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STATEMENT OF
HONORABLE KENNETH B. KRAMER, CHIEF JUDGE
U.S. COURT OF APPEALS FOR VETERANS CLAIMS
FOR SUBMISSION TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON BENEFITS
APRIL 29, 2004

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

On behalf of the United States Court of Appeals for Veterans Claims (the Court), I appreciate the opportunity to testify concerning H.R. 3936. I speak in support of the bill. H.R. 3936 would amend title 38 of the United States Code to authorize the Court to locate its principal office in the Washington, D.C., metropolitan area, rather than only in the District of Columbia, and would express the sense of Congress that a dedicated Veterans Courthouse and Justice Center (Courthouse) should be provided for the Court and those it serves. The proposed legislation would also require the Secretary of Defense, the Secretary of Veterans Affairs, the Administrator of General Services, and other appropriate government officials to work with the Court to explore the feasibility of using a site owned by the United States and located on or proximate to the Pentagon Reservation. A report to the Congress on this matter would be due 90 days after enactment of the legislation.

The Court is an independent Article I judicial tribunal created by statute in 1988 to hear appeals from adverse final decisions of the Board of Veterans' Appeals concerning benefits administered by the Department of Veterans Affairs (VA). By creating the Court, Congress gave our nation's veterans, for the first time, the right to judicial review of VA benefits decisions. The Court, housed since its founding in a commercial office building in the District of Columbia, is presently the only Article I court not located in a dedicated courthouse (the other Article I courts are the U.S. Court of Appeals for the Armed Forces, the U.S. Tax Court, and the U.S. Court of Federal Claims).

Last October, I wrote to DoD Secretary Rumsfeld to ask for his support for the construction on presently available Pentagon Reservation land of a Courthouse that would become the permanent home for the Court. It was my understanding that the Department of Defense (DoD) had initiated a feasibility study to determine the "highest and best possible use" of three sites in Arlington, Virginia: the Hayes, Eads, and Fern Street parking lots, located on the Pentagon

Reservation, south of Interstate 395, just north of Army Navy Drive; and that, after the study had been completed, the DoD might use its enhanced-leasing authority to request proposals for private development. I asked Secretary Rumsfeld to consider using this enhanced-leasing authority to construct the Courthouse on one of these sites.

In addition to the Court, occupants of the Courthouse would be members of those entities that regularly practice before the Court -- VA General Counsel Group VII, the Veterans Consortium Pro Bono Program, and appellate attorneys of the Disabled American Veterans (DAV), the Paralyzed Veterans of America (PVA), and the National Veterans Legal Services Program (NVLSP), as well as the executive office of the U.S. Court of Appeals for Veterans Claims Bar Association (CAVC Bar Association). The Veterans Consortium Pro Bono Program is a federally funded grant program, administered through the Legal Services Corporation, to recruit, train, and mentor attorneys to provide pro bono representation to veterans and their families in cases before the Court. The DAV and PVA are veterans service organizations that have historically had staff members housed at Department of Veterans Affairs (VA) facilities where they represent veterans benefits claimants. The NVLSP is a public-interest program devoted to representing veterans and their families. The CAVC Bar Association is a tax-exempt voluntary organization of practitioners before the Court that qualifies to receive grants of funds for, e.g., educational programs, pursuant to 38 U.S.C. § 7285(b)(2). We are asking other veterans organizations about their interest in having their legal offices in the Courthouse.

The General Services Administration (GSA) has preliminarily estimated that an appropriate Courthouse would require 121,000 gross square feet or 112,000 rentable square feet of interior space. (It is not anticipated that, if additional veterans organizations were to occupy space, there would be any significant impact on square-footage requirements.) GSA can work with DoD on predesign and preconstruction studies to determine the feasibility of use of one of the DoD sites for the Courthouse, can provide input during design and construction based on guidelines for federal courthouses, and, once construction was completed, act as the federal leasing agent. The Court and its constituencies that have expressed an intent to relocate in the Courthouse pay (or have expressed a willingness to pay, based upon present rental costs) over \$3.7 million per year for rent. GSA anticipates that, at least for the Court and VA, rental costs at our present D.C. location will increase substantially in the near future.

In December 2003, I received a response to my letter to Secretary Rumsfeld. The response came from the Honorable Raymond F. DuBois, the DoD Deputy Under Secretary for Installations and the Environment. In his letter, Mr. DuBois stated that a feasibility study had been initiated to "gauge the level of private sector interest in entering into an 'Enhanced-Use Lease' agreement in accordance with the provisions of Section 2667 of Title 10, United States Code." He pointed out that requirements for use of the land include DoD's anti-terrorism and force-protection needs"; specifically, he listed "maintaining the present level of employee parking, the possible relocation of the Navy Exchange Service Station (which sits on land that will be transferred to the Secretary of the Army for use by Arlington National Cemetery), compliance with line-of-site [sic] restrictions, and effecting other critical structural security and design features." He went on to say

the following: "Should 'Enhanced-Use-Leasing' prove feasible, we would not object to the [GSA] working with our selected developer to see if your requirement for a new United States Veterans Courthouse and Justice Center could be met within this context."

GSA has been supportive, with members of the National Capital Region staff providing assistance and preliminary analysis. In a December 2003 letter, Administrator Stephen A. Perry wrote as follows, concerning the initiative to locate the Courthouse on or near the Pentagon Reservation: "We share your vision for this worthy undertaking, and we will continue to support you on this or any other alternatives you may consider." Arlington County government officials have indicated that they support the Courthouse and have offered to assist in this project.

I continue to follow the progress of the DoD feasibility study, and have been informed that it is not yet final, but should be complete within the next few weeks. Should the study be positive concerning enhanced-lease development by the private sector, the Court would work with DoD, the developer it selects, GSA, and the constituents who intend to co-locate with the Court to try to make the Veterans Courthouse and Justice Center a reality.

Given the past, present, and future sacrifices of the many men and women of our Armed Forces, I cannot imagine a higher or better use for one of these present parking-lot sites than a stand-alone, dedicated Veterans Courthouse and Justice Center to embody the gratitude that this nation holds for those who -- in Abraham Lincoln's words -- "shall have borne the battle and for his widow and his orphan." The Pentagon Reservation site would be the ideal setting, given its proximity to the Pentagon, Arlington Cemetery, and the soon-to-be-constructed Air Force Memorial. The Courthouse would express our government's strong commitment to the ideal of justice for veterans and DoD's use of its enhanced-leasing authority would permit the project to come to fruition with a minimum expenditure of appropriated funds. We would, of course, be glad to cooperate in the preparation of the report called for by section 2(c) of H.R. 3936.

In closing, I want to express my gratitude for the support of the sponsors of this legislation, Chairman Smith, ranking minority member Evans, and Armed Services Committee ranking minority member Skelton and for the invaluable assistance of your Committees staff, especially Pat Ryan, Kingston Smith, and Mary Ellen McCarthy. I thank you for your consideration of H.R. 3936, which would greatly advance this undertaking, as a timely and tangible symbol of justice for our nation's veterans and their families whose sacrifices are greatly valued.