairs to the courtroom.<sup>5</sup> One courthouse attic was so infested with pigeons that the ceiling collapsed under the weight of bird droppings.

The Commonwealth of Kentucky is home to 120 counties<sup>6</sup> within the 40,395 square miles of its borders.<sup>7</sup> Before it became a state in 1792, Kentucky was the westernmost county in Virginia.<sup>8</sup> So it was only natural that Kentucky, like Virginia, would “cling to [the] most English of governmental divisions”—the county.<sup>9</sup> Each county operates as its own governmental unit, run by officials elected by the voters of the county. From 1792 until 1976, each county also had its own court system, which, over time, resulted in a “patchwork of . . . courts with overlapping jurisdiction, uneven justice around the state, and a growing backlog of appellate cases.”<sup>10</sup>

In 1974, the Kentucky General Assembly took the bold move of reforming the court system through passage of the Judicial Article.<sup>11</sup> The measure transformed Kentucky’s court system through a series of constitutional amendments that were approved by the voters in November 1975 and became law in 1976.<sup>12</sup> Most significant among the amendments was the change from a county-based court system to a unified, statewide system, with a central administrative office. The Chief Justice of the Commonwealth was deemed “the executive head of the Court of Justice,”<sup>13</sup> with authority to delegate the supervision of court “accommodations” to the “administrative director of the courts or to his administrative assistants.”<sup>14</sup> The Kentucky Administrative Office of the Courts

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<sup>5</sup> Jim Hannah, *Elevator Needed: County Pleads Poverty*, CINCINNATI ENQUIRER, July 24, 2003, at 1C.

<sup>6</sup> CLARK’S KENTUCKY ALMANAC AND BOOK OF FACTS 143 (2005) [hereinafter KENTUCKY ALMANAC].

<sup>7</sup> *Id.* at 19.

<sup>8</sup> *See id.* at 143; *Kentucky Genealogy, Facts and Records Resources*, GENEALOGY INC., <http://www.genealogyinc.com/kentucky> (last visited July 27, 2013).

<sup>9</sup> KENTUCKY ALMANAC, *supra* note 6, at 143, 148.

<sup>10</sup> UNITED AT LAST: THE JUDICIAL ARTICLE AND THE STRUGGLE TO REFORM KENTUCKY’S COURT 27 (Kurt. X. Metzmeier et al eds., 2006).

<sup>11</sup> *Roland v. Jefferson Cnty. Fiscal Ct.*, 599 S.W.2d 469, 470 (Ky. Ct. App. 1980).

<sup>12</sup> *Id.*

<sup>13</sup> KY. REV. STAT. ANN. § 27A.010 (LexisNexis 2013).

<sup>14</sup> *Id.* § 27A.020.

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“AOC”) was created “to serve as the staff for the Chief Justice in executing the policies and programs of the Court of Justice.”<sup>15</sup>

Before unification of the court system, counties were solely responsible for the construction and maintenance of court facilities. More than four hundred courthouses were built during this time, ranging in design from the original log structures of the late 1700s to the elaborate Italianate style architecture of the 1850s and the art deco, Public Works Administration buildings of the New Deal era.<sup>16</sup> During its history, Kentucky has lost approximately one hundred courthouses to disaster—“three to floods, one to a tornado, one to bombing, and the rest to fire.”<sup>17</sup> Several buildings were damaged beyond repair during the Civil War, either as a result of occupation by federal troops or during Confederate General Hylan B. Lyon’s march through western Kentucky, which left a path of burned courthouses in its wake.<sup>18</sup>

In 1976, the General Assembly passed the Court Facilities Act, which was designed as a partnership between local governments and the new Court of Justice.<sup>19</sup> The supervision of court facilities became the responsibility of the Chief Justice as the head of the Court of Justice.<sup>20</sup> That authority was delegated to the AOC, which established a facilities department to coordinate with counties on

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<sup>15</sup> *Id.* § 27A.050.

<sup>16</sup> See JOHN W. CARPENTER & WILLIAM B. SCOTT, JR., *KENTUCKY COURTHOUSES* xiii–xxiii (1988).

<sup>17</sup> Ann Marie P. Doyon, *Kentucky’s Traditional Courthouses: Preservation in the Heart of the Community* 14 (June 2009) (unpublished Master’s project, University of Kentucky), available at [http://www.adpreservation.com/pdfs/Doyon-Masters%20\(compressed\).pdf](http://www.adpreservation.com/pdfs/Doyon-Masters%20(compressed).pdf) (footnote omitted). See also CARPENTER & SCOTT, *supra* note 16, at v (providing a list of how the courthouses have been destroyed). A March 2, 2012 tornado in West Liberty, Kentucky, destroyed the old Morgan County courthouse and the new judicial center that was under construction, bringing the total number of courthouses destroyed by tornadoes to two. Press Release, Leigh Anne Hiatt, Ky. Court of Justice, Temporary Morgan County Courthouse Open at New Location in West Liberty (Mar. 16, 2012), available at <http://migration.kentucky.gov/newsroom/kycourts/NR03162012LAH1.htm>.

<sup>18</sup> See generally CARPENTER & SCOTT, *supra* note 16, at 22, 28, 32, 36, 48, 54, 58, 62, 94, 106, 108, 130, 142, 146, 178, 182, 196, 232 (providing information on each courthouse that was destroyed during the Civil War). There are other colorful stories of courthouse destruction during the Civil War, like the original Marion County courthouse, which was set aflame after the Battle of Lebanon by Confederate General John Hunt Morgan “in order to burn the indictments of treason filed there against Marion County soldiers in his command.” *Id.* at 128.

<sup>19</sup> See e.g., *Kentucky Administrative Office of the Courts*, KY. CT. OF JUST., <http://courts.ky.gov/aoc/Pages/default.aspx> (last visited July 27, 2013) (describing the duties that the AOC has as a result of the 1976 Judicial Article).

<sup>20</sup> KY. REV. STAT. ANN. § 27A.010.

the construction, renovation, and maintenance of court facilities.<sup>21</sup> The 1977 and 1978 Kentucky General Assemblies followed up by enacting a series of statutes detailing the operation of court facilities and services.<sup>22</sup> This included the creation of the Court Facilities Standards Committee, which was charged with providing “periodic review of each court facility” and making “recommendations for improvements.”<sup>23</sup>

Although the General Assembly transferred oversight of judicial facilities to the court system, the counties were, and still are, the owners of the buildings.<sup>24</sup> The counties issue bonds to pay for the cost of the capital construction and the Court of Justice pays operating costs<sup>25</sup> and a “use allowance” to cover the bond payments.<sup>26</sup> The amount paid is computed based on the Court of Justice’s proportionate share of the occupation of the building.<sup>27</sup>

Despite this move to centralize oversight of judicial facilities, the reality over the next twenty years was that counties retained control over all details of courthouse construction and renovations—including location, design, and space requirements. There were no guidelines in place dictating minimum requirements for adequate judicial accommodations, meaning no uniform standards and little input from the judges, circuit court clerks, and employees occupying the buildings on a daily basis.

In the early 1990s, the Court of Justice undertook a modest program under the leadership of Chief Justice Robert F. Stephens to improve some judicial buildings across the Commonwealth.<sup>28</sup> The

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<sup>21</sup> See *id.* § 27A.020(1); Doyon, *supra* note 17, at 17.

<sup>22</sup> See KY. REV. STAT. ANN. §§ 26A.100, 26A.105 (repealed 1982), 26A.107, 26A.110, 26A.115, 26A.120.

<sup>23</sup> *Id.* § 26A.107(1).

<sup>24</sup> *Id.* § 24A.140(1) (stating that a sheriff must be present in sessions of the district court held in “the county courthouse or other county-owned facilit[ies]”).

<sup>25</sup> See *id.* § 26A.090. The term “operating costs allowance” is defined as:

[C]ompensation equivalent to the annual expenses borne by the unit of government for utilities, janitorial service, rent, insurance, and necessary maintenance, repair, and upkeep of the court facility which do not increase the permanent value or expected life of the court facility, but keeps it in efficient operating condition, and, at the election of the Administrative Office of the Courts, capital costs of interior or mechanical renovations for the benefit of the court.

*Id.*

<sup>26</sup> *Id.* § 26A.115(1). For court facility construction or renovation projects authorized by the General Assembly after 2000, the term “‘use allowance’ means the court’s proportional share of the annual principal and interest costs in connection with the construction or renovation of the facility, not to exceed the authorized annual use allowance.” *Id.* § 26A.090(2).

<sup>27</sup> *Id.* § 26A.115(2).

<sup>28</sup> See generally KY. COURT OF JUSTICE, HISTORY OF JUDICIAL CENTER CONSTRUCTION &

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old county courthouses were built without consideration for the safety and security of building occupants. They also suffered from inadequate space and outdated mechanical and electrical systems. During this time, the improvements were limited to additions to existing buildings and the construction of a few small, freestanding courthouses.

Beginning in 1996, the Kentucky General Assembly specifically outlined court facility projects in the Judicial Branch budget and required construction of all court projects to be in compliance with the standards set by the National Center for State Courts (“NCSC”), a move urged by Chief Justice Stephens.<sup>29</sup> While this requirement “slowed the process a bit,”<sup>30</sup> it also gave the AOC more control over the construction of new judicial centers by providing guidance and long-term planning for court space.<sup>31</sup> The biennial budget for fiscal years 1996–1998 included authorization for much-needed new construction and renovations in fourteen counties, including new judicial centers in four of Kentucky’s most populous counties—Jefferson, Fayette, Kenton, and Warren.<sup>32</sup> The total bonded indebtedness for these fourteen projects was approximately \$223 million.<sup>33</sup> The new projects were overseen by the Court Facilities Standards Committee, which was comprised of nine representatives from the judicial, legislative and executive branches.<sup>34</sup>

In 1998, the Court of Justice revised the Guidelines for Kentucky Court Facilities.<sup>35</sup> The purpose of the Guidelines was “to set forth the minimum levels of adequacy for courts in the Commonwealth.”<sup>36</sup>

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RENOVATION PROJECTS 1988–2008 (Internal AOC Document) (describing renovation projects on Kentucky courthouses). *See also* ROBERT F. STEPHENS & PAUL F. ISAACS, FISCAL YEARS 1995–96 & 1996–97 BIENNIAL REPORT OF THE KENTUCKY COURT OF JUSTICE (1997) (noting on the cover that Robert F. Stephens was the Chief Justice of the Kentucky Supreme Court).

<sup>29</sup> GUIDELINES FOR KENTUCKY COURT FACILITIES 19 (Rev. 1998) [hereinafter GUIDELINES]. *See also* Kentucky Judicial Branch 1996–2002 Six Year Capital Plan Overview [hereinafter Six Year Capital Plan Overview] (on file with author); STEPHENS & ISAACS, *supra* note 28, at 1.

<sup>30</sup> Six Year Capital Plan Overview, *supra* note 29.

<sup>31</sup> *See id.*; CAPITAL PLANNING ADVISORY BD., LEGISLATIVE RESEARCH COMM’N, 1996–2002 STATEWIDE CAPITAL IMPROVEMENTS PLAN: EXECUTIVE SUMMARY (1995), available at [http://www.e-archives.ky.gov/pubs/Capital\\_Plan/9602es.pdf](http://www.e-archives.ky.gov/pubs/Capital_Plan/9602es.pdf).

<sup>32</sup> *See* KY. COURT OF JUSTICE, *supra* note 28; *see also* Kentucky Population by County, INDEXMUNDI, <http://www.indexmundi.com/facts/united-states/quick-facts/kentucky/population#chartTab> (last visited July 27, 2013) (listing Jefferson, Fayette, Kenton, Boone, and Warren as the most populous counties, respectively).

<sup>33</sup> *See* KY. COURT OF JUSTICE, *supra* note 28.

<sup>34</sup> KY. REV. STAT. ANN. §§ 26A.090(7), 26A.107(1) (LexisNexis 2013).

<sup>35</sup> GUIDELINES, *supra* note 29, at cover page.

<sup>36</sup> *Id.* at introduction.

As directed by the General Assembly, the Guidelines were reviewed by the NCSC to ensure their compliance with national standards for court facilities, including detailed criteria on square footage by room and requirements relating to public and private space within the judicial facility and security relating to the circulation of prisoners.<sup>37</sup>

That same year marked the beginning of a new era for the Court of Justice under the leadership of Chief Justice Joseph E. Lambert, who recognized the need for extensive renovation of courthouses statewide.<sup>38</sup> Under his guidance, the Court of Justice established a comprehensive system for facility assessment and a plan to provide practical, efficient, and cost-effective judicial buildings where they were most needed for Kentucky's citizens.

In 2000, the General Assembly passed House Bill ("HB") 734, which significantly changed the criteria for construction of court facilities in the Commonwealth and placed responsibility for oversight, management and construction of court facilities squarely under the Court of Justice.<sup>39</sup> The new statutes required the Chief Justice to "establish rules of procedure or guidelines on matters relating to the design, financing, and construction of court facilities."<sup>40</sup> The General Assembly also explicitly charged the AOC with overseeing the design, financing and construction of court facilities, requiring the agency to assess the need for court facilities construction and renovation; develop project programs for construction and renovation of court facilities; and evaluate the financial condition of any county in which a new project is planned "to determine the county's ability to participate in the proposed project."<sup>41</sup>

Carrying out its obligation under HB 734, the Court of Justice established a set of procedures detailing the requirements for the construction and renovation of court facilities.<sup>42</sup> The first set of

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<sup>37</sup> *Id.* at 47.

<sup>38</sup> KY. COURT OF JUSTICE, ANNUAL REPORT: FISCAL YEAR 1998, at 1, 4 (1999), *available at* [http://www.e-archives.ky.gov/pubs/aoc/kcoj\\_annualreport\\_1998.pdf](http://www.e-archives.ky.gov/pubs/aoc/kcoj_annualreport_1998.pdf).

<sup>39</sup> H.B. 734, 2000 Gen. Assemb., Reg. Sess. (Ky. 2000) (codified as amended at KY. REV. STAT. ANN. §§ 26A.160–68 (LexisNexis 2013)).

<sup>40</sup> KY. REV. STAT. ANN. § 26A.160(1).

<sup>41</sup> *Id.* § 26A.160(2).

<sup>42</sup> *See, e.g.*, KY. COURT OF JUSTICE, RULES OF ADMINISTRATIVE PROCEDURE OF THE COURT OF JUSTICE: CONSTRUCTION PROGRAM DEVELOPMENT (May 2007) [hereinafter CONSTRUCTION PROGRAM DEVELOPMENT], *available at* <http://courts.ky.gov/courtprograms/judicialconstruction/Documents/ProjectDevelopmentGuideSection1.pdf>.

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rules was promulgated in 2000.<sup>43</sup> Those rules were revised in August 2005 and again in May 2007.<sup>44</sup> The nearly eight hundred pages contained in the regulations establish procedures for courthouse construction in the Commonwealth in elaborate detail, including comprehensive processes for analyzing existing court facilities, financing new buildings, and considering historical and environmental factors throughout the construction process.<sup>45</sup> The regulations also require transparency in the oversight of the construction process, dictating that all meetings relating to the construction of courthouses are open to the public.<sup>46</sup>

Under the regulations, all construction projects are managed by a Project Development Board, or PDB, which acts as the agent for the county and the Court of Justice.<sup>47</sup> The PDB consists of representatives from the county, the Court of Justice and the public.<sup>48</sup> The Board is required to meet on a monthly basis and makes all decisions relating to the project, including selection and oversight of service providers.<sup>49</sup> The PDB is also required to work within the budget appropriated by the General Assembly, though extraordinary expenses may be paid if authorized by the AOC Director of Budget and Policy.<sup>50</sup> Despite the relative autonomy of the PDB, the regulations give the Chief Justice ultimate authority over “approval or disapproval of Projects, Project designs, Project components, and/or procedures,” including the “authority to terminate, assign, appoint, or reassign PDB Members and/or to direct and complete Projects in the best interest of the COJ.”<sup>51</sup>

The regulations also dictate the criteria and design standards for all new judicial facilities, including uniform space allowances and design requirements for all construction projects, including additions, alterations, adaptations, rehabilitations, and

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 5, 15.

<sup>45</sup> *Id.* at 5, 15.

<sup>46</sup> *Id.* at 19. This was a significant departure for the Court of Justice, which had historically guarded court records and meetings as presumptively closed to the public. *See Ex parte Farley*, 570 S.W.2d 617, 626, 627 (Ky. 1978). But because the courthouses were ultimately county projects, the Court of Justice recognized through AP Part X that the construction of court facilities “shall not be conducted in secret.” CONSTRUCTION PROGRAM DEVELOPMENT, *supra* note 42, at 19.

<sup>47</sup> CONSTRUCTION PROGRAM DEVELOPMENT, *supra* note 42, at 29.

<sup>48</sup> *See id.* at 29–30.

<sup>49</sup> *See id.* at 29–31.

<sup>50</sup> *See id.* at 33 (noting that costs must be authorized through the AOC before the PDB may finalize plans for the event).

<sup>51</sup> *Id.* at 34.

conversions.<sup>52</sup>

The passage of HB 734 marked the beginning of the courthouse construction boom in Kentucky. In 2000, the General Assembly authorized the construction of fifteen new judicial centers.<sup>53</sup> Another eighteen projects were authorized in 2005, followed by seventeen new projects during the 2006 Session of the General Assembly.<sup>54</sup> Five additional projects were authorized in 2008.<sup>55</sup> With fifty-five new judicial centers in the pipeline, the Court of Justice was officially in the construction business. The AOC facilities department grew to include two architects, an HVAC specialist and a number of project managers to oversee the new projects.

For the next decade, the sound of construction could be heard statewide as new judicial centers were built in counties across the Commonwealth. Gone were most of the “crumbling, dilapidated structures” described by Harry Caudill. In their place were facilities designed to house a modern court system in a safe environment. The construction boom also had some unintended but positive results. First, the projects provided much-needed jobs in communities across Kentucky.<sup>56</sup> And second, counties began to see a renewed interest and vitality in their downtowns, where most of the new buildings were located.<sup>57</sup>

But as the worst economic recession in decades began leveling state budgets in 2008, the courthouse construction program faced increased media scrutiny. Projects that were previously viewed as beneficial to the vitality and restoration of some of the Commonwealth’s more economically depressed counties were suddenly viewed by some as wasteful.<sup>58</sup> Questions were raised

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<sup>52</sup> See generally *id.* at 5–8 (describing the judicial facilities building and expansion process).

<sup>53</sup> Six Year Capital Plan Overview, *supra* note 29.

<sup>54</sup> *State Budget Includes Authorization for 18 New Judicial Center Projects*, LAWREADER (May 11, 2006), <http://news.lawreader.com/2006/05/11/state-budget-includes-authorization-for-18-new-judicial-center-projects>.

<sup>55</sup> Press Release, Leigh Anne Hiatt, Ky. Court of Justice, Court Facilities Standards Committee to Review Judicial Center Projects for Carlisle and Wolfe Counties (Nov. 9, 2008), available at <http://migration.kentucky.gov/Newsroom/kycourts/PR11092008A.htm>.

<sup>56</sup> Linda B. Blackford, *State Struggles to Pay for New Courthouses*, LEXINGTON HERALD-LEADER (Jan. 31, 2010), <http://www.kentucky.com/2010/01/31/1117984/state-struggles-to-pay-for-new.html>.

<sup>57</sup> See, e.g., Press Release, Casie Anderson, Ky. Court of Justice, Whitley County to Break Ground for \$18.9 Million Judicial Center April 24 (April 21, 2009), available at <http://migration.kentucky.gov/Newsroom/kycourts/PR04212009A.htm>.

<sup>58</sup> See, e.g., *Franklin County Judicial Center*, URBANUP,



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about the size and cost of the buildings in proportion to the population and annual budget of the counties where they were built.<sup>59</sup> Those questions led to accusations about the legitimacy of the construction contracts.

In September 2008, the *Lexington Herald-Leader*, the daily newspaper for the second largest city in Kentucky,<sup>60</sup> began to examine the courthouse construction boom in a series of articles titled “Law and Mortar.”<sup>61</sup> The articles took aim at the perceived extravagance of the program, highlighting the fact that the state had funded \$880 million worth of judicial facilities in ten years.<sup>62</sup> In the first article, “A Poor State Rich in Courthouses,” reporter Linda Blackford raised concerns about the possibility that counties could be on the hook for bond payments if something jeopardized state funding for the annual use allowance.<sup>63</sup> Later articles focused on an alleged bonding issue that required construction managers to insure only five percent—rather than the state-required one hundred percent—on courthouse construction projects.<sup>64</sup>

Blackford also reported that the majority of construction contracts had been awarded to one contractor, Codell Construction, and questioned the construction program’s preference for construction managers versus general contractors.<sup>65</sup> The article further noted

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<http://urbanup.net/cities/kentucky/frankfort-kentucky/franklin-county-judicial-center> (last visited May 24, 2013).

<sup>59</sup> Scott Wartman, *Courthouse Construction Cooled*, KY. POL. (Mar. 24, 2012, 8:46 AM), <http://cincinnati.com/blogs/nkypolitics/2012/03/24/courthouse-construction-cooled>.

<sup>60</sup> *Lexington Herald-Leader*, MCLATCHY COMPANY, <http://www.mclatchy.com/2006/06/09/357/lexington-herald-leader.html> (last visited May 24, 2013).

<sup>61</sup> *See, e.g., Law and Mortar*, LEXINGTON HERALD-LEADER, <http://www.kentucky.com/justice> (last visited July 27, 2013) (listing the articles in the “Law and Mortar” series).

<sup>62</sup> Ryan Alessi, *New Courthouses Serve as Political Flashpoints as Ky. Legislature Considers Debt Limit*, CN2 (Feb. 27, 2012, 7:58 AM), <http://mycn2.com/politics/new-courthouses-serve-as-political-flashpoints-as-ky-legislature-considers-debt-limit>.

<sup>63</sup> Linda B. Blackford, *A Poor State Rich in Courthouses*, LEXINGTON HERALD-LEADER (Sept. 7, 2008), <http://www.kentucky.com/2010/01/31/1117984/state-struggles-to-pay-for-new.html>.

<sup>64</sup> Linda B. Blackford, *Director of Courthouse Program Resigns*, LEXINGTON HERALD-LEADER (Feb. 26, 2009), <http://www.kentucky.com/2009/02/26/706989/director-of-courthouse-program.html>. *See also* John Cheves & Linda B. Blackford, *Court Projects Audit Ordered*, LEXINGTON HERALD-LEADER (Feb. 27, 2009), <http://www.kentucky.com/2009/02/27/707988/court-projects-audit-ordered.html>; Linda B. Blackford, *Courthouse Bond Flap Escalates*, LEXINGTON HERALD-LEADER (Mar. 5, 2009), <http://www.kentucky.com/2009/03/05/714317/courthouse-bond-flap-escalates.html>.

<sup>65</sup> Linda B. Blackford, *Two Well-Connected Firms Profit*, LEXINGTON HERALD-LEADER (Sept. 7, 2008), <http://www.skyscrapercity.com/showthread.php?t=482756&page=13>.

that one firm, Ross, Sinclair & Associates (“RSA”), had done the bond work on more than sixty-eight percent of courthouse projects.<sup>66</sup> The fact that Codell and RSA had significant connections within state government contributed to the perception that courthouse construction had become inappropriately politicized.<sup>67</sup>

The *Lexington Herald-Leader’s* series prompted the Supreme Court of Kentucky to order an internal audit in early 2009.<sup>68</sup> The AOC was directed to retain a construction law attorney to perform a thorough review of the courthouse construction program.<sup>69</sup> The report revealed that the AOC had “allowed certain construction managers to furnish [p]erformance . . . bonds [on projects] that [we]re legally insufficient.”<sup>70</sup> In several instances, performance bonds were required only after the AOC received public record requests regarding bonding information.<sup>71</sup> As it turned out, the bonding practices violated not only state law, but the AOC’s own administrative procedures and construction contracts as well.<sup>72</sup>

Budget woes for Kentucky—and the Court of Justice in particular—magnified the negative public perception of the courthouse construction program. The recession decimated state budgets, Kentucky’s included,<sup>73</sup> which resulted in deep cuts to all state agencies and departments.<sup>74</sup> Since fiscal year 2008, the court system has experienced a cumulative reduction of forty-eight percent in its court operations budget.<sup>75</sup> Significant measures have

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<sup>66</sup> *Id.*

<sup>67</sup> *See id.*

<sup>68</sup> Press Release, Leigh Anne Hiatt, Ky. Court of Justice, Chief Justice Minton Releases Legal Opinion on Bonding Required for Kentucky Court Facilities Construction Program (Mar. 25, 2009), *available at* <http://migration.kentucky.gov/Newsroom/kycourts/PRO3252009.htm>.

<sup>69</sup> *See id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Memorandum from William G. Geisen on Kentucky Court of Justice Court Facilities Construction Program to Chief Justice John D. Minton, Jr. (Mar. 19, 2009), *available at* <http://migration.kentucky.gov/NR/rdonlyres/879DB7DD-9EC1-48C5-A36D-843A57EFE659/185167/GeisenOpinionLetter31909.pdf>.

<sup>73</sup> *See, e.g.*, Phil Oliff et al., *States Continue to Feel Recession’s Impact*, CTR. ON BUDGET AND POLY PRIORITIES, <http://www.cbpp.org/cms/index.cfm?fa=view&id=711> (last updated June 27, 2012) (noting that Kentucky’s 2012 budget was short 3.7% and that the recession, starting in 2007, “caused the largest collapse in state revenues on record”).

<sup>74</sup> *See, e.g.*, *How Does the Recession Affect State and Local Governments?*, LEONORE ANNENBERG INST. FOR CIVICS, <http://www.annenbergclassroom.org/speakouts.aspx?name=how-does-the-recession-affect-state-and-local-governments&AspxAutoDetectCookieSupport=1> (last visited July 27, 2013, 2013) (describing how in Philadelphia, the recession has affected the state and local budgets).

<sup>75</sup> JOHN D. MINTON, JR., BUDGET CUTS HOLLOWING OUT COURT SYSTEM (2012), *available*

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been taken to address this shortfall, including layoffs, furloughs, and elimination of court programs.<sup>76</sup>

At the same time that the court operations budget has been slashed, the courthouse construction boom has caused the court facilities budget to increase significantly. By way of comparison, the facilities budget for fiscal year 2003 was \$49.3 million. A decade later, it is \$122 million.<sup>77</sup> So despite the significant deficit in the court's operation budget, the General Assembly has been "virtually obligated" to fund the facilities budget, which includes payments to counties to fund the new judicial centers.<sup>78</sup>

The construction of new judicial centers across the Commonwealth in this financial environment quickly became a serious public relations issue. In the court of public perception, it is difficult to justify the construction of a multi-million dollar judicial center when courthouse doors are closing to address funding shortfalls.

A lot has been learned since the inception of the modern courthouse construction era in 1996. There is no doubt that courthouses across the Commonwealth were—and still are—in desperate need of replacement. Beyond the anecdotal horror stories noted at the beginning of this article are the more common scenarios that judges and court staff in older facilities encounter on a daily basis due to lack of usable space in the old county courthouses. Prisoners, victims, and judges share elevators.<sup>79</sup> Divorcing spouses sit in the same waiting areas. Mold and asbestos are customary while security often is not.

A new courthouse in every county was once a popular idea with both elected officials and the public. During the much stronger economy of the late 1990s and early 2000s, it seemed like a feasible promise. But the lessons of the past decade have established the need for a more measured approach to the construction of judicial facilities across the Commonwealth.

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at [http://courts.ky.gov/furlough/Documents/MintonOp\\_Ed.pdf](http://courts.ky.gov/furlough/Documents/MintonOp_Ed.pdf).

<sup>76</sup> *Id.*

<sup>77</sup> Tom Loftus, *Costly Courtrooms: Construction Boom is Questioned as Budget Cuts Cause Furloughs*, COURIER-J. (Sept. 5, 2012), <http://www.courier-journal.com/article/20120904/news01/309050005/Costly-courtrooms-Construction-boom-questioned-budget-cuts-cause-furloughs>.

<sup>78</sup> *Id.*

<sup>79</sup> Louis Perret, *The Case for a New Courthouse*, ABIZ, <http://www.acadianabusiness.com/business-news/13218-the-case-for-a-new-courthouse> (last updated Apr. 2, 2013, 2:33 PM).

In the aftermath of the performance bond issue that came to light in 2008 and 2009, the construction program has undergone a complete overhaul. For starters, all documents relating to construction projects—from expenditures to PDB meeting minutes—have been made available to the public through the Court of Justice website.<sup>80</sup> The facilities department has been scaled back and moved under the supervision of the Budget Director.<sup>81</sup> And all construction regulations have been fully revised after months of review and comment from a wide range of stakeholders, including construction lawyers, construction service providers, architects, engineers, and county officials.<sup>82</sup> The new regulations feature a revised procurement process that more closely follows the process used by the executive branch. The rules also clarify the two available project delivery methods, revise the fee structures, and revise the process for issuing change orders on a project. The new regulations became effective on June 1, 2012, and will apply to all new renovation and construction projects going forward.<sup>83</sup>

If this all sounds like an unusual venture for a court system to undertake, it is. California is the only other court system with a statewide courthouse construction program that falls under the administrative duties of the chief justice.<sup>84</sup> In effect, the chief justices of Kentucky and California are the only two in the country who serve the dual role of judge and construction manager.

For better or for worse, the courthouse construction program makes the Kentucky Court of Justice unique. The Court of Justice has not put on blinders to some of the well-deserved criticism that this program has taken. But that criticism should not tarnish the overall benefit of a program that was initiated with the best of intentions and has brought secure, modern court facilities to counties across the Commonwealth. The court system and the citizens of the Commonwealth have benefited from the efficient administration of justice that is accomplished in these buildings. And the counties have benefited from a capital investment project

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<sup>80</sup> *Judicial Center Construction: Judicial Center Projects*, KY. CT. OF JUST., <http://courts.ky.gov/courtprograms/judicialconstruction/Pages/default.aspx> (last visited July 27, 2013).

<sup>81</sup> *Budget & Policy*, KY. CT. OF JUST., <http://courts.ky.gov/aoc/budgetpolicy/Pages/default.aspx> (last visited July 27, 2013).

<sup>82</sup> See CONSTRUCTION PROGRAM DEVELOPMENT, *supra* note 42 (indicating a complete revision and overhaul of the capital construction programs regulations).

<sup>83</sup> *Id.*

<sup>84</sup> See CAL. GOV'T CODE § 70391 (West 2012).

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that improves the face of their city centers and brings much needed construction dollars and jobs to their communities.

The Commonwealth is unlikely to see another courthouse construction boom similar to the explosion of the past decade. But that does not mean the work is done. As of the publication of this article, there are five judicial centers still under construction.<sup>85</sup> That work is expected to be completed by the middle of 2014.<sup>86</sup> There are forty-seven counties on the waiting list for new or renovated buildings. The current judicial facilities in those counties have been assessed by the AOC and are listed in order of priority based on a number of factors, including the condition of the building, space needs, ADA accessibility and security. In its last Capital Plan covering years 2012–2018 and in its fiscal year 2012–2014 budget recommendation, the Court of Justice requested authorization for two new judicial facilities.<sup>87</sup> Both of those requests were denied. Regardless of the number of new facilities under construction, the facilities department will stay busy maintaining and supervising the more than 242 facilities the Court of Justice occupies across the Commonwealth.

The Commonwealth of Kentucky and its 120 county courthouses have come a long way in the past 50 years. In just two decades, the program initiated by Chief Justice Stephens and expanded by Chief Justice Lambert has provided a model for national standards for courthouse construction. It has also provided Kentucky with an extraordinary legacy of modern, functional, and safe judicial centers designed to serve the citizens of the Commonwealth well into the twenty-first century.

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<sup>85</sup> See ADMIN. OFFICE OF THE CTS, QUARTERLY CAPITAL PROJECTS STATUS REPORT (2012), available at [http://courts.ky.gov/aoc/Documents/Budget\\_Policy/QuarterlyStatusReport.pdf](http://courts.ky.gov/aoc/Documents/Budget_Policy/QuarterlyStatusReport.pdf).

<sup>86</sup> *Id.*

<sup>87</sup> CAPITAL PLANNING ADVISORY BD., 2012-2018 STATEWIDE CAPITAL IMPROVEMENTS PLAN 115 (2011).