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COURTHOUSE CONSTRUCTION

Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking



General Government Division

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The Honorable Sam Brownback
Chairman, Subcommittee on Oversight of Government Management,
Restructuring, and the District of Columbia
Committee on Governmental Affairs
United States Senate

The Honorable Carl Levin
United States Senate

The Honorable Jay C. Kim
Chairman, Subcommittee on Public Buildings and
Economic Development
Committee on Transportation and Infrastructure
House of Representatives

The Honorable James A. Traficant, Jr.
Ranking Minority Member
Subcommittee on Public Buildings and
Economic Development
Committee on Transportation and Infrastructure
House of Representatives

The Honorable Wayne T. Gilchrest
House of Representatives

The General Services Administration (GSA) and the federal judiciary have embarked on a multibillion-dollar courthouse construction initiative aimed at addressing the housing needs of the federal district courts and related agencies. Included in this initiative are plans to construct hundreds of new district judge trial courtrooms to replace existing ones and to accommodate future increases in federal judgeships. Using GSA data, we estimated that the cost to build a typical trial courtroom in 1995 dollars could range from about \$640,000 to \$1.3 million depending on geographic location. The cost in Washington, D.C., was about \$800,000. Over the last few years, various subcommittees and Members of Congress have become increasingly concerned that courtrooms may be underutilized and that more costly courtrooms than needed may have been, and continue to be, constructed. This report responds to your request to (1) determine how often and for what purposes courtrooms have been used and (2) examine what steps the judiciary is taking to assess space and courtroom usage issues.

Results in Brief

The judiciary's process for administering justice is dynamic and complex. According to the judiciary, the availability of a trial courtroom is an integral part of the judicial process because judges need the flexibility to resolve cases more efficiently. Nonetheless, trial courtrooms, because of their size and configuration, are expensive to construct, and constructing any unneeded courtrooms would waste taxpayer dollars. Currently, the judiciary maintains a general practice of, whenever possible, assigning a trial courtroom to each district judge.

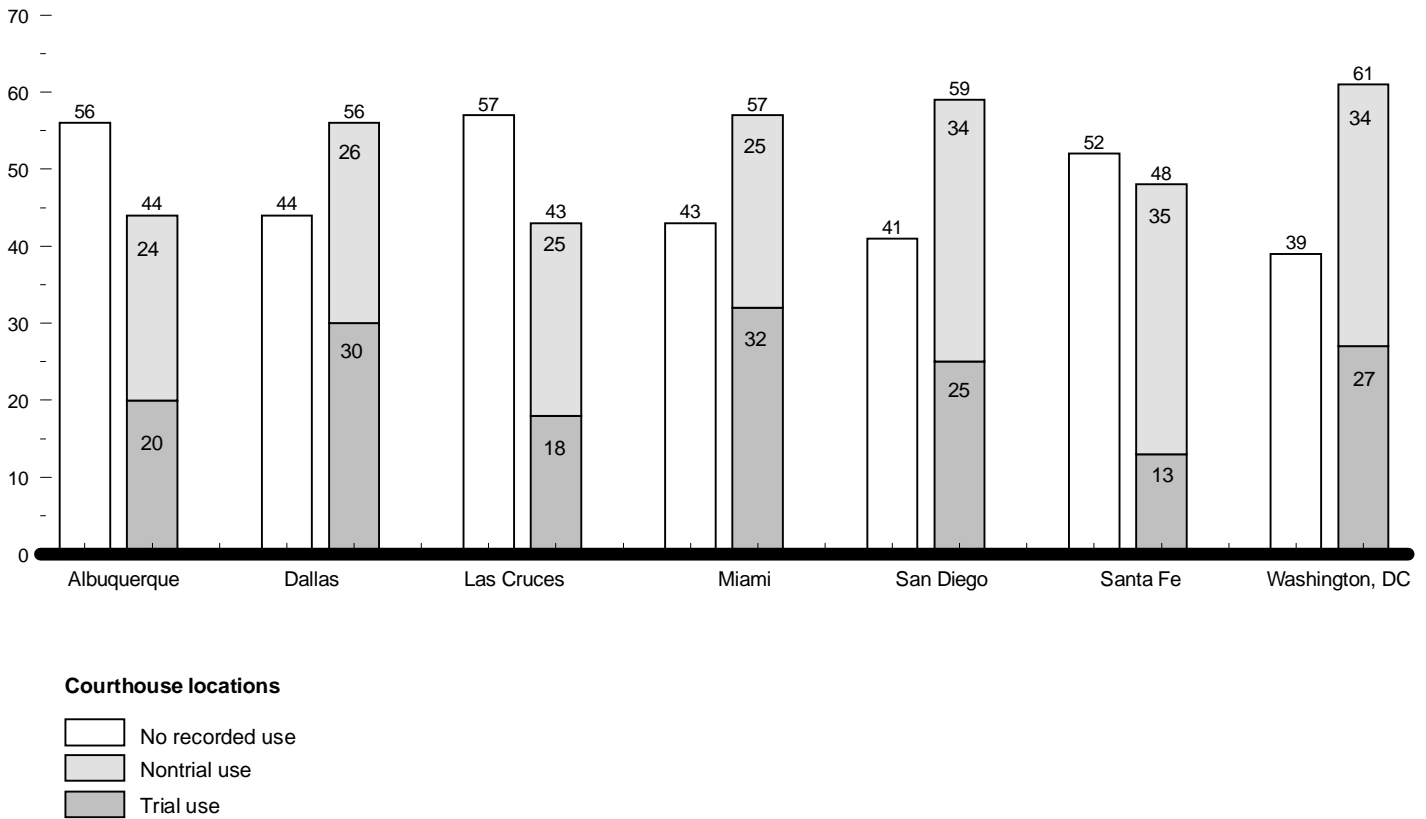
The extent to which trial courtrooms are utilized for trials and nontrial activities¹ is one indication of need, but the judiciary does not compile data on how often and for what purposes courtrooms are actually used or have analytically-based criteria for determining how many and what types of courtrooms are needed to effectively administer justice. Therefore, the judiciary does not have sufficient data to support its practice of providing a trial courtroom for every district judge.

Our detailed work compiling data at seven geographically dispersed locations—Dallas, TX; Miami, FL; Albuquerque, Santa Fe, and Las Cruces, NM; San Diego, CA; and Washington, D.C.—showed that courtroom usage for trials and nontrial activities varied by judge and location. Furthermore, on many of the workdays during 1995, courtrooms were not used at all for these purposes. Our analysis for 1995 showed that:

- On average, trial courtrooms were used for trial or nontrial purposes about 54 percent of all the days that they could have been used. In other words, these courtrooms were, on average, used for some purpose 135 days and vacant 115 days out of the 250 federal work days in 1995. Overall, courtroom utilization rates varied by location, from 61 percent in Washington, D.C., to 43 percent in Las Cruces, NM.
- Courtrooms were used for trials less than one-third of the days, and the use of courtrooms for trials varied by location. The highest average trial usage rate was 32 percent in Miami, FL, and the lowest was 13 percent in Santa Fe, NM. Nontrial activities, such as pretrial conferences, motion hearings, and grand jury proceedings, consumed the remainder of the days courtrooms were used. On most of the nontrial days, the courtrooms were used for 2 hours or less. Figure 1 illustrates the percentage of days courtrooms were used for trials and nontrial purposes and the percentage of days with no such use for each of the seven locations during 1995.

¹According to AOUSC, trials are defined as any contested proceeding. Nontrial activities include motion hearings, arraignments, and other proceedings.

Figure 1: Percent of Days Courtrooms Were Used



Source: GAO analysis of data obtained at seven courthouse locations.

- At the six locations with more than one trial courtroom, all courtrooms at any location were seldom used for trials or nontrial activities the same day. Of the 250 workdays in 1995, Miami and Washington each had at least one unused courtroom on each of the workdays; San Diego and Dallas each had at least one unused courtroom on all but 1 day; Albuquerque had at least one of its five courtrooms unused on all but 7 days; and Las Cruces

had at least one courtroom unused on all but 54 days, or about 78 percent of the work year.

- Senior judges—district judges who are eligible to retire but choose to continue to carry out judicial duties, often at reduced caseloads—used the courtrooms assigned to them for trials and nontrial activities considerably less frequently than active district judges. For example, 41 active district judges at the locations visited used the courtrooms assigned to them about 65 percent of the days for both trials and nontrial activities, but average use for 21 senior judges was 38 percent. For trials only, the active district judges' average utilization rate was 33 percent and for senior judges it was 17 percent.

Our discussions with district judges in the various locations showed diverse opinions about changes to current courtroom configurations or use practices. All preferred having their own courtrooms to help them resolve cases, but their views on the one judge, one courtroom practice were mixed. Some district judges, like those in Miami, were opposed to any type of courtroom sharing if it meant having fewer trial courtrooms than judges. Other district judges believed that having fewer trial courtrooms or a mix of full-sized and smaller courtrooms could work if scheduling and case management were better coordinated. According to the Chief Judge of the New Mexico District, a new courthouse now under construction in Albuquerque has been designed with fewer courtrooms than the projected number of judges and should facilitate sharing among judges, including magistrates. Likewise, senior judges are to share courtrooms in the new courthouse annex that is planned for San Diego.

The Administrative Office of the U.S. Courts (AOUSC), the judiciary's administrative arm, considers the data we developed limited because we do not capture such other factors as (1) "latent" use whereby the threat of a trial in an available courtroom can leverage the disposition of cases before trial; or (2) cases that settle just before a scheduled trial, leaving a courtroom available that cannot be easily rescheduled. We agree that these and other factors are important considerations, but the judiciary has not developed data to show how much of an effect such factors may have on the number of courtrooms needed.

The judiciary recognizes that it has not developed the data or performed the research to support its practice of providing a trial courtroom for every district judge. It has taken some actions intended to help it better understand courtroom usage, which include commissioning a study on the impact of providing fewer courtrooms than judges and adopting a policy

for exploring courtroom sharing opportunities by senior and visiting judges. However, these actions do not include a plan to produce data on the actual use of courtrooms for trials or nontrial activities or to systematically quantify the latent and other usage factors. In fact, the Federal Judicial Center (FJC), the education and research arm of the judiciary, and the Rand Institute for Civil Justice separately examined the AOUSC-commissioned study and said that it had major limitations and that more research must be done to adequately address the courtroom usage issue.

Background

The U.S. district courts are the federal courts of general trial jurisdiction. There are 94 district courts located throughout the United States, the Commonwealth of Puerto Rico, and the territories of Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. These courts have two categories of district judges who hear cases and use courtrooms. The first is “active district judges” who carry full caseloads. The other is “district judges with senior status”² who have resigned from their active judgeships, but continue to carry some caseload. When an active district judge takes senior status, he or she creates a judicial vacancy and the president may nominate a replacement. In this report we refer to active district judges as district judges and to district judges with senior status as senior judges. District courts also have magistrate judges, who, according to the FJC, can use district courtrooms and play an integral part in resolving cases.

Congress authorizes judgeships for each district based largely on the caseload. As of September 30, 1996, the judiciary reported that there were 647 authorized district judgeships, 44 of which were classified as vacant positions. In addition, there were 274 senior judges.

Historically, the judiciary’s practice has been to provide one trial courtroom³ for each district judge, and in many cases a courtroom is provided for each senior judge and additional courtroom(s) for visiting judges.⁴ According to AOUSC officials, courtrooms are an integral part of a court’s ability to discharge its judicial responsibilities, and no two courts

²Senior status can be achieved when a district judge reaches the age and service eligibility requirements for retirement.

³According to the U.S. Courts Design Guide, a district trial courtroom should customarily be 2,400 square feet with a proportional ceiling height (16 feet) and contain a jury box capable of seating 12 jurors and 6 alternates.

⁴A visiting judge is usually a district or senior judge who is on temporary assignment to a U.S. district court to which he or she is not assigned. Other members of the judiciary, such as a circuit judge, can also use district courtrooms.

use exactly the same procedure in scheduling cases to be heard or in using courtrooms. But there are similarities in how courtrooms are used. Cases are tried, witnesses testify, and juries serve in district trial courtrooms. In addition to trials, other legal proceedings involving the participation of a judge, such as arraignments/ pleas and pretrial conferences, are sometimes held in trial courtrooms.

In the late 1980s, the judiciary recognized that it was facing growing space shortages, security shortfalls, and operational inefficiencies at courthouse facilities. To address these problems, the Judicial Conference of the United States directed each of the 94 judicial districts, with assistance from AOUSC, to develop long-range space plans identifying where new and additional space was needed. Generally, these plans were to assume that each district judge would be assigned a trial courtroom. AOUSC has provided each of the 94 districts with long-range facility planning guidance for projecting space shortages. Under the planning process, each district is to develop space projections that are to be approved by the district's chief judge and each district's circuit judicial council. GSA uses the district court's 10 year space projections to develop requests for both new courthouse construction and expansion of existing court facilities.

GSA requests funding for courthouses as part of the president's annual budget request to Congress. Under the Public Buildings Act of 1959, as amended, GSA is required to submit to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure detailed project descriptions, called prospectuses, that contain project cost estimates and justifications for projects that exceed a certain cost threshold. Under the act, GSA can adjust the threshold upward or downward on the basis of changes in construction costs during the preceding calendar year—the threshold for fiscal year 1997 was \$1.74 million. Once courthouses are funded by Congress, GSA is to contract with private sector firms for design and construction work.

As a result of its planning process, the judiciary had initially identified about 200 locations it estimated would be out of space within the next 10 years. Many of these locations also have security concerns or operational inefficiencies. The judiciary estimated that new courthouses at these locations would cost about \$10 billion. In commenting on this report, GSA said that expansion of the courts' housing needs at 40 of these locations is no longer needed or will be satisfied through leasing actions or building modernizations. GSA and the judiciary estimate that there are now 160

locations that need a new courthouse or an annex to an existing building at an estimated cost of \$8 billion. Of the 160 locations, GSA said that 40 projects have received about \$3 billion in funding, and the remaining 120 projects will require an additional \$5 billion in funding.

The judiciary does not maintain readily available aggregate data on the number and cost of additional courtrooms that will result from this multibillion-dollar courthouse construction initiative. However, AOUSC workload projections indicate that the number of district judgeships could double or perhaps increase even more significantly by the year 2020—from 647 judgeships in 1996 to between 1,280 judgeships and 2,410 judgeships over this period.⁵ Using GSA data, we estimate that the cost to build a typical trial courtroom in 1995 dollars could range from about \$650,000 to \$1.3 million depending on geographic location. The cost in Washington, D.C., was about \$800,000. Using the Washington, D.C., cost, we estimated that the cost of providing one courtroom for each new judgeship, in 1995 dollars, could range from about \$500 million to \$1.4 billion. This amount does not include the cost of replacing courtrooms for existing judgeships.

In commenting on the report, AOUSC and FJC pointed out, and we agree, that factors such as budget constraints and availability of senior judges will influence the actual number of judgeships that will be added in the future. However, our intent in using these judgeship projections was to provide Congress with some perspective on the potential cost associated with providing a full-sized district courtroom for each of these projected judgeships.

Scope and Methodology

We did our work primarily at AOUSC in Washington, D.C., and at seven courthouses located in five judicial districts. Specifically, we reviewed the use of 65 district courtrooms—the 8 trial courtrooms located in Dallas, TX (Northern District of Texas); the 18 trial courtrooms located in Miami, FL (Southern District of Florida); the 5 trial courtrooms in Albuquerque, the 1 trial courtroom in Santa Fe, and the 2 trial courtrooms in Las Cruces, NM (District of New Mexico);⁶ the 12 trial courtrooms in San Diego, CA (Southern District of California); and the 19 trial courtrooms in Washington, D.C. (District of the District of Columbia).

⁵Long Range Plan for the Federal Courts, Judicial Conference of the United States, December 1995.

⁶In the District of New Mexico, we included courtrooms at multiple locations in our analysis because many of the judges in this district customarily hold trials and nontrial hearings in courtrooms located in Albuquerque, Las Cruces, and Santa Fe.

Recognizing that many variables could be used to select courthouse locations, we chose to judgmentally select the courthouses we visited on the basis of geographical location; the size of the courts; and, with the exception of Dallas, locations where new courthouse construction projects were planned or already under way. We included Dallas because some of our staff working on this study were located in Dallas, and we used the Dallas courthouse to test our methodology before visiting other courthouses. We limited the number of courthouses and the time period under review (calendar year 1995) because reviewing courtroom use at geographically dispersed locations required time-consuming file reviews, extensive data development, interviews with judges and their staffs, and significant travel expense.

To determine how often and for what purposes courtrooms were used, we analyzed data at the seven courthouse locations. Neither AOUSC nor the courts that we visited compile or routinely use specific data on how often or for what purposes courtrooms are used. Therefore, we had to compile information from numerous sources. First, we reviewed the judiciary's Monthly Report of Trials and Other Court Activity (JS-10) for all district judges that were assigned in 1995 to the locations that we visited and for all visiting judges who heard cases at these locations that year. From the JS-10 reports we determined the number of days and hours that each judge was actually in trial and the time spent conducting nontrial court activities. We considered all times recorded on the JS-10 reports as courtroom usage by the judges, even though nontrial activities are sometimes held in the judges' chambers or conference rooms.

We validated the information taken from the JS-10 reports by analyzing the judges' and/or courtroom deputies' daily calendars, trial/clerk minutes, and case histories from the Integrated Case Management System, which is an automated docketing system. Our analyses allowed us to determine when and how the courtrooms were used by the district judges, senior judges, and visiting judges for every federal working day in 1995. We also discussed courtroom usage, including the possibility of courtroom sharing; case scheduling; and the importance of having available courtrooms with judges, courtroom deputies, and other court officials at the locations visited. Also, we reviewed court management statistics and other data that showed the use of trial courtrooms by individuals other than federal district judges. After examining all the data, we credited each courtroom with one day of usage for all days that the records showed that there was any activity in it. We considered it a trial day if it had any trial activity, regardless of any nontrial activity that also may have occurred. We

determined the percentages of days that courtrooms were used for all purposes by comparing actual recorded usage with the maximum number of federal workdays on which the courtrooms could have been used (250).

To examine the steps the judiciary has taken to evaluate space and courtroom usage issues, we interviewed AOUSC officials and reviewed pertinent documents and studies on courtroom use. Specifically, we reviewed AOUSC documentation on initiatives to manage judicial space and engaged an operations research consultant to assist us in evaluating an AOUSC-commissioned study of the impact of providing fewer than one courtroom per judgeship.⁷ Lastly, we reviewed documents prepared by the Federal Judicial Center⁸ and the Rand Institute for Civil Justice⁹ that separately (1) examine various aspects of AOUSC's impact study and (2) make suggestions for further research on courtroom usage and courtroom sharing.

We cannot project the results of our work to the universe of district courtrooms nationwide, within the district where they were located, or to the locations visited in other time periods. We did our work between January 1996 and April 1997, in accordance with generally accepted government auditing standards. Appendix I discusses our objectives, scope, and methodology in greater detail.

Courtroom Usage

According to the judiciary, courtroom availability is a key component in providing judges the flexibility to resolve cases more efficiently. Nonetheless, trial courtrooms are expensive to construct, and any unneeded courtrooms would waste taxpayer dollars. The extent to which trial courtrooms are utilized for trial or nontrial activities is one indication of need, but the judiciary does not compile data on how often and for what purposes courtrooms are used or have analytically-based criteria for determining effective courtroom utilization. Therefore, the judiciary does not have sufficient data to support its practice of generally providing a trial courtroom for every district judge. Our detailed work compiling data at seven geographically dispersed locations—Dallas, TX; Miami, FL;

⁷The Impact of Providing Fewer Than One Courtroom Per Judgeship: Report to the Committee on Security, Space, and Facilities of the Judicial Conference of the United States; Edward H. Leekley and William T. Rule II, Washington, D.C., March 1996.

⁸Federal Judicial Center Research Note on The Impact of Providing Fewer Than One Courtroom Per Judgeship, Federal Judicial Center, August 28, 1996.

⁹Research on Courtroom Sharing, Project Memorandum, Terrence Dunworth and James S. Kakalik, Rand Institute for Civil Justice, PM-598—1-ICJ, September 1996.

Albuquerque, Santa Fe, and Las Cruces, NM; San Diego, CA; and Washington, D.C.—showed that courtroom usage for trials or nontrial activities varied by judge and location. Furthermore, on many of the workdays during 1995, courtrooms were not used at all for these purposes.

Our analysis of use data for the 65 courtrooms we reviewed showed they were used for trials or nontrial activities an average of 54 percent of the workdays in 1995. Stated another way, they were not used for any of these recorded purposes 115 out of 250 possible days that year. Utilization rates varied widely from one location to another—the highest rate being 61 percent and the lowest 43 percent. It was seldom that all courtrooms at any location were used for trial or nontrial activities on the same day. Specifically, at two locations—Miami and Washington, D.C.—there was not 1 day of the 250 workdays when all courtrooms were used; and at Dallas and San Diego, there was only 1 day when all the courtrooms were used. Table 1 shows the number of days in 1995 during which all courtrooms at each location were used on the same day.¹⁰ Appendixes II through VI provide greater detail on the use of courtrooms at each location.

Table 1: Number of Days All Courtrooms at a Location Were Used for Trial or Nontrial Activities on the Same Day in 1995 (250 Available Workdays)

Location	Number of courtrooms	Number of days all courtrooms used
Albuquerque	5	7
Dallas	8	1
Las Cruces	2	54
Miami	18	0
San Diego	12	1
Washington, D.C.	19	0

Source: GAO analysis of data collected at six courthouse locations with more than one courtroom

We also found differences in the extent to which courtrooms were used for trials and nontrial activities. For instance, our analysis showed that:

- Courtroom use for trial purposes varied by location, ranging from a low of 13 percent in Santa Fe, NM, to a high of 32 percent in Miami. At all locations, courtrooms were used for trials less than one-third of the available days. On average, each courtroom included in our analysis was used for trials 27 percent of the time, or 69 days in 1995.

¹⁰The seventh location that we visited, Santa Fe, has only one trial courtroom; therefore, we did not include it in our analysis of how often courtrooms at each location were used simultaneously.

- Nontrial use—for activities such as motion hearings or arraignments—also varied by location, ranging from a low of 24 percent in Albuquerque to a high of 35 percent in Santa Fe. For the most part, on nontrial days, the courtrooms were used for 2 hours or less.
- Washington, D.C., courtrooms had the lowest incidence of no use for trials or nontrial activities at 39 percent; courtrooms in Las Cruces, NM, had the highest incidence of no use for trial or nontrial activities—57 percent.

According to court officials, these differences occurred for a variety of reasons, including the differences in caseloads and the dynamics of each individual case. Table 2 shows the percentage of days courtrooms were used for trials and nontrial activities and the percentage of days with no use for these purposes for courtrooms in the seven locations visited.

Table 2: Percentage of Days Courtrooms Were Not Used At All or Were Used for Trials and Nontrial Purposes at Seven Courthouse Locations During 1995

Location	Trial use	Nontrial use	No use
Albuquerque ^a	20%	24%	56%
Dallas	30	26	44
Las Cruces ^a	18	25	57
Miami	32	25	43
San Diego	25	34	41
Santa Fe ^a	13	35	52
Washington, D.C.	27	34	39

Note 1: Dallas, Miami, and San Diego reflect some miscellaneous usage in the nontrial category by court personnel other than district judges.

Note 2: If any time was recorded for the day, we considered the courtroom used for the entire day. Days when the courtroom was used for both trial and nontrial activities were recorded as trial days.

^aWe developed courtroom usage information for these separate locations because the judges told us that many of them routinely use each other's courtrooms. Appendix IV discusses our analysis of overall usage at all three locations combined and separately.

Source: GAO analysis of data collected at seven courthouse locations

As shown in table 2, courtrooms were used more often for nontrial purposes than they were for trials at all but two locations (Dallas and Miami). Furthermore, on most of the nontrial days, the courtrooms were used for 2 hours or less, which, in our view, raises a number of questions regarding the utilization of courtrooms. Some of these questions include:

- Could some nontrial activities be scheduled to more fully utilize individual courtrooms on any given day?

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- Could some nontrial activities be carried out in smaller courtrooms, hearing rooms, conference rooms, or chambers?
 - Would it be feasible for some nontrial activities to be carried out without a courtroom by using video or audio technology?

We recognize that some trial and nontrial activities demand full-sized trial courtrooms that accommodate one or several defendants and seat 12 jurors and 6 alternates. For example, our analysis of the total 1995 trial time at the seven courthouses showed that 70 percent of the more than 4,000 trial days involved civil or criminal jury trials. On the other hand, many of the courtrooms in the locations we visited were not used on many of the available days in 1995, and the 30 percent of the remaining trial days involved nonjury trials or contested proceedings that may not have had to take place in a full-sized, jury box-equipped courtroom.

Courtroom Usage Varies by Judge

At all locations we visited, most judges—both district and senior judges—used the courtrooms assigned to them for trials and nontrial activities.¹¹ The senior judges used courtrooms assigned to them significantly less often than the district judges. Specifically, the senior judges used the courtrooms 38 percent of all days in 1995, whereas the district judges averaged a 65 percent usage rate. The difference in trial days was also significant—senior judges averaged 17 percent for trial time as compared to 33 percent for district judges. Court officials told us that the lower senior judge usage rates occurred primarily because many senior judges do not carry full caseloads or do not carry as many criminal cases as the district judges. Table 3 compares courtroom usage for trial and nontrial purposes and no use among the district and senior judges in the seven courthouse locations.

¹¹In Washington, D.C., most of the 22 judges had assigned courtrooms, but since there were only 19 trial courtrooms, 3 of the judges did not have assigned courtrooms. These three judges used one of the other judges' assigned courtrooms when it was vacant. In Santa Fe, NM, two judges shared one trial courtroom; the other six judges, who sat in Albuquerque and Las Cruces, had assigned courtrooms. However, these judges, as well as the ones in Santa Fe, routinely held court in courtrooms other than those assigned to them.

Table 3: Percentage of Days Courtrooms Were Not Used or Were Used for Trials and Nontrial Purposes by District and Senior Judges at Six Courthouse Locations During 1995

Location	District judges			Senior judges		
	Trial use	Nontrial use	No use	Trial use	Nontrial use	No use
Dallas ^a	33%	26%	41%	N/A	N/A	N/A
Miami ^a	45	28	27	25%	20%	55%
San Diego ^a	37	34	29	17	26	57
Albuquerque ^b	20	27	53	13	8	79
Las Cruces ^b	18	22	60	18	27	55
Washington, D.C. ^c	33	41	26	16	22	62
Overall averages	33	32	35	17	21	62

N/A - not applicable because no senior judges used courtrooms.

^aEach district and senior judge in Dallas, Miami, and San Diego was assigned his/her own courtroom. These statistics measure district and senior judges' usage of their assigned courtrooms in these locations.

^bThe eight judges in New Mexico did not use their assigned courtrooms exclusively. Instead, they moved between the five courtrooms in Albuquerque, two in Las Cruces, and one in Santa Fe. For this table, we assumed that four of the courtrooms in Albuquerque were used predominantly by district judges and the other one by senior judges; and that one Las Cruces courtroom was used by district judges and the other courtroom was used by senior judges. Santa Fe was not included in this table because it had only one courtroom, which was shared by both district and senior judges.

^cThere were 19 courtrooms in Washington, D.C. Twelve of these courtrooms were assigned to district judges and 7 were assigned to senior judges. During 1995, 22 district and senior judges used these courtrooms. These statistics show all district judge usage in the 12 courtrooms assigned to district judges and all senior judge usage at the 7 courtrooms assigned to them.

Source: GAO analysis of data collected at six courthouse locations.

We also found wide variances in how often individual district and senior judges at each location used their courtrooms. For example, although the 41 district judges used their assigned courtrooms on average 65 percent of the workdays, individual judges' utilization rates ranged from a low of 32 percent to a high of 82 percent. Courtroom usage also varied widely for the 21 senior judges—the lowest rate was 16 percent and the highest was 66 percent.

Due to the absence of readily available criteria for measuring effective courtroom utilization and the limited scope of our review, we did not attempt to determine the number of courtrooms that are actually needed. However, our data suggest that there may be opportunities for the judiciary to reduce costs by building fewer trial courtrooms. Whether opportunities to reduce costs could be realized would depend on the

potential impact or benefits and costs of other options, such as instituting courtroom sharing practices; changing the configuration of courtrooms by building a mix of full-size and smaller, less expensive courtrooms or hearing rooms; or holding meetings or proceedings in facilities other than trial courtrooms, possibly by using audio or video technology. In commenting on a draft of this report, FJC noted that some federal courts are now using two-way videoconferencing for some court proceedings. FJC also said that federal trial judges have used the telephone for hearings or motions and other matters for over 20 years.

Judiciary's Views on Changes to Current Usage Practices

Our discussions with district judges in the locations we visited indicated a courtroom for each judge is their preferred approach for ensuring the availability of a courtroom to try cases and conduct hearings as scheduled. The judges generally stated that having the courtroom available gives them the flexibility to manage their own caseloads without having to worry about scheduling conflicts. On the other hand, some of the judges we spoke with acknowledged that courtroom sharing is feasible. In fact, some judges told us they are currently sharing courtrooms.

The Chief Judge of the District of New Mexico is a proponent of courtroom sharing. According to this judge, the district's judges are currently sharing courtrooms. In addition, the new courthouse under construction in Albuquerque is to have fewer trial courtrooms than judges, and none of the courtrooms are to be assigned to judges, including magistrates. The Chief Judge told us that judges in his district can usually find a courtroom when one is needed. He also said that he believes that many of the proceedings that a judge does in a courtroom do not necessarily need to be done in a full-sized trial courtroom. Our work showed that in several locations, some judges held nontrial proceedings in chambers or in courtrooms or hearing rooms smaller than the judiciary's standard trial-sized courtroom.

In Dallas, the four judges with whom we spoke told us they would prefer to continue having their own courtrooms to assist them in resolving cases more efficiently. However, they said that having fewer full-size trial courtrooms than judges is workable. In their opinion, hearing rooms could suffice for some criminal case functions as well as for nonjury trials and motion hearings, if proper security were provided.

In Washington, D.C., three district judges did not have assigned courtrooms for all months in 1995 because there were more judges than

courtrooms. The judges with whom we spoke told us they would prefer that each judge have an assigned courtroom to ensure more efficient case management. According to the Chief Judge, courtroom sharing was implemented out of necessity. Two of the judges who shared courtrooms told us that even without assigned courtrooms, they always had access to a courtroom when one was needed.

Judges at several locations also told us that courtroom sharing by senior judges, especially those who do not carry full caseloads, would be easier than district judges sharing courtrooms. For example, the Chief Judge in San Diego said that courtroom sharing among senior judges could work. In fact, she told us that the new courthouse annex will house chambers for senior judges who will not have assigned courtrooms, but instead will share courtrooms.

On the other hand, judges at several locations were opposed to district judges sharing courtrooms. The Chief Judge in San Diego said that courtroom sharing by district judges would be very difficult because of their heavy caseloads. In this judge's opinion, courtroom sharing by district judges could decrease their case management efficiency because the availability of a courtroom is a key factor in getting cases to settle prior to trial. A district judge who shares a courtroom with a senior judge in Santa Fe told us that in her opinion courtroom sharing may be a good concept, but in her experience it makes case scheduling more difficult. She further stated that courtroom sharing has required her to reschedule hearings or conduct them in her chambers. Furthermore, in Miami, the judges with whom we met were adamantly opposed to having fewer courtrooms than judges. In their opinion, having fewer courtrooms than judges would create a host of scheduling problems resulting in delays and higher litigation costs for all parties.

If the judiciary were to adopt some form of courtroom sharing, it may need fewer trial courtrooms than the number of judges, provided that judges could still effectively discharge their judicial responsibilities. Relatedly, a mix of full-sized and smaller, less expensive courtrooms could be built if it is feasible to conduct nontrial activities in courtrooms smaller than, and perhaps configured differently from, the standard trial-sized courtroom. Some of these nontrial activities might be candidates for hearing rooms, conference rooms, or chambers; or, if feasible, they could be held in multiple locations using video and audio conferencing technology, thereby eliminating the need for fully equipped courtrooms.

AOUSC believes that it would be premature to change the practice of one courtroom per judge or to build courtrooms smaller than the standard trial-sized courtroom solely on the basis of actual courtroom utilization data. It maintains that the courtroom is a tool the judge uses to bring cases to resolution, and unimpeded availability of a courtroom is critical to ensuring that justice be dispensed and cases resolved in a timely manner. According to AOUSC, one important element of the one judge, one courtroom practice is “latent” use whereby a judge is able to use an available courtroom and the scheduling of that courtroom as leverage to encourage a case to settle without going to trial. AOUSC officials also believe that when a case settles at the last minute—the day before or the day of the scheduled trial—a judge often cannot immediately reschedule another case. AOUSC and the courts we visited were unable to provide data on how often this occurs.

According to AOUSC, another important element is the dynamic nature of the justice system. An AOUSC official said that judges cannot be certain when, or even if, a specific case will go to trial or how long the trial will take to complete; they cannot anticipate the filing of motions that must be dealt with expeditiously; nor can the judges predict when criminal defendants will be arrested and arraigned. Therefore, to effectively deal with all of these situations, AOUSC believes that judges must have courtrooms available, and the best way to ensure that courtrooms are available is for each judge to have a courtroom. In commenting on a draft of this report, AOUSC cited as additional evidence that a recent survey had been issued showing that state courts also have policies of providing one courtroom for each judge.¹²

The judiciary has not developed data to substantiate the degree to which these factors affect the number of courtrooms needed. Thus, neither we nor others are able to quantify how scheduling issues or the dynamic nature of the justice system might affect the number of courtrooms needed. For example, we were unable to determine how often the availability of a courtroom causes civil litigants to settle or criminal defendants and U.S. Attorneys to plea bargain before trial. Judges and other court officials with whom we spoke told us that many cases settle prior to trial after a firm trial date is set. Therefore, some judges schedule more than one case for trial on the same day with the expectation that all cases will not go to trial. In fact, an AOUSC study¹³ showed that most cases

¹²Dan Hardenbergh, “Courtroom Sharing Practices Among State and Local Trial Courts,” September 13, 1996.

¹³Leekley and Rule, *op. cit.*

filed in federal district courts in 1994 settled prior to trial—only 3.5 percent of all civil filings reached trial, and only 7.5 percent of criminal filings went to trial.

Our work was designed to examine actual courtroom usage at the locations we visited. We recognize that other factors are important considerations in determining the need for courtrooms. Information on usage as well as other relevant factors can only enrich the courtroom usage analysis and provide a better context for discussing actions needed and identifying opportunities to achieve overall efficiencies.

Judiciary Has Taken Some Steps to Examine Courtroom Use

The judiciary is aware of growing concerns about the cost and use of courtrooms and has made some attempts to measure and examine courtroom use and its related policy issues. It views these efforts as a starting point in resolving the debate over the number of courtrooms needed and the practice of providing one courtroom for each judge. For instance, until recently, neither GSA nor the judiciary had readily available data on the total number of federal courtrooms in buildings nationwide. During the middle part of 1996, AOUSC began surveying courts to not only determine the number of courtrooms, but also to obtain information about those courtrooms, such as jury box capacity and the general functionality of the space. AOUSC is currently verifying the information from this survey and plans to use it to analyze space rental costs and compare and contrast the amount of space occupied by the courts. In commenting on this report, AOUSC pointed out that the judiciary has efforts under way to improve space management, control rent costs, improve facility use, and examine the need for facilities with no permanently assigned judge.

The judiciary has also started an effort to explore a courtroom sharing policy. In March 1996, the Judicial Conference directed its Court Administration and Case Management Committee and the Bankruptcy, Magistrate Judges, and Judicial Branch Committees to address the concept of courtroom sharing and its implications for case management and administration. According to AOUSC, the Committees are to examine courtroom sharing for district and senior judges and determine whether sharing would delay or otherwise adversely affect case processing. As part of this effort, each judicial council was encouraged to submit a position on courtroom sharing. Furthermore, the Subcommittee on Space Management Initiatives developed a survey instrument that was sent to all chief judges to solicit input on courtroom sharing, and a consultant was retained to survey state and local sharing practices. In commenting on a

draft of this report, AOUSC said that the Judicial Conference adopted a policy related to courtroom utilization during its March 1997 session. The policy retains the practice of providing one courtroom for each district judge, and it encourages each judicial council¹⁴ to examine opportunities for senior and visiting judges to share courtrooms. The policy, which was incorporated in the United States Courts Design Guide, recognizes several factors, such as the anticipated number and types of cases and the number of years judges are likely to be located at a facility, that should be used to evaluate whether courtroom sharing opportunities exist.

One important aspect of the judiciary's efforts is focused on an assessment of the impact of changing the ratio of courtrooms to judges. In March 1996, AOUSC released a report on the impact of providing fewer than one courtroom per judgeship,¹⁵ which examined some of the potential operational issues associated with providing fewer than one courtroom per judgeship. The report used case studies and the data provided by the courts and the judiciary to test the applicability of mathematical models for predicting the impact of fewer courtrooms than judges. Among other things, the study said that (1) case delays would increase when district judges are provided fewer than one trial courtroom each, and (2) the cost savings resulting from not building and maintaining a new courtroom must be weighed against staff costs resulting from the additional scheduling workload and the cost to litigants for delays imposed by additional congestion. The report recommended that the judiciary and GSA

- continue to build one courtroom for every district judgeship;
- consider the direct court construction costs and the indirect costs to litigants in determining the number of courtrooms to be built in new courthouses; and
- consider building more courtrooms than there are judges to avoid the greater costs of subsequently adding additional courtrooms for new judgeships.

In June 1996, the Judicial Conference's Committee on Court Administration and Case Management asked the Federal Judicial Center (FJC), the education and research arm of the judiciary, to review the March 1996 report. In August 1996, FJC issued a detailed critique that focused on many of the technical and nontechnical aspects of the AOUSC

¹⁴Circuit judicial councils consist of the chief judge of each circuit and an equal number of appellate and district judges. The councils manage caseloads and carry out related administrative responsibilities.

¹⁵Leekley and Rule, *op. cit.*

report. FJC praised the March 1996 report for pointing out some of the limits of current data and the complexities of dealing with matters like courtroom scheduling, but it reported that the “limitations of the analysis, some of which are acknowledged in the report, substantially limit its value as a basis for any policy decision.” FJC went on to discuss the major limitations that led it to caution against relying on the recommendations. For instance, FJC found that the quantitative analyses used were not as sophisticated as they could have been, and other more useful techniques might have been developed; the objectives of the study were unclear, and the findings and recommendations went beyond the data presented; and the conclusions and their corresponding recommendations failed to consider alternatives other than fully equipped courtrooms or chambers where nontrial proceedings could be held.

The Rand Institute for Civil Justice also expressed similar concerns about the March 1996 AOUSC report. In September 1996, the Institute issued a project memorandum entitled Research on Courtroom Sharing. The memorandum, prepared under contract for AOUSC, was designed to review the most important research on courtroom sharing and determine whether additional research was needed. The Institute found that prior research is limited and does not resolve the one courtroom-per-judge issue. In fact, only one of five studies discovered during Rand’s research—the March 1996 report—had a federal court focus, and none “satisfactorily resolve the courtroom-per-judge issue and do not offer a solid empirical or theoretical basis for federal court facilities decisionmaking.”

Like FJC, the Institute also critiqued various aspects of the March 1996 report. For example, the Institute questioned whether the report fully explored some of the analytical techniques available and suggested that the techniques employed might have been more fruitful had they been further explored or more detailed data incorporated. In another instance, the Institute expressed concern about a key assumption made in the report—specifically, that additional staff, a full-time scheduler, would be needed to manage courtroom scheduling if judges were required to share fewer courtrooms. In its critique, the Institute stated that it could not assert with confidence that no additional staff would be needed but found it difficult to accept the assumption. Furthermore, the Institute pointed out that even if a scheduler were needed, fewer courtrooms might reduce the need for other personnel, such as courtroom deputy clerks or security personnel.

Research Groups Emphasize Need for Additional Study

The growing debate over courtroom use and construction costs, coupled with the limitations of available research on courtroom usage and sharing issues, has prompted both FJC and Rand to suggest further study on courtroom utilization and related operational issues. For example, FJC noted that “it seems likely the judicial branch can expect the current pressure for economy, efficiency, and effectiveness to continue and quite probably to intensify” and that “expenditures for features beyond the most Spartan will have to be defended with hard data.” Furthermore, FJC proposed major changes to the judiciary’s regular data collection “so that the elements, dynamics, and effects of court operations can be substantively reported without assembling an ad hoc study each time a specific aspect of the system is questioned and singled out for scrutiny.” FJC went on to suggest that there may be more to be learned by exploring a more sophisticated use of the analytical techniques than those used in the March 1996 study. In addition, FJC proposed two other possible research-based approaches for further examining this and other policy issues facing the judiciary.

First, FJC suggested that the judiciary do short-term research to address the effect of abandoning the practice of assigning a full-time, fully equipped courtroom for each district judge. As part of this research, 10 to 15 courts would be asked to continue to manage actual operations in existing facilities, but they would establish a staff to simulate operations as if there were fewer courtrooms than those available. The simulation would then allow judges and staff to deal with scheduling issues and their resolution and collect data and information on such things as the type of activities planned by judges, scheduling and other problems that arise under realistic conditions, and solutions to problems caused by fewer courtrooms. In FJC’s view, such an approach would help the judiciary (1) formulate criteria for allocating facilities for various situations and circumstances; (2) build a database about the scheduling and proceedings; and (3) show a good faith effort to develop tools to cope with resource reduction or, if no tools are available, help justify the one judge, one courtroom policy.

Second, FJC suggested a longer term commitment to improvements in the judiciary’s data collection systems so that it could more fully describe the activities of the courts. In FJC’s view, such an effort would anticipate the types of information needed to build a database that could respond to various questions and future scenarios, ranging from the types of activities that need to be held in a courtroom to the features of a case or proceeding that make a courtroom environment essential.

As mentioned earlier, Rand’s Institute for Civil Justice also emphasized the importance of further study on courtroom utilization issues. Specifically, the Institute stressed the need for the judiciary to understand the effects of courtroom sharing on the judicial system when making facility decisions and concluded that:

“Making decisions without such an understanding presents two kinds of risks. On the one hand, reducing the courtroom-per-judge ratio may unacceptably impair the ability of the federal court system to meet its judicial obligations and may have other potentially negative effects. On the other hand, not reducing the ratio may forego an opportunity to save taxpayer dollars.”

The Institute suggested that the judiciary, Congress, AOUSC, and GSA would be well served by a methodologically sound empirical study that would require investigating the effects of varying the courtroom-to-judge ratio. Furthermore, the Institute proposed a research process that would

- examine existing courtroom sharing systems and data, including data on the number and adequacy of courtrooms from AOUSC’s recent space inventory; information on courtroom and event scheduling; actual usage data from JS-10 reports, real time observation, and other supplemental data sources; and information on intangible factors, such as latent usage—and develop a research design;
- use a sample of district courts to collect new data and develop analytical methods and research findings based on the results of stage 1, including, again, information on actual courtroom utilization as well as information on case management, budgets and expenditures, and practitioner views on the latent affects of courtroom availability; and
- incorporate and operationalize the results of data collection and analysis into AOUSC’s facility planning process to extend the results to other districts and judges, and revise and update the analysis as necessary.

The Institute also offered suggestions for selecting districts to study as well as requirements for data to collect and reviewed various analytical methods.

Conclusions

The judiciary’s process for administering justice is complex and dynamic, and courtrooms are an integral part of making it work. Nonetheless, trial courtrooms are expensive to build, and unneeded courtrooms would result in wasted taxpayer dollars. The extent to which courtrooms are utilized is one indication of need, but the judiciary does not compile data

on how often and for what purposes courtrooms are actually used for trials or nontrial activities or have analytically-based criteria for determining effective courtroom utilization. Furthermore, it has only recently begun to collect information on the total number of courtrooms in the federal judicial system and consider the possible impacts of providing fewer than one trial courtroom per judge. Therefore, the judiciary does not have sufficient data to support its practice of providing one trial courtroom for every district judge or for projecting how many new courtrooms should be built.

Our analyses of actual courtroom usage for trials and nontrial activities at seven courthouse locations suggests there may be opportunities to reduce costs by building fewer full-sized trial courtrooms in the judiciary's multibillion-dollar courthouse construction initiative. In 1995, courtrooms at the locations we visited were, on average, not used for trials or nontrial activities about one-half of the days they were available, and they were used for trials—a major factor in determining the size, configuration, and overall cost of district courtrooms—less than one-third of the days. It is also important to recognize that on most nontrial days, the courtrooms were used for 2 hours or less and that senior judges' usage, on average, was substantially less than district judges' usage. Whether opportunities to reduce costs could be realized would depend on the need for the one judge, one courtroom practice and the potential impact or benefits and costs of other options.

Other factors, such as latent use and scheduling issues, are important considerations in determining the need for courtrooms. However, the judiciary has not developed data to substantiate the degree to which these factors affect the number of courtrooms needed. The judiciary recognizes that the courtroom usage issue needs to be examined in more depth and has made initial efforts to explore the issue. However, one of these efforts—a study commissioned by AOUSC—was found to have major limitations by FJC and the Rand Institute for Civil Justice. Both FJC and Rand believe that more research is needed to adequately address the courtroom usage issue, and each had a number of ideas to get the process started.

Recommendations

We recommend that the Director, AOUSC; the Director, FJC; and the Judicial Conference's committees on (1) Court Administration and Case Management and (2) Security, Space and Facilities design and implement cost-effective research to fully examine the courtroom usage issue to form

a better basis for determining the number and type of courtrooms needed, as well as whether each district judge needs a dedicated courtroom. This effort should include:

- establishing criteria for determining effective courtroom utilization and a mechanism for collecting and analyzing data at a representative number of locations so that trends can be identified over time and better insights obtained on court activity and courtroom usage;
- designing and implementing a methodology for capturing and analyzing data on latent usage, courtroom scheduling, and other factors that may substantially affect the relationship between the availability of courtrooms and judges' ability to effectively administer justice;
- using these data and criteria to explore whether the one judge, one courtroom practice is needed to promote efficient courtroom management or whether other courtroom assignment alternatives exist; and
- establishing an action plan with time frames for implementing and overseeing these efforts.

Agency Comments and Our Evaluation

On April 7, 1997, AOUSC and FJC provided us with their written comments on a draft of this report and on a related correspondence on courtroom usage at four selected locations¹⁶ (see apps. VII and VIII). GSA's Public Buildings Service provided written comments on April 11, 1997 (see app. IX). An overall description of the comments and our evaluation are discussed below. Additional evaluations of some AOUSC and FJC comments are contained in apps. VII and VIII. AOUSC and FJC also provided several technical comments under separate cover that we considered in finalizing the report.

Comments From AOUSC

AOUSC said that it shared our interest in conserving the judiciary's resources and that the judiciary is aggressively exploring opportunities to save taxpayer dollars by examining and evaluating space needs. For example, it said that the Judicial Conference of the United States—the policymaking body of the judiciary—recently adopted a new policy related to courtroom utilization. This policy continues the practice of assigning each active district judge a courtroom, but it encourages circuit judicial councils to examine opportunities for senior and visiting judges to share courtrooms and to develop a policy on sharing courtrooms by senior judges. It cites several factors that should be considered when assessing

¹⁶COURTHOUSE CONSTRUCTION: Information on the Use of District Courtrooms at Selected Locations (GAO/GGD-97-59R, May 19, 1997).

sharing opportunities, such as the anticipated number and type of cases expected and the number of years judges are likely to be located at a facility.

Given this initiative and the judiciary's continuing facilities planning efforts to reduce overall space costs, such as controlling rent costs and closing nonresident facilities, AOUSC requested that we recast our recommendation. Instead of recommending what it thought could be a time-consuming and expensive study of the courtroom usage issue, AOUSC requested that we recommend that the Judicial Conference committees on Court Administration and Case Management and Security, Space, and Facilities monitor the implementation of the Judicial Conference's recent policy initiatives on courtroom sharing and other facilities planning activities and their impact on case management and effectiveness in reducing costs.

We chose not to recast our recommendation as AOUSC requested. We agree that the Judicial Conference committees mentioned above should be involved in any research on courtroom usage, and their involvement was meant to be implicit in our recommendation. To clarify this point, we have changed the recommendation to specifically include these committees. We also agree that the judiciary should monitor the implementation of the Judicial Conference's policy initiatives and consider any outcomes as part of its overall evaluation of how to use courthouse facilities most efficiently. However, just monitoring these initiatives would be an incomplete basis for making courtroom construction decisions because it would not include information and analysis on actual courtroom usage. Without such information and analysis, there will continue to be questions about how many full-sized trial courtrooms are really needed. Accordingly, we continue to believe that further study of courtroom usage is warranted.

AOUSC also said that it appreciated our understanding that the process for administering justice is complex and dynamic but that a simple counting of the time a courtroom is actually occupied over a short period cannot be the measure for the number of courtrooms needed at a facility. AOUSC acknowledged the draft report's recognition that scheduled and latent uses of courtrooms are important considerations in determining the number of courtrooms needed. AOUSC added that the courtroom occupancy rate of 65 percent by active district judges cited in the report is only a fraction of the real use of the courtroom, given that these latent use factors were not part of the study. AOUSC also highlighted the scope limitations set forth in our objectives, scope, and methodology section and reiterated that such

limitations would not allow a determination of the number of courtrooms needed.

We agree with AOUSC that the process for administering justice is complex and dynamic and that a measurement of actual courtroom usage would not, by itself, be a sufficient basis for determining the number of courtrooms in a facility. We also agree that scheduled and latent use are important components that should be considered when analyzing courtroom usage. However, as discussed in the report, the judiciary lacks information on how significant an impact these factors have on courtroom usage rates and how many courtrooms are actually needed. In the absence of such information, there is no way to determine whether AOUSC's observation that if scheduled and latent use were included, the 65 percent average usage rate for active district judges would be much higher is correct. As mentioned in our report, individual active judges' courtroom utilization rates at the locations we visited ranged from a low of 32 percent to a high of 82 percent—showing that individual usage patterns vary significantly. Furthermore, on most of the days active district judges used their courtrooms for nontrial activities only, the courtrooms were used for two hours or less.

Although our available resources only allowed us to examine courtroom usage at a limited number of locations, our work provides insight into how often and for what purpose these courtrooms were actually used, which is more information than the judiciary previously had. Further, each location we visited, with the exception of one, is under consideration for project funding, according to the judiciary's March 1996 5-year plan for courthouse construction. Data on usage patterns like we developed could aid in planning, designing, and constructing each of these facilities. We recognize that more study is needed to adequately address the courtroom usage question and this recognition helped form the basis for our conclusions and recommendations.

Finally, AOUSC stated that it hoped we understood the consequences of providing Congress and the public with information that could lead to unintended and erroneous conclusions. In doing so, AOUSC characterized our data as "selectively edited." While it is always possible that someone will draw "unintended and erroneous" conclusions from any data we present, we disagree strongly with such a characterization of our data. Our report clearly describes the data we collected and identifies other relevant factors such as latent use for which data were not available. We also clearly state the limitations of our methodology and acknowledge that

additional data and analysis would be needed to determine the number of courtrooms needed. Our recommendation addresses what we believe needs to be done to conduct a comprehensive study. At no time during this work were any data “edited” in or out of our analysis.

Comments From FJC

Many of FJC’s comments were similar to those from AOUSC. To reduce redundancy, we are not replying separately but note those references in app. VIII. In general, FJC acknowledged the report’s recognition that courtroom use policy is a complex matter involving many variables, not all of which are subject to easy measurement. FJC also stated that it is willing and able to design research and examine the courtroom usage issue as we recommended if requested to do so from within the judiciary. It said that such research should be done in cooperation with the Judicial Conference and its committees. We agree and have modified the recommendation accordingly.

Comments From GSA

GSA provided updated figures on the universe of 200 locations the judiciary identified as needing new projects. GSA reported that of the original 200 locations, GSA and the judiciary have now determined that 160 locations require new construction. In the remaining locations, expansion of the courts’ housing is no longer needed or will be satisfied through leasing actions or building modernizations. Of the 160 locations, 40 projects have received approximately \$3 billion in funding. The remaining 120 projects will require an estimated \$5 billion. GSA pointed out that most of the larger projects are already well into the design and construction process. GSA said that in general, the remaining projects will be smaller courthouses and will offer less flexibility for sharing courtrooms.

We recognize that several larger projects are well under way and in some cases completed. Thus, the judiciary may have missed opportunities to reduce costs by exploring different courtroom sizes and courtroom sharing. We do not see the basis for GSA’s comment that there is less flexibility to share courtrooms in the remaining smaller projects. First, as outlined in this report, the judiciary does not compile data on how often and for what purposes courtrooms are actually used or have criteria for determining how many and what types of courtrooms are needed to effectively administer justice. GSA’s statement that sharing opportunities may be limited at remaining locations is therefore not based on any analysis of usage patterns. In fact, our work at smaller courthouses, such as Albuquerque, showed some of the lower usage patterns. Second, several

projects that remain are large. The judiciary's March 1996 5-year plan for courthouse construction identifies eight projects that are estimated to cost more than \$100 million each. According to an AOUSC official, another project not in the plan—Los Angeles—could cost over \$200 million. We issued a separate report in December 1996 on the judiciary's 5-year plan.¹⁷

We are sending copies of this report to the Chairman, Judicial Conference Committee on Security, Space, and Facilities; Director, Administrative Office of the U.S. Courts; Administrator of GSA; Director, Office of Management and Budget; and other interested congressional committees. The major contributors to this report are listed in appendix VII. If you have any questions, please contact me on (202) 512-8387.

Sincerely yours



Bernard L. Ungar
Director, Government Business
Operations Issues

¹⁷COURTHOUSE CONSTRUCTION: Improved 5-Year Plan Could Promote More Informed Decisionmaking (GAO/GGD-97-27, Dec. 31, 1996).

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Abbreviations

AOUSC	Administrative Office of the United States Courts
FJC	Federal Judicial Center
GSA	General Services Administration

Objectives, Scope, and Methodology

Our objectives were to (1) determine how often and for what purposes district trial courtrooms were used and (2) examine what steps the judiciary is taking to assess space and courtroom usage issues. We did our work at the Administrative Office of the U.S. Courts (AOUSC) and the General Services Administration (GSA) and at 7 courthouses located in 5 of the 94 federal judicial districts—Dallas, TX, in the Northern District of Texas; Miami, FL, in the Southern District of Florida; San Diego, CA, in the Southern District of California; Washington, D.C., in the District of the District of Columbia; and Albuquerque, Las Cruces, and Santa Fe, NM, in the District of New Mexico. These 7 locations encompassed 65 district trial courtrooms.

To meet our first objective, we met with AOUSC and GSA officials to discuss the judiciary's practice of providing a trial courtroom for each district judge, the number of courtrooms nationwide, and the availability of data on courtroom usage. From these meetings, we learned that (1) AOUSC does not maintain systematic data on courtroom usage for any location, (2) neither AOUSC nor GSA maintains an inventory of district courtrooms by location or courthouse, and (3) each court and each judge tends to manage cases and courtrooms differently. As a result, we had to analyze usage at individual courthouses. Many variables, such as judgeship vacancies or senior judge workload, could have been used to select courthouse locations. However, we judgmentally selected the seven courthouse locations considering the availability of staff and travel costs; geographic dispersion; and courthouse size (small, medium, and large). First, we selected the Dallas courthouse because it gave us the opportunity to explore the availability of courtroom usage data, develop data collection techniques, and learn about the various aspects of courtroom usage issues at a single, small-sized facility (eight courtrooms and seven judges).

Once we completed our work in Dallas, we selected Miami; San Diego; Washington, D.C.; and Albuquerque for detailed review because each had a new courthouse construction project that was either planned or under way. While making our selections, we took into account the following:

- Miami was considered a large courthouse with 18 trial courtrooms and 14 judges located in 3 separate buildings. According to the judiciary's 5-year plan, Miami is slated for \$26 million in site and design funding in fiscal year 1998 and \$91.4 million in construction funding in fiscal year 2000.
- San Diego was considered a medium-sized courthouse with 12 trial courtrooms and 11 judges. According to the judiciary's 5 year courthouse construction plan, San Diego is scheduled for \$18.2 million in site funding

in fiscal year 1998, \$5.2 million in design funding in 2000, and \$91.2 million in construction funding in fiscal year 2001.

- Washington, D.C., was considered a large courthouse with 19 trial courtrooms and 22 judges. The judiciary's construction plan lists Washington with \$5.7 million in design funding for fiscal year 1998 and \$98.2 million for construction funding in fiscal year 1999.
- Albuquerque was considered a small courthouse since it had five courtrooms and five judges. A new courthouse with an expected total project cost of over \$50 million is currently under construction.

We also selected Albuquerque because, during our interviews with GSA, we learned that the judges in Albuquerque plan to share courtrooms once the new courthouse is completed. After we started our fieldwork in Albuquerque, we learned that two judges sitting in Santa Fe share one courtroom and that many of the judges in the District of New Mexico customarily conduct trials and nontrial hearings not only in the courtrooms in Albuquerque, but also in the courtroom in Santa Fe and the two courtrooms in Las Cruces.¹ Therefore, we decided to include these courthouses in our study.

At all seven courthouse locations, we toured trial courtrooms and discussed courtroom usage with judges, District Clerks, and other court officials involved in scheduling and managing the use of the courtrooms. Specifically, we discussed how judges schedule cases and use their courtrooms, the importance of having a courtroom available when one is needed, and the possibility of district judges sharing trial courtrooms. We learned that the individual courts also do not compile statistical data specifically on how often courtrooms are used or for what purposes. Thus, we had to compile and analyze data from numerous sources. Due to time constraints and the volume of information and records at each location, we decided to limit the scope of our detailed review to calendar year 1995.

In doing our detailed audit work, we first reviewed Monthly Reports of Trials and Other Court Activity (JS-10) compiled by the courts for 1995 pertaining to all district and senior judges assigned to the locations we visited and Monthly Reports of Visiting Judge Activity (JS-10A) compiled for 1995 pertaining to all visiting judges who heard cases at these locations. The JS-10 is supposed to be used to report trials and nontrial

¹According to the judiciary's 5 year construction plan, Las Cruces is also slated for a new courthouse project. This project is scheduled to receive \$3.5 million in site and design funds in fiscal year 1999 and \$20 million in construction funds in 2001.

proceedings² conducted by individual district or senior judges on a monthly basis. The judiciary requires a JS-10 report for each active district judge each month even if the judge did not have any trials or proceedings that particular month. A JS-10 is also required for any senior judge during each month that the judge had court activity. Likewise, the JS-10A is supposed to be used to report the court time of visiting judges who are temporarily assigned to a court and is supposed to be completed by the court receiving the services. Figures I.1 and I.2 are samples of the JS-10 and the JS-10A forms, respectively.

²According to the AOUSC, trials are defined as any contested proceeding. Nontrial activities include motion hearings, arraignments, and other proceedings.

**Appendix I
Objectives, Scope, and Methodology**

Figure I.1: Sample JS-10 Form

JS-10 (Rev. 10/93)

MONTHLY REPORT OF TRIALS AND OTHER COURT ACTIVITY

1 Month 2 Year

3 District 4 District Code 5 Judge 6 Judge Code

FOR THE PURPOSES OF THIS REPORT A TRIAL IS DEFINED AS A CONTESTED PROCEEDING BEFORE A COURT OR JURY IN WHICH EVIDENCE IS INTRODUCED. REPORT ONLY PROCEEDINGS WHICH FALL WITHIN THIS DEFINITION IN THE SPACE BELOW. ALL OTHER PROCEEDINGS SHOULD BE REPORTED ON PAGE 2.

7 No trial activity to report (Page 1 is blank) 8 No other court activity to report (Page 2 is blank)

PART A. TRIALS BEGINNING DURING THE REPORT MONTH.											
9 Place of Holding Court	10 Docket Number			13 Number of Criminal Defendants	14 Type of Case	15 Date Case Filed (Civil Cases Type Trial 1, 2, 5, only) Month/Day/Year	16 Type of Trial	17 Date Trial Began Month/Day/Year	18 Total Hours in Trial This Month (To the Nearest 1/2 Hour)	19 Number of Separate Days of Trial This Month	20 Trial Status
	10	11	12								
	Year	Sequence Number	Def. No. (Crim. Only)								

TYPE OF CASE
 1 Civil
 2 Criminal
 3 Bankruptcy
 4 Misc. (includes probation revocation)

TYPE OF TRIAL
 1 Non-Jury
 2 Jury
 3 Three-Judge Court
 4 Preliminary Injunctions and TRC
 5 All Other
 6 Non-Jury Land Condemnation
 7 Jury Land Condemnation
 8 Summary Jury Trials
 9 Sentencing Hearings (with contested issues)

TRIAL STATUS
Trials Continued
 8 Settled after jury selection but before introduction of evidence (only for trials reported with trial status "7" in prior month). This code is valid in Part B only.
 7 Jury Selection only this month, trial scheduled for later month
 6 Continued to following month

Trials Completed
 5 Settled/Guilty Plea
 4 Directed Verdict
 3 Hung Jury
 2 Mistrial
 1 Completed by court decision or jury verdict

PART B. TRIALS CONTINUED FROM THE PREVIOUS MONTH. USE ONLY WHEN THE TRIAL WAS LAST REPORTED WITH A CODE "6" OR "7" IN THE TRIAL STATUS (BOX 20). IF THERE ARE NO TRIAL HOURS THIS MONTH, SHOW ZEROS UNDER COLUMNS 18 AND 19.

REFER TO STATISTICS MANUAL, VOLUME XI, CHAPTER VI, FOR DETAILED INSTRUCTIONS

PERSON COMPLETING FORM: _____

Name _____ (Area Code) _____ Telephone No _____

Mail completed form to: Administrative Office of the U.S. Courts,
 Statistics Division, ATTN: JS-10, Washington, DC 20544

**Appendix I
Objectives, Scope, and Methodology**

PAGE 2

JS-10 (Rev. 10/93)

22 Month	23 Year

MONTHLY REPORT OF TRIALS AND OTHER COURT ACTIVITY

24 District	25 District Code	26 Judge	27 Judge Code

ALL PROCEEDINGS INVOLVING THE PARTICIPATION OF THE JUDGE WHICH DO NOT FALL WITHIN THE DEFINITION OF A TRIAL (SHOWN ON PAGE 1) SHOULD BE REPORTED IN THE SPACE BELOW. REPORT ALL PROCEEDINGS, OTHER THAN THOSE REPORTED ON PAGE 1, WHICH REQUIRE THE PRESENCE OF THE JUDGE AND THE PARTIES IN THE CASE. THESE PROCEEDINGS SHOULD BE REPORTED WHETHER HELD IN COURTROOM OR CHAMBERS.

Day of the Month	28 Code for Place of Holding Court	29 Total Number of Hours	Number of Proceedings							Day of the Month	28 Code for Place of Holding Court	29 Total Number of Hours	Number of Proceedings						
			30 Arraignments/ Pleas	31 Sentencings	32 Motions	33 Pretrial Conferences	34 Grand Jury Proceedings	35 Other Proceedings	30 Arraignments/ Pleas				31 Sentencings	32 Motions	33 Pretrial Conferences	34 Grand Jury Proceedings	35 Other Proceedings		
1									19										
2									20										
3									21										
4									22										
5									23										
6									24										
7									25										
8									26										
9									27										
10									28										
11									29										
12									30										
13									31										
14	36 TOTALS FOR EACH PLACE OF HOLDING COURT																		
15																			
16																			
17																			
18																			

REFER TO STATISTICS MANUAL, VOLUME XI, CHAPTER VI, FOR DETAILED INSTRUCTIONS

Source: Statistics Manual, Vol. I - Administrative Office of the United States Courts.

Appendix I Objectives, Scope, and Methodology

Figure I.2: Sample JS-10A Form

JS-10A (Rev. 10/93)

MONTHLY REPORT OF VISITING JUDGE ACTIVITY

1 Month	2 Year

3 Reporting District	3a District Code	4 Judge	4a Judge Code
5 Arrival Date (Month/Day/Year)	5a Departure Date (Month/Day/Year)	6 Home District	6a District Code

FOR THE PURPOSES OF THIS REPORT A TRIAL IS DEFINED AS A CONTESTED PROCEEDING BEFORE A COURT OR JURY IN WHICH EVIDENCE IS INTRODUCED. REPORT ONLY PROCEEDINGS WHICH FALL WITHIN THIS DEFINITION IN THE SPACE BELOW. ALL OTHER PROCEEDINGS SHOULD BE REPORTED ON PAGE 2.

7 No trial activity to report (Page 1 is blank). <input type="checkbox"/>	8 No other court activity to report (Page 2 is blank). <input type="checkbox"/>
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PART A. TRIALS BEGINNING DURING THE REPORT MONTH.

9	Docket Number			13	14	15	16	17	18	19	20
	10	11	12								
Place of Holding Court	Year	Sequence Number	Def. No. (Crim. Only)	Number of Criminal Defendants	Type of Case	Date Case Filed (Civil Cases Type Trial 1, 2, & only) Month/Day/Year	Type of Trial	Date Trial Began Month/Day/Year	Total Hours in Trial This Month (to the nearest 15 Hour)	Number of Separate Days of Trial This Month	Trial Status

PART B. TRIALS CONTINUED FROM THE PREVIOUS MONTH. USE ONLY WHEN THE TRIAL WAS LAST REPORTED WITH A CODE "6" OR "7" IN THE TRIAL STATUS (BOX 20). IF THERE ARE NO TRIAL HOURS THIS MONTH, SHOW ZEROS UNDER COLUMNS 18 AND 19.

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REFER TO STATISTICS MANUAL, VOLUME XI, CHAPTER VI, FOR DETAILED INSTRUCTIONS

PERSON COMPLETING FORM

Name	(Area Code)	Telephone No.

Mail completed form to: Administrative Office of the U.S. Courts, Statistics Division, ATTN: JS-10, Washington, DC 20544

TYPE OF CASE

- 1 Civil
- 2 Criminal
- 3 Bankruptcy
- 4 Misc. (includes probation revocation)

TYPE OF TRIAL

- 1 Non-Jury
- 2 Jury
- 3 Three-Judge Court
- 4 Preliminary Injunctions and TRO
- 5 All Other
- 6 Non-Jury Land Condemnation
- 7 Jury Land Condemnation
- 8 Summary Jury Trials
- 9 Sentencing Hearings (with contested issues)

TRIAL STATUS

Trials Continued

- 6 Settled after jury selection but before introduction of evidence (only for trials reported with trial status "7" in prior month). This code is valid in Part B only.
- 7 Jury Selection only this month; trial scheduled for later month.
- 8 Continued to following month.

Trials Completed

- 5 Settled/Guilty Plea
- 4 Directed Verdict
- 3 Hung Jury
- 2 Mistrial
- 1 Completed by court decision or jury verdict

**Appendix I
Objectives, Scope, and Methodology**

JS-10A (Rev. 10/93)

PAGE 2

22 Month	23 Year

MONTHLY REPORT OF VISITING JUDGE ACTIVITY

24 Reporting District	24a District Code
26 Arrival Date	26a Departure Date

25 Judge	25a Judge Code
27 Home District	27a District Code

ALL PROCEEDINGS INVOLVING THE PARTICIPATION OF THE JUDGE WHICH DO NOT FALL WITHIN THE DEFINITION OF A TRIAL (SHOWN ON PAGE 1) SHOULD BE REPORTED IN THE SPACE BELOW. REPORT ALL PROCEEDINGS, OTHER THAN THOSE REPORTED ON PAGE 1, WHICH REQUIRE THE PRESENCE OF THE JUDGE AND THE PARTIES IN THE CASE. THESE PROCEEDINGS SHOULD BE REPORTED WHETHER HELD IN COURTROOM OR CHAMBERS.

Day of the Month	28 Code for Place of Holding Court	29 Total Number of Hours	Number of Proceedings							Day of the Month	28 Code for Place of Holding Court	29 Total Number of Hours	Number of Proceedings						
			30 Arrangements/Planes	31 Sentences	32 Motions	33 Pretrial Conferences	34 Grand Jury Proceedings	35 Other Proceedings	30 Arrangements/Planes				31 Sentences	32 Motions	33 Pretrial Conferences	34 Grand Jury Proceedings	35 Other Proceedings		
1									19										
2									20										
3									21										
4									22										
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6									24										
7									25										
8									26										
9									27										
10									28										
11									29										
12									30										
13									31										
14	36 TOTALS FOR EACH PLACE OF HOLDING COURT																		
15																			
16																			
17																			
18																			

REFER TO STATISTICS MANUAL, VOLUME XI, CHAPTER VI, FOR DETAILED INSTRUCTIONS

Source: Statistics Manual, Vol. I - Administrative Office of the United States Courts.

According to AOUSC, the JS-10 was not designed to provide information on how often courtrooms are used. AOUSC officials said the JS-10 was designed to provide information on (1) the number and length of trials conducted in district courts and (2) the amount of time judges spend on other court activities in which both sides of the controversy were involved. AOUSC officials acknowledge that the JS-10 might allow for an approximation of courtroom use data in some courts, but it does not provide a satisfactory substitute for actual data on courtroom usage. They contend that much of the time courtrooms are in use does not appear on the JS-10 because it does not capture such things as use by other types of judges and time when the courtroom must be available to enforce trial schedules or foster settlement of litigation.

Court officials at all locations we visited told us that (1) active district and senior district judges are the primary users of the trial courtrooms and (2) the JS-10 is the best source for determining how often and for what purposes the judges used their courtrooms. From page 1 of the JS-10 reports, we were able to determine the date that each trial began and the total number of hours and separate days that each judge spent on each trial during the month. We were not, however, able to determine from the JS-10 reports the specific days that the judges used the courtrooms for trials. Using page 2 of the JS-10 reports, we determined the number of hours and the specific days that each judge spent conducting nontrial proceedings, such as arraignments/pleas, motions, pretrial hearings, and other proceedings. Although these proceedings may have been held in either the courtrooms or the judges' chambers, we decided to consider all of this time as courtroom usage time regardless of the location where the event occurred.

To determine the specific days that the courtrooms were used for trials and because of AOUSC's concerns about the JS-10, we validated the courtroom usage information taken from these reports by reviewing various detailed records. Since each of the courts we visited maintain different daily records pertaining to the activities of the judges, we had to tailor our detailed analyses for each location. In some cases, we analyzed the judges' and/or their courtroom deputies' daily calendars. These calendars provided the specific days and types of proceedings that the judges conducted throughout the year. In other cases, we reviewed the minute orders or clerk's minutes maintained by the courts. Like the daily calendars, these documents provided such details as the dates and type of hearings that were conducted by each judge on a case-by-case basis. Finally, for some judges we had to review case histories from the

Integrated Case Management System, which is an automated docketing system that keeps track of case events, such as trial and hearing dates.

Our detailed analyses of the various daily records showed that the JS-10 data was generally accurate, but when we found errors, we made corrections before recording the data into our database of courtroom usage. Identifying errors with the JS-10 data was possible because our detailed analyses allowed us to determine all the days that the senior, district, and visiting judges held trials and nontrial proceedings that could have taken place in a courtroom.

Also, we reviewed court management statistics and other data, where available, that showed the use of trial courtrooms by individuals other than federal district judges. This included use by magistrate judges and administrative law judges as well as various ceremonial uses of the courtrooms. The miscellaneous usage was included in our overall calculation of courtroom usage. After examining all the data, we credited each courtroom with a full day of usage for all days that the records showed that there was any activity in it. We then determined the percentage of days that courtrooms were used by comparing actual usage with the maximum number of federal workdays on which the courtrooms could have been used (250) in 1995. We recognize that courtroom usage may be affected by a number of variables, such as the number of judgeship vacancies in a district and the number and workload of senior judges. However, the purpose of our work was to determine actual courtroom usage at the locations visited, not analyze the reasons for the usage patterns we found. We did determine, on a location-by-location basis, how many courtrooms were in use on every working day in 1995. This analysis allowed us to identify the number of days when at least one courtroom was vacant at each location.

To meet our second objective, we interviewed AOUSC and GSA officials and reviewed various documents and studies pertaining to courtroom usage. Specifically, we reviewed AOUSC documents pertaining to its nationwide inventory of federal courtrooms and initiatives to better manage the judiciary's space. We also reviewed, with the assistance of an operations research consultant, the AOUSC-commissioned study on the impact of providing fewer courtrooms than judgeships.³ Additionally, we reviewed documents prepared by the Rand Institute for Civil Justice and the Federal Judicial Center that examine various aspects of courtroom usage, including courtroom sharing. Lastly, we interviewed an official from the

³Leekley and Rule, op. cit.

National Center for State Courts to discuss the concept of courtroom sharing.

The results of our analysis on courtroom usage at the seven locations visited cannot be projected across all federal district courts, within the districts where they were located, or to the locations visited in other time periods. We did our work between January 1996 and April 1997, in accordance with generally accepted government auditing standards.

District Courtroom Use in Dallas, Texas

Background

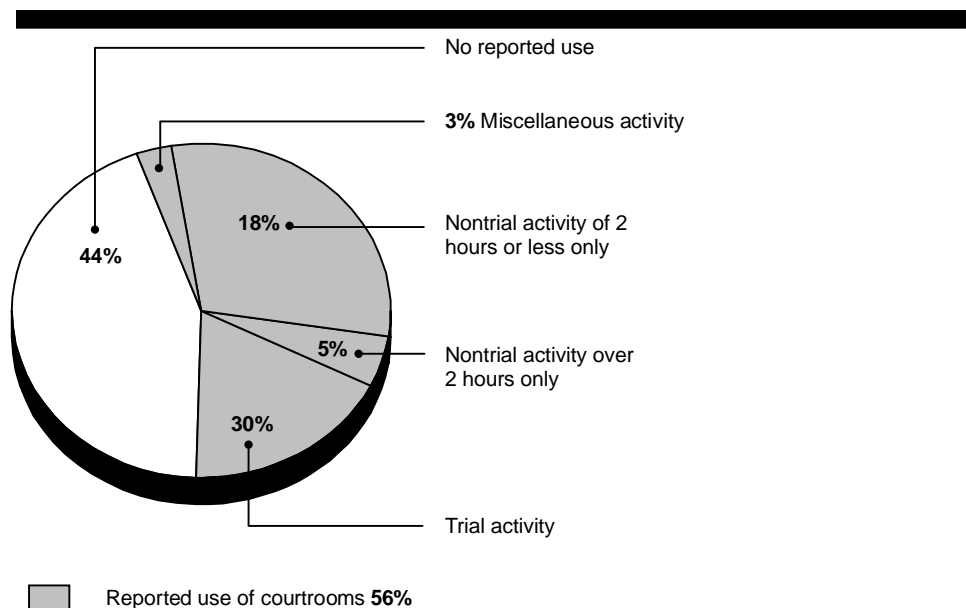
In 1995, the U. S. District Court, Northern District of Texas was authorized 12 judgeships, but it had two vacancies that remained open at the time of our review. In addition, there were three senior judges in the district, but none sat in Dallas. The average number of trial days per judgeship was 76. The district typically holds court in four locations—Amarillo, Dallas, Fort Worth, and Lubbock—but in 1995 trials were also conducted in three other locations—Abilene, San Angelo, and Wichita Falls. Forty-six percent of the more than 400 trials in the district were held in Dallas, and this was the only location in the district included in our review.

All eight trial courtrooms in Dallas are located in one building—the Earle Cabell Federal Building and Courthouse. In 1995, seven of these courtrooms were assigned to and used predominantly by the seven district judges sitting in Dallas. Another courtroom was used primarily by visiting judges. According to the District Clerk, the visiting judge courtroom has poor acoustics, which makes it difficult to use for jury trials. In addition to the trial courtrooms, there is a small courtroom (approximately 1,000 square feet) in Dallas that is used for hearings and other nontrial activities. We did not include this courtroom in our analysis because it is not a full-sized trial courtroom. A construction contract has been awarded for a ninth trial courtroom, and a tenth courtroom is planned. According to a court official, the two new courtrooms are being constructed to accommodate the two new district judges who have been appointed by the President but not yet confirmed by the Senate.

Overall Courtroom Usage

In 1995, seven district judges sitting in Dallas, one visiting judge from another district, and one district judge from another location within the Northern District of Texas were the primary users of eight trial courtrooms in Dallas. Overall, our analysis showed that the eight courtrooms were used 56 percent of the total workdays in 1995, or 1,131 days of the 2,000 possible days. Trials accounted for 30 percent of the workdays, nontrial activities accounted for 26 percent, and the courtrooms were reported not used 44 percent of the workdays. On most of the nontrial days, courtrooms were used for 2 hours or less. In addition some of the nontrial time—3 percent of the total workdays—was for miscellaneous activities by administrative law judges, magistrate judges, and judges from the Fifth Circuit Court of Appeals. Figure II.1 illustrates overall usage of the eight trial courtrooms in Dallas, Texas.

Figure II.1: Overall Usage of Eight District Courtrooms in Dallas, TX, in 1995



Source: GAO analysis of U.S. District Court records.

We did a frequency analysis of courtroom usage to determine how often all eight courtrooms were used on the same day in 1995. Our analysis showed that all courtrooms were used on only 1 day—in other words, on 249 days of 250 possible workdays in 1995, at least one courtroom was vacant in Dallas.

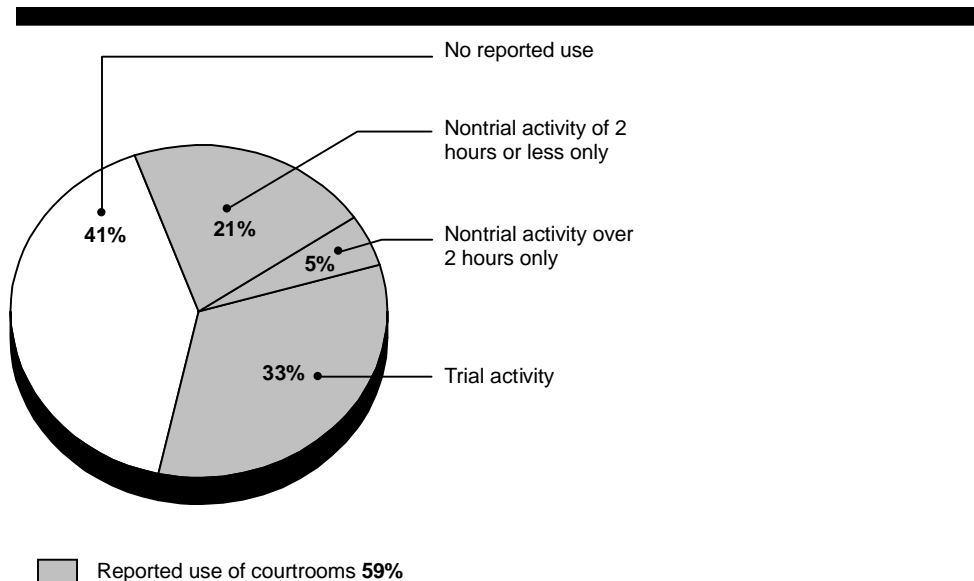
Courtroom Usage by District Judges

The seven district judges in Dallas in 1995 all had assigned courtrooms. The four judges with whom we spoke told us that they sometimes use another judge's courtroom, but most trials and nontrial proceedings are held in their own courtrooms. They explained that having assigned courtrooms is preferred because the current culture assumes that each judge will have his or her own courtroom, and each manages his or her caseload differently.

As Figure II.2 illustrates, the district judges used their assigned courtrooms, on average, 59 percent of the workdays in 1995. Most of this usage—33 percent of the total workdays—was for trials; whereas

26 percent of the days the courtrooms were used for nontrial activities. On most of the nontrial days, courtrooms were used for 2 hours or less. Individual courtroom usage ranged from a low of 48 percent, or 120 days, to a high of 80 percent, or 199 days.

Figure II.2: Use of Seven Courtrooms by District Judges in Dallas, TX, in 1995



Source: GAO analysis of U.S. District Court records.

Courtroom Sharing

The judges we spoke with in Dallas said that they prefer to have their own courtrooms to help them resolve cases more efficiently. They commented that the current culture assumes that each judge will have his or her own courtroom. Furthermore, they stated that lawyers, litigants, and the public have become accustomed to this arrangement, and any change could be difficult. Nonetheless, the judges said that having fewer trial courtrooms than district judges is workable. They said that if proper security were available, hearing rooms could suffice for some criminal case functions as well as for nonjury trials and motion hearings. However, the judges said that they and their staffs would have to coordinate more closely with other judges to ensure that a trial courtroom was available when needed.

District Courtroom Use in Miami, Florida

Background

The U.S. District Court, Southern District of Florida, was authorized 16 judgeships in 1995 but had 2 vacancies at the time of our review. In addition, there were six senior judges in the district. In 1995, the average trial days per judgeship was 143 days—80 percent higher than the national average. The district judges customarily hold court in five locations—Miami, Fort Lauderdale, Fort Pierce, Key West, and West Palm Beach. All five sites have at least one trial courtroom. Miami, with most of the district's trial activity, has the most courtrooms and was the only location in the district that we visited.

In Miami, there are 3 separate buildings housing the 18 district courtrooms that we reviewed. The newest building is the Federal Justice Building, constructed in 1993. There are six trial courtrooms in this building, and in 1995 all were assigned to district or senior judges. The U.S. Courthouse, which was constructed in 1983, has nine courtrooms with eight assigned to district or senior judges and one left unassigned in 1995. This unassigned courtroom did not have a fully equipped and functional chamber for the first half of the year, but it was still used by visiting judges. There are four trial courtrooms in the Old Courthouse (the U.S. Post Office and Courthouse). This building, built in the 1930s, has two courtrooms that have been vacant due to air-conditioning and mildew problems since the Federal Justice Building was occupied in 1993, according to the District Clerk. The Clerk also said that because the building lacks secure corridors, the movement of prisoners to these two courtrooms can occur only in the public corridors. The Clerk explained that the other two courtrooms in the Old Courthouse do not have attached chambers; therefore, judges must travel public corridors to and from the bench. Consequently, these courtrooms are primarily used by visiting judges for emergency hearings and administrative matters where security is not an issue.

The Clerk suggested that since two of the four courtrooms in the Old Courthouse are not used that often for criminal trials, we should exclude them from our analyses, leaving a total of 16 courtrooms instead of 18. However, because courtroom usage records showed that all four courtrooms were used by visiting judges, we included these courtrooms in our analyses. We did not include the large ceremonial courtroom located in the Old Courthouse in our analyses because it is primarily used for ceremonial purposes.

A new courthouse, which is estimated to cost over \$100 million, is planned for Miami. The judiciary's 5 year courthouse construction plan cites the

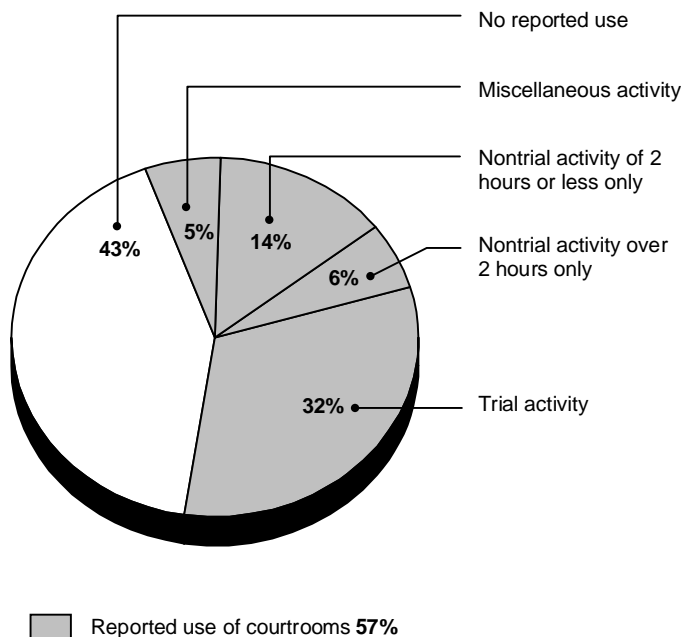
Miami project as requiring \$26 million in site and design funding in fiscal year 1998 and \$91.4 million in construction funding in fiscal year 2000.

Overall Courtroom Usage

In 1995, there were nine district judges and five senior judges sitting in Miami. The district had two vacant judgeships that year. In addition to these 14 judges, 6 visiting judges from other districts and 5 judges from other locations within the district conducted trials and held hearings in Miami in 1995. Overall, the 18 courtrooms were used 57 percent of the workdays (2,581 days of the total 4,500 workdays). Trials accounted for 32 percent of the workdays and nontrial proceedings accounted for 25 percent. The courtrooms were not used 43 percent of the days. On most of the nontrial days, courtrooms were used for 2 hours or less. Some of the nontrial time—5 percent of the total workdays—was for miscellaneous purposes. Miscellaneous use included proceedings conducted by administrative law judges, naturalization and judicial swearing-in ceremonies, jurist training, mock trials, and hearings conducted by someone other than a federal district judge.

If, as previously suggested by the District Clerk, we excluded two of the four courtrooms in the Old Courthouse from our analysis, the overall courtroom usage rate in Miami would have been 65 percent instead of 57 percent. Figure III.1 illustrates overall usage of the 18 district courtrooms in Miami during 1995.

Figure III.1: Overall Usage of 18 District Courtrooms in Miami, FL, in 1995



Source: GAO analysis of U.S. District Court records.

We did a frequency analysis of courtroom usage to determine how often all 18 courtrooms were used on the same day. We found that all of the courtrooms were never in use on the same day in 1995. In fact, there were no days when more than 15 courtrooms were used on the same day. In other words, on any given day in 1995, there were at least three trial courtrooms reported as vacant.

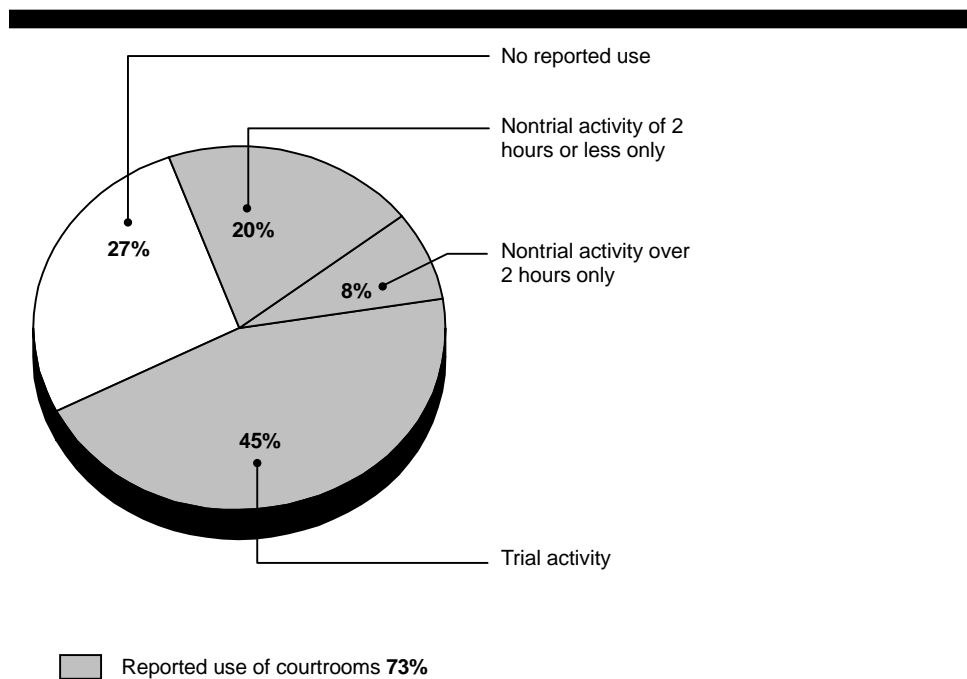
Courtroom Usage by District Judges

The nine district judges sitting in Miami in 1995 all had assigned courtrooms, which they used for most trials and nontrial activities. The five judges with whom we met told us that they sometimes borrow another judge's courtroom, but most trials and nontrial proceedings are held in their assigned courtrooms. They explained that having their own courtrooms is important because each judge manages his or her caseload a little differently, and with an assigned courtroom they always know when they can schedule a trial or hearing. The judges pointed out that

having a courtroom available at all times is important because they are frequently called upon to issue temporary restraining orders, many of which must be completed immediately.

As figure III.2 illustrates, the district judges used their nine assigned courtrooms, on average, 73 percent of the workdays in 1995. Most of this usage—45 percent of the total workdays—was for trials; whereas 28 percent of the days the courtrooms were used for nontrial activities. On most of the nontrial days, courtrooms were used for 2 hours or less. Individually, the district judges’ courtroom usage ranged from a high of 80 percent, or 200 days, to a low of 59 percent, or 147 days.

Figure III.2: Use of Nine Courtrooms by District Judges in Miami, FL, in 1995



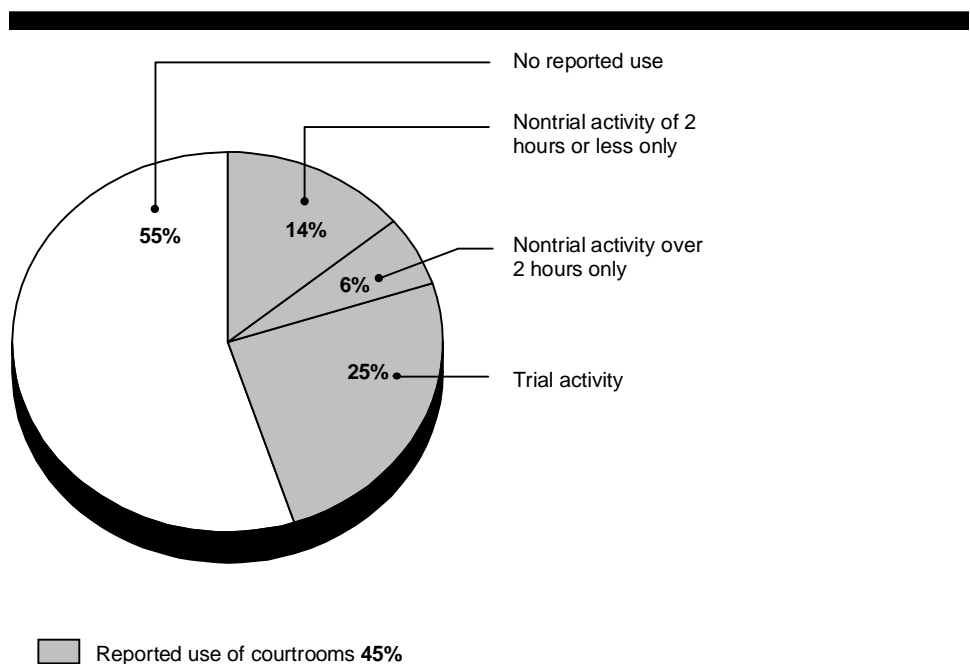
Source: GAO analysis of U.S. District Court records.

Courtroom Usage by Senior Judges

The five senior judges sitting in Miami in 1995 also had assigned courtrooms, which they used for most trials and nontrial activities. Most of the senior judges carried reduced caseloads in 1995, but according to the court officials with whom we spoke, all of them need their own

courtrooms to ensure that scheduled trials and hearings are not delayed. Our analysis showed that the senior judges used their five courtrooms, on average, 45 percent of the workdays in 1995. The courtrooms were used 25 percent of the days for trials and 20 percent for nontrial proceedings. The senior judges used their courtrooms considerably less than the district judges used their courtrooms. The senior judges' courtroom utilization rates varied from a high of 66 percent, or 164 days, to a low of 20 percent, or 50 days. Figure III.3 shows the use of five assigned courtrooms by senior judges in Miami.

Figure III.3: Use of Five Courtrooms by Senior Judges in Miami, FL, in 1995



Source: GAO analysis of U.S. District Court records.

Courtroom Sharing

The judges in Miami are opposed to courtroom sharing if it means having fewer trial courtrooms than judges. The judges that we spoke with said that they believe that every district judge and senior judge in the Southern District of Florida should have his or her own courtroom. In their opinion, anything less would create a host of scheduling problems, which would lead to an increase in case continuances and delays and higher litigation costs for all parties. Furthermore, the district's official position is that

Appendix III
District Courtroom Use in Miami, Florida

each facility occupied by resident judicial officers should also have a fully functional visiting judge courtroom with a 14-person jury box and furnished and equipped judge chambers.

District Courtroom Use in Albuquerque, Las Cruces, and Santa Fe, New Mexico

Background

The New Mexico District covers the entire state of New Mexico. In 1995, the district was authorized five judgeships and had no vacancies. In addition to the five district judges, three senior judges served in the district that year. The district averaged 74 trial days per judgeship, which was slightly below the national average. Court is customarily held in three locations—Albuquerque, Las Cruces, and Santa Fe. There are five trial courtrooms located in Albuquerque, two in Las Cruces, and one in Santa Fe. A ninth courtroom is located in Roswell, but there was no recorded use of this courtroom by the district or senior judges in 1995. According to the District Clerk, the courtroom in Roswell is leased by the District of New Mexico, but it is used almost exclusively by a judge from the Tenth Circuit Court of Appeals. We did not visit or include this courtroom in our analyses.

In 1995, the five courtrooms in Albuquerque were assigned to four district judges and one senior judge. According to the District Clerk, one of these courtrooms is not a full-size trial courtroom; consequently, using it for jury trials is difficult. The Clerk suggested that because of its limitations we not include this courtroom in our analyses of trial courtrooms. However, we included it because the courtroom was assigned to a senior judge who used it for trial purposes in 1995, and it is still used for trials.

One of the two courtrooms in Las Cruces was assigned to a senior judge, and the other was used by other judges from within the district who routinely hold court in Las Cruces. The one trial courtroom in Santa Fe was shared by a senior and a district judge. Despite having assigned courtrooms, many of the judges in the District of New Mexico customarily hold trials and conduct nontrial proceedings in courtrooms located in cities other than where they are sitting. Therefore, in the chief judge's opinion, the judges are sharing courtrooms.

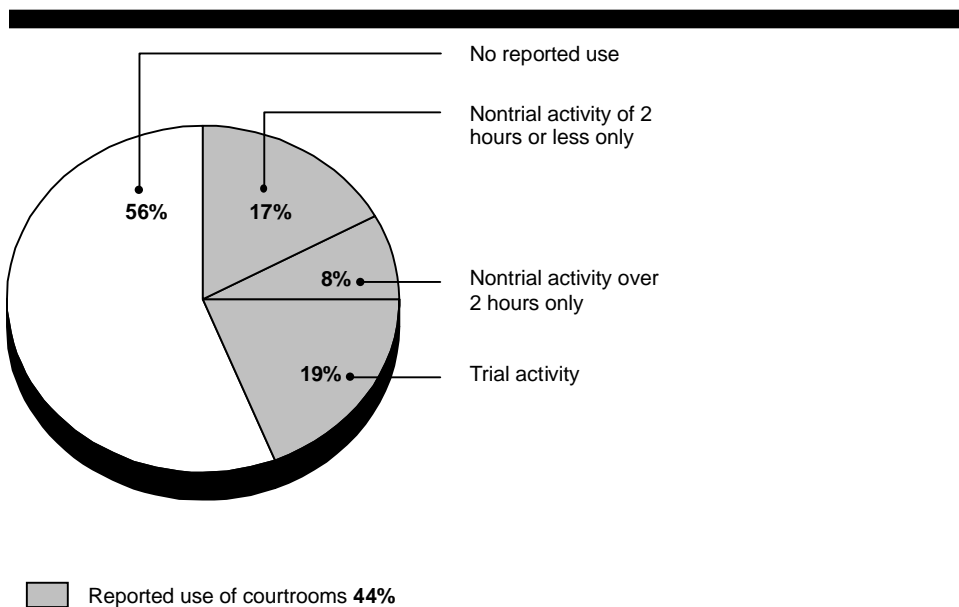
Courtroom Usage

Because the judges customarily hold trials and nontrial proceedings in the three separate locations, we examined courtroom usage from two perspectives—districtwide and each of the three locations separately. We found that the eight courtrooms in the District of New Mexico were used by the eight judges from the district and four visiting judges from other districts 44 percent of the total federal workdays in 1995. As illustrated in figure IV.1, the courtrooms were used 19 percent of the days for trials and 25 percent for nontrial proceedings. The courtrooms were not used 56 percent of the workdays. Further, on most of the nontrial days, courtrooms were used for 2 hours or less. If, as suggested by the District

**Appendix IV
District Courtroom Use in Albuquerque, Las Cruces, and Santa Fe, New Mexico**

Clerk, we excluded the small courtroom in Albuquerque from our analyses, the overall courtroom usage rate would increase to 51 percent.

Figure IV.1: Overall Usage of Eight District Courtrooms in New Mexico in 1995



Source: GAO analysis of U.S. District Court records.

The following discusses overall courtroom usage and usage by district and senior judges at each of three locations. Our analysis of district and senior judges reflects their usage of all courtrooms where they tried cases and held hearings, not just their usage of courtrooms located where they were assigned. This approach was taken because the judges routinely hold court throughout the district.

Albuquerque Courtroom Usage

During 1995, the five courtrooms in Albuquerque were used for trials and nontrial proceedings 44 percent of the workdays. Trials were conducted on 20 percent of the workdays and nontrial proceedings on 24 percent of the days. On most of the nontrial days, courtrooms were used for 2 hours or less. If we excluded the small courtroom from our analyses, the Albuquerque courtroom usage rate would increase to 55 percent.

We did a frequency analysis of the courtroom usage in Albuquerque to determine how often all five courtrooms were used on the same day. Our analysis found that all courtrooms were used on 7 of the 250 workdays in 1995. In other words, on 243 days there was at least one courtroom vacant in Albuquerque.

We also examined how district and senior judges used the five courtrooms in Albuquerque. The district judges used the courtrooms in Albuquerque considerably more often than the senior judges used the courtrooms. The district judges used the courtrooms a total of 474 days, or 47 percent of the workdays (20 percent for trials and 27 percent for nontrial purposes); the senior judges used the courtroom 53 days, or 21 percent of the workdays (13 percent for trials and 8 percent for nontrial purposes).

Las Cruces Courtroom Usage

Although there is only one senior judge sitting in Las Cruces, two trial courtrooms are located there. According to the Chief Judge and the District Clerk, one-half of the district's criminal caseload originates from the Las Cruces area, and they anticipate that this caseload will grow. Therefore, a second courtroom is needed for the judges who regularly travel from Albuquerque or Santa Fe to hear cases in Las Cruces.

Our analysis showed that the two courtrooms were used for trials and nontrial activities 43 percent of the workdays in 1995. Trial days accounted for 18 percent of the days, and nontrial proceedings accounted for 25 percent. On most of the nontrial days, courtrooms were used for 2 hours or less. We also found that both courtrooms in Las Cruces were used on 54 of the 250 workdays in 1995; or, stated another way, a courtroom was vacant in Las Cruces on 196 days that year.

Unlike Albuquerque, we found that the senior judges recorded more courtroom usage in Las Cruces than the district judges. Our analysis showed that the senior judges used the courtroom a total of 113 days, or 45 percent of the workdays; the district judges' used the courtroom 101 days, or 40 percent of the days.

Santa Fe Courtroom Usage

As previously stated, a senior judge and a district judge share one trial courtroom in Santa Fe. In addition to these two judges, we were told that a judge from the Tenth Circuit Court of Appeals who sits in Santa Fe also uses this courtroom when he hears cases for the district. We discussed this sharing situation with the district judge and two clerks involved in

scheduling cases for trials and other hearings. These court officials told us that sometimes the competing demands on the courtroom caused scheduling conflicts that resulted in a few hearings being rescheduled or the district judge being required to conduct hearings in chambers. The district judge told us that on a few occasions she had to travel to Albuquerque to find a courtroom in which to conduct a hearing.

The courtroom in Santa Fe was used for trials and nontrial proceedings on 48 percent of the total workdays. The courtroom was used 13 percent of the total workdays for trials and 35 percent of the total workdays for nontrial activities. On most of the nontrial days, the courtroom was used for 2 hours or less. Our analysis of courtroom usage in Santa Fe also showed that the courtroom was used by district judges for trial and nontrial activities a total of 74 days, or 30 percent of the 250 workdays. Senior judges used the courtroom 40 days, or 16 percent of the workdays.

Courtroom Sharing

The Chief Judge and several other court officials told us that although the district has assigned courtrooms, the judges are now sharing courtrooms because they travel between locations so frequently to conduct trials and other hearings. Their opinion is bolstered by the fact that we identified five instances when four judges recorded courtroom activities in two different locations in a single day. The Chief Judge also said he believes that courtroom sharing will become more widespread in the future because the judiciary will continue to grow, but its budgets are likely to tighten. He added that as budgets tighten, court administrators and judges will be forced to choose between people or space.

According to the Chief Judge, courtroom sharing will increase in the District of New Mexico after the courthouse now under construction in Albuquerque is completed. In the new courthouse, he said he envisions that courtrooms will not be assigned because the 15 judges' chambers will be located on different floors from the 10 courtrooms. Initially, there will be as many courtrooms as there are judges, but on the basis of the judiciary's 10-year projection, 15 judges (5 district, 4 seniors, and 6 magistrate judges) are expected to share the 10 trial-sized courtrooms.

The district judge who shares a courtroom in Santa Fe told us that although sharing may be a good concept, it makes case scheduling more complex and difficult. She stated that courtroom sharing would probably work best if senior judges, especially those who do not carry criminal caseloads, shared courtrooms.

District Courtroom Use in San Diego, California

Background

The U.S. District Court, Southern District of California, was authorized eight judgeships in 1995 but still had two vacancies in August 1996. In 1995, six district judges and five senior judges tried cases and conducted hearings in the district. The district averaged 63 trial days per judgeship, which was slightly below the national average.

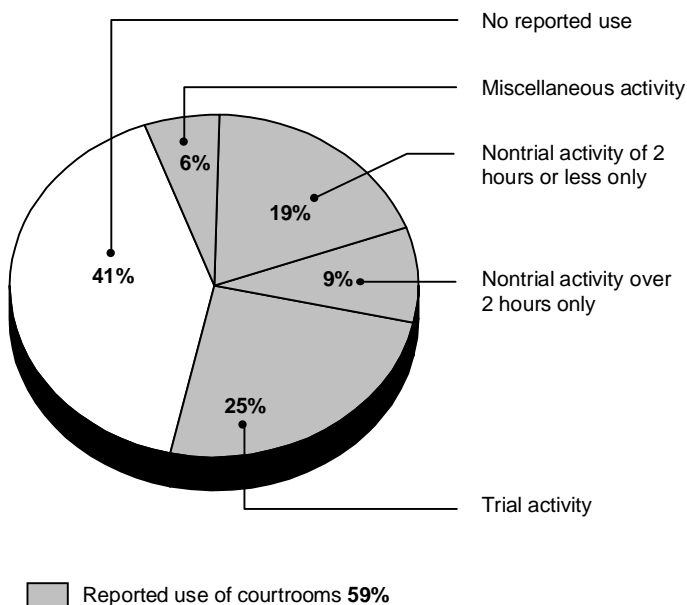
The District Clerk's office occupies space in the Edward J. Schwartz Federal Building located in San Diego. The district judges and their staffs are located in the adjacent Edward J. Schwartz Courthouse, where all trials were completed in the district's 12 trial courtrooms during 1995. Because of the anticipation of additional judges and the growing space needs for the court, the judiciary asked GSA to construct four additional trial courtrooms in the Edward J. Schwartz Courthouse. These courtrooms became operational in early 1996. Additionally, the judiciary plans to construct a new courthouse annex that will include additional trial courtrooms. The new courthouse annex is listed in the judiciary's 5 year courthouse construction plan and is slated to receive \$18.2 million in site funding in fiscal year 1998, \$5.2 million in design funding in fiscal year 2000, and \$91.2 million for construction in fiscal year 2001.

Overall Courtroom Usage

In 1995, the six district judges and five senior judges sitting in San Diego each had an assigned courtroom that they used for conducting trials and nontrial proceedings. The twelfth courtroom was used primarily for trials and related activities by a magistrate judge and seven visiting judges from other districts. This courtroom was previously assigned to another senior judge, but because of illness he recorded court time on only 1 day in 1995.

Our analysis in San Diego showed that the 12 courtrooms were used 59 percent of the workdays in 1995 and not used 41 percent of the days. On 25 percent of the workdays the courtrooms were used for trials, and on 34 percent of the workdays they were used for nontrial activities. On most of the nontrial days, courtrooms were used for 2 hours or less. Included in the nontrial activities were miscellaneous activities, such as hearings conducted by magistrate judges, grand jury proceedings, training, and meetings. Figure V.1 shows overall usage for trial and nontrial activities and nonusage of the 12 courtrooms in San Diego during 1995.

Figure V.1: Overall Usage of 12 District Courtrooms in San Diego, CA, in 1995



Source: GAO analysis of U.S. District Court records.

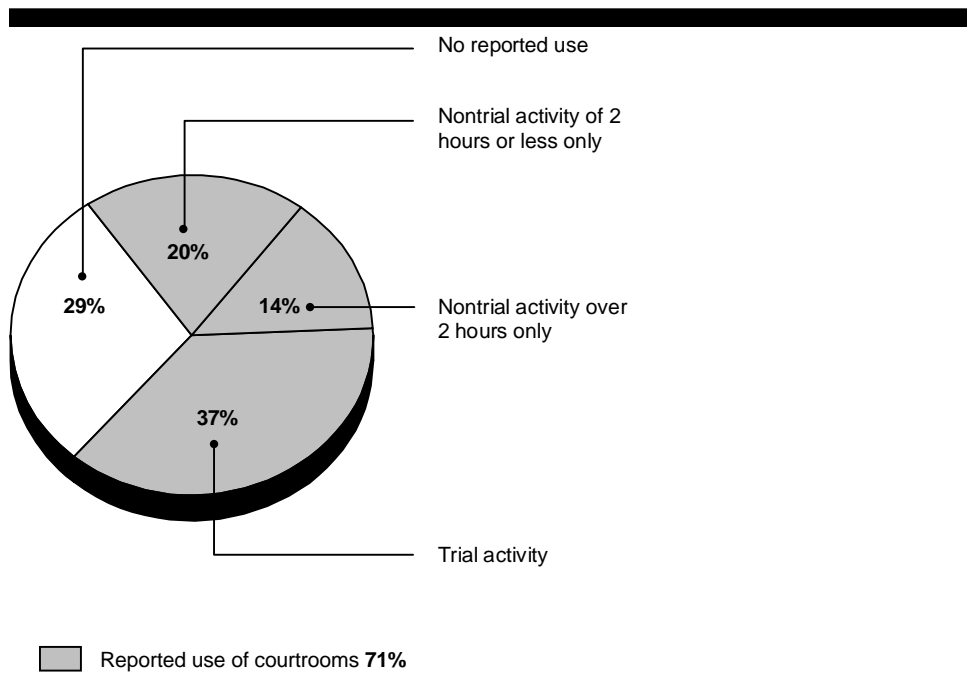
We did a frequency analysis of courtroom usage to determine how often all 12 courtrooms were used on the same day. This analysis showed that all the courtrooms were used on only 1 day in 1995. In fact, on 97 percent, or 242, of the 250 workdays in 1995, there were at least 2 courtrooms reported as vacant.

Courtroom Usage by District Judges

We were told that the district judges use their courtrooms nearly every day. As a rule, the judges hear motions and other short matters on Mondays, and on the remaining days they hold trials and conduct longer hearings. Our analysis found that the six district judges used their assigned courtrooms, on average, 71 percent of the workdays and had no reported use 29 percent of the days. District judges used their courtrooms for trials slightly more often than for nontrial activities—trials consumed 37 percent of the workdays, and nontrial activities represented 34 percent of the days. On most nontrial days, courtrooms were used for 2 hours or less. The

district judges' courtroom usage ranged from 143 days, or 57 percent, to 198 days, or 79 percent. Figure V.2 illustrates the district judges' average use of their courtrooms for trial and nontrial purposes.

Figure V.2: Use of Six Courtrooms by District Judges in San Diego, CA, in 1995

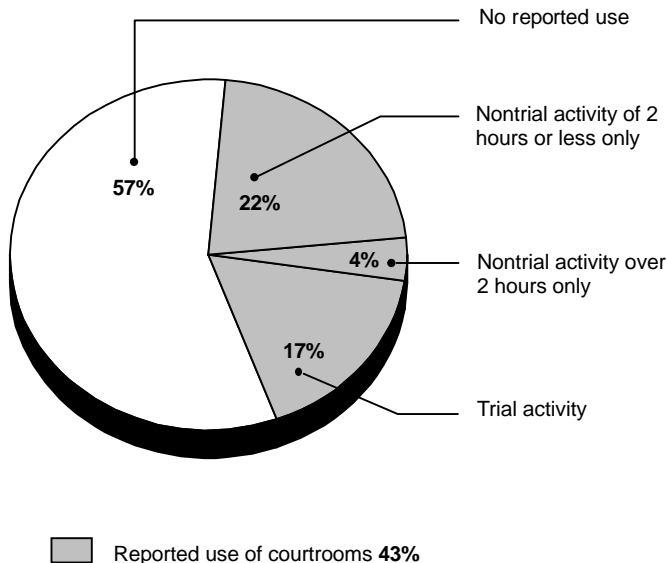


Source: GAO analysis of U.S. District Court records.

Courtroom Usage by Senior Judges

The five senior judges also had assigned courtrooms that they used for conducting trials and nontrial activities. The senior judges used their courtrooms considerably less than the district judges, averaging 43 percent of the workdays. The courtrooms were used 17 percent of the workdays for trials and 26 percent of the days for nontrial activities. Only one senior judge, who recorded 156 days of usage, exceeded 50-percent usage. The minimum usage was 59 days, or 24 percent. Figure V.3 shows the senior judges' average usage of their courtrooms for trials and nontrial purposes.

Figure V.3: Use of Five Courtrooms by Senior Judges in San Diego, CA, in 1995



Source: GAO analysis of U.S. District Court records.

Courtroom Sharing

We were told by the Chief Judge and other court officials that courtroom sharing by district judges would be very difficult because of their heavy caseloads. The Chief Judge said that sharing may decrease the efficiency of the judiciary because the availability of a courtroom is a key factor in getting cases to settle, along with an available judge and a firm trial date. The absence of one or more of these factors, according to the Chief Judge, could hamper the settlement of cases and increase case backlogs. She also stated that sharing could have consequences further down the judicial process, affecting marshals, jail staff, juries, and other people involved. This is because sharing might necessitate longer days in court, thus requiring longer or additional shifts for these personnel. Ultimately, she said, the cost savings from having fewer courtrooms than judges may be more than offset by other costs imposed on the system.

The court officials with whom we met did say that courtroom sharing could be possible among the senior judges. In fact, the Chief Judge said there are plans for three senior judges to share a courtroom when a senior judges' suite is constructed in the current courthouse. She added that if necessary, these judges would also use other available assigned

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District Courtroom Use in San Diego,
California

courtrooms. Also, she stated that the district will be in a sharing mode when the vacant judgeships are filled and new judgeships are assigned, as they will then have more district judges than courtrooms.

District Courtroom Use in Washington, D.C.

Background

The U.S. District Court for the District of Columbia is located in Washington, D.C. The district was authorized 15 judgeships but had 3 vacancies at the time of our review. At the start of 1995, the district had 15 district judges and 7 senior judges. In July and August 1995, two of the district judges took senior status. Also, in August 1995, one of the senior judges died. Thus, by mid-August, the court had 13 district judges and 8 senior judges. The district averaged 80 trial days per judgeship in 1995, which was equal to the national average.

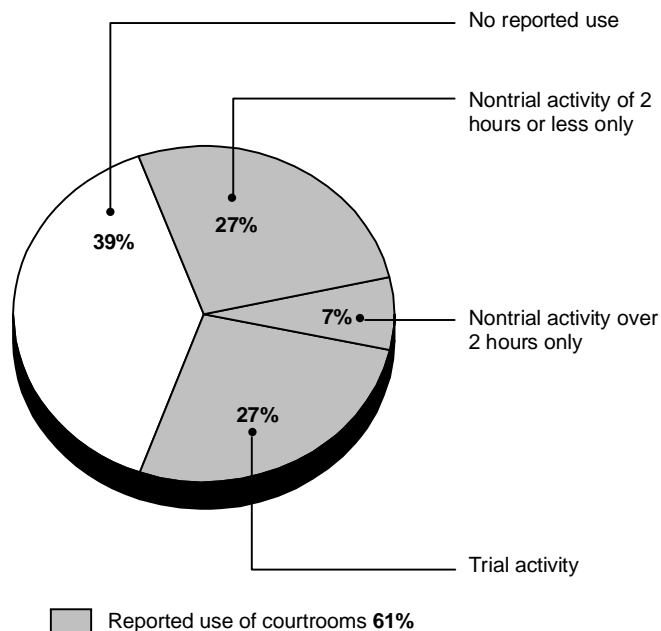
The district holds court in one location, the United States Courthouse in Washington, D.C. This building contains 19 trial courtrooms plus 1 larger ceremonial courtroom. Because the district had more judges than trial courtrooms, up to three district judges did not have their own assigned courtrooms during 1995. Instead, these judges used courtrooms assigned to other judges when they were available. Construction of a new courthouse annex is planned in Washington, D.C. The judiciary's 5 year courthouse construction plan calls for this project to receive \$5.7 million in design funding in fiscal year 1998 and \$98.2 million in construction funding in fiscal year 1999.

Overall Courtroom Usage

In 1995, a total of 22 district and senior judges used the district's 19 trial courtrooms. These courtrooms were used for trials and nontrial activities on 61 percent of the workdays. The courtrooms were used 27 percent of the workdays for trials, 34 percent for nontrial activities, and they were not used 39 percent of the days. On most of the nontrial days, courtrooms were used for 2 hours or less. Figure VI.1 illustrates overall usage of the 19 trial courtrooms in Washington, D.C., during 1995.

Not included in Figure VI.1 is the use of the district's ceremonial courtroom. This courtroom was not assigned to a particular judge, but rather was used by judges primarily for naturalization ceremonies, attorney admission ceremonies, and for trials and related activities that required additional seating and space. During 1995, the ceremonial courtroom was used on 80 days, or 32 percent of the total workdays. On 44 days, the courtroom was used for trial and related activities. The remaining 36 days were for miscellaneous uses by court and other personnel, such as educational institutions' mock trials, school tours, other training events, and meetings.

Figure VI.1: Overall Usage of 19 District Courtrooms in Washington, D.C., in 1995



Source: GAO analysis of U.S. District Court records.

We also did a frequency analysis to determine how often all 19 trial courtrooms were used on the same day. This analysis showed that all of the courtrooms were never used on the same workday in 1995. In fact, on over 95 percent of the workdays, or 239 days, there were at least three courtrooms reported as vacant.

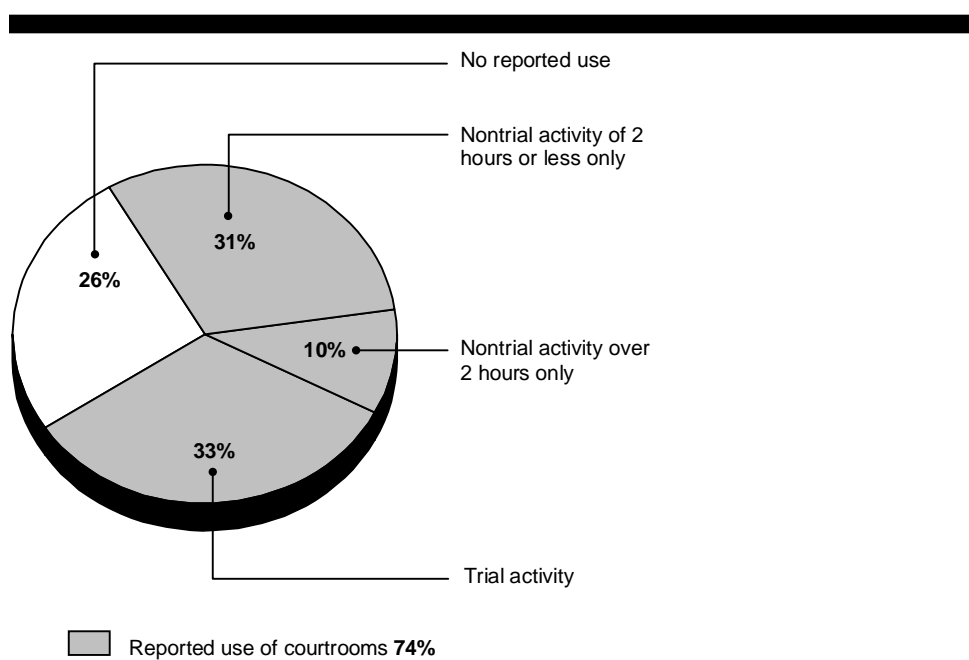
Courtroom Usage by District Judges

In 1995, the district had 13 district judges for the entire year and 2 others who took senior status during the summer of that year. In determining district judge use of the courtrooms, we prorated the courtroom use of the two judges who took senior status during the year based on their time in district judge status.

Figure VI.2 shows that district judges' average use of the courtrooms was about 74 percent of the workdays in 1995. Thirty-three percent of the days the courtrooms were used for trials, 41 percent of the days they were used

for nontrial activities, and 26 percent of the days the courtrooms were not used. On most of the nontrial days, courtrooms were used for 2 hours or less. The number of days that district judges used a courtroom during 1995 ranged from 80 days, or 32 percent, to 205 days, or 82 percent of the workdays.

Figure VI.2: Use of Courtrooms by District Judges in Washington, D.C., in 1995



Source: GAO analysis of U.S. District Court records.

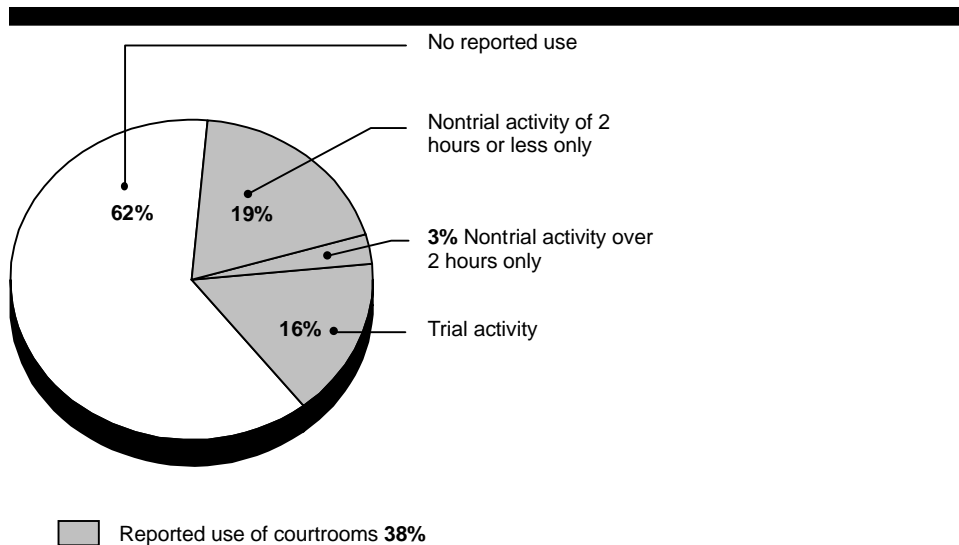
Courtroom Usage by Senior Judges

In 1995, the district had six senior judges for the entire year, two district judges who took senior status during the year, and one senior judge who died. Thus, the district ended the year with eight senior judges. In determining the senior judges' use of the courtrooms, we prorated the usage time of the two judges who took senior status during the year based on the number of days they were in senior status and included all of the courtroom time of the senior judge who died during the year.

Figure VI.3 shows that senior judges' average use of the courtrooms was about 38 percent—considerably less than district judges' average use. Nontrial activities accounted for the most usage at 22 percent of the

workdays; whereas trial usage was only 16 percent and the courtrooms were not used 62 percent of the workdays. The number of days that senior judges used a courtroom ranged from 40 days, or 16 percent, to 128 days, or 51 percent of workdays in 1995.

Figure VI.3: Use of Courtrooms by Senior Judges in Washington, D.C., in 1995



Source: GAO analysis of U.S. District Court records.

Courtroom Sharing

The Chief Judge, two district judges who had tried cases without assigned courtrooms, and other court officials told us that courtroom sharing is possible, as evidenced by their actual experiences. The Chief Judge stated that sharing had been implemented out of necessity when the number of judges exceeded available trial courtrooms. However, the judges said that they preferred that each judge have a courtroom to ensure more efficient and effective case management. The Chief Judge said that he was concerned that sharing on a larger scale might adversely affect the flexibility that the judges have in individually managing their cases and setting case schedules.

The judges stated that in addition to the availability of a judge and maintaining firm trial dates, the availability of a courtroom has been another key element in achieving case settlements and closures rather than proceeding with actual trials. None of the judges that we spoke with

could recall any instance when a judge without an assigned courtroom had not been able to find an available courtroom when needed. Courtroom sharing, they noted, had caused some inconveniences, such as having to move trial exhibits and participants' materials from one courtroom to another or having delays because jurors or participants had gone to the wrong courtroom. They also indicated that the proximity of their chambers to an unassigned courtroom could be a problem because they were not always able to quickly return to chambers to handle other business during short court recesses.

One judge noted that the successful implementation of courtroom sharing had been due in part to the large number of trial courtrooms in the courthouse. Sharing, he said, in smaller courthouses might be more difficult. Further, the judges interviewed said that sharing is more feasible among senior judges, particularly those who carry smaller caseloads.

Comments From the Administrative Office of the United States Courts



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

April 7, 1997

Mr. Michael E. Motley
Acting Director
Government Business Operations Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Motley:

Thank you for providing the judiciary with the opportunity to comment on the General Accounting Office's (GAO) draft reports entitled "Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decision Making" and "Courthouse Construction: Information on the Use of District Courtrooms at Selected Locations." We share your interest in conserving the judiciary's resources, and have dedicated considerable effort to the study of courtroom utilization. The Judicial Conference of the United States has most recently adopted a major policy change with regard to courtroom utilization, and in particular, with regard to courtroom sharing for senior judges.

The significance of the courtroom to the accomplishment of the judiciary's work cannot be overemphasized. The RAND Institute for Civil Justice (RAND) aptly characterized the importance of the courtroom in its statement that "adequate courtroom space is the *sine qua non* of effective judicial operation..."¹ This fact has been recognized by the longstanding use of the standard of one courtroom for every judge not only by the federal courts, but by each of the fifty states, which are under heavy pressures similar to the federal government to economize. The judiciary takes very seriously its absolute responsibility to assure that every judge has the tools to perform the judicial duties required by the Constitution.

¹RAND Institute for Civil Justice, "Research on Courtroom Sharing," Project Memorandum, PM-598-1-ICJ, pp. 1-2 (1996).

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

See p. 23.

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Because of the critical importance of the courtroom to the administration of justice and the universal acceptance of the need for the present standard, you will note that we have found it necessary to respond at some length and detail to your draft report. A list of technical comments has been provided under separate cover.

We certainly agree with your recognition of the courtroom utilization issue, but we believe that before we embark upon an extensive and time consuming study, the judiciary should aggressively monitor both the effects of its ongoing efforts to reduce space usage and its newly adopted initiatives relating to courtroom sharing. The continuing study of the need for courtrooms should be conducted by those who are most knowledgeable in this area, that is, the federal judges.

See pp. 23-26.

Accordingly, we recommend that you recast your recommendation to provide that the Judicial Conference committees on Court Administration and Case Management and Security, Space and Facilities, which have jurisdiction in this area, closely monitor the implementation of these major policy initiatives on courtroom sharing and facilities planning with regard to the impact on case management and effectiveness in contributing to the judiciary's efforts to reduce space costs.

The judiciary will undertake such data collection as is necessary to implement this recommendation and follow through with any policy changes required to further the goal of effectively delivering justice while seeking to reduce costs.

We note your suggestion that there may be some opportunity for sharing courtrooms in the federal courts, particularly with respect to senior judges, and your recommendation on page 38 that further study and data collection be undertaken. The policy recently adopted by the Judicial Conference with respect to courtroom utilization, discussed below and contained in Enclosure 1 for suggested inclusion in your report, and our own recommendation set forth above are certainly not inconsistent with the goals inherent in the draft's recommendations.

Now on pp. 22-23.

We appreciate your understanding, as reflected in the drafts, that the nation's process for administering justice is complex and dynamic, and that a simple counting of the amount of time a courtroom is actually occupied over a short period cannot be the measure for the number of courtrooms needed at a facility. The draft acknowledges at page 7 that scheduled use and latent use of the courtroom are important considerations in that determination. We would stress that a courtroom occupancy rate of 65 percent

Now on p. 4.
See p. 25.

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by active district court judges indicates only a fraction of what is actually the real use of the courtroom, given that the critical factors of scheduled use and latent use were not part of this study.

We also agree, as the draft states at page 15, that the analysis developed by study over the past 14 months in 11 locations out of a possible 300 cannot be used to project the results to the universe of district courtrooms nationwide. Clearly, caseload, case type, number and type of judges, case management requirements, geographical, and demographic considerations vary greatly across districts and circuits.

Building a courthouse in a location that will provide service to litigants, victims and their families, jurors, and the general public also plays an important role in any discussion of courtroom availability. We would be pleased to discuss individual housing needs on a building-by-building basis with you or congressional requestors of the report.

Provided below are our more specific comments. These comments underscore the complexity of the issue you studied at these 11 locations.

- 1. The judiciary has undertaken a comprehensive plan to improve space management, control rent costs, and ensure optimal use of facilities. The report should recognize on pages 7-8 and pages 28-32 that the judiciary has undertaken this aggressive space reduction program.**

Containing the cost of space needed by the federal courts to conduct their business is a major administrative goal of the judiciary. In 1988, the Judicial Conference approved a long-range facilities planning process that enables the judiciary to project its housing and facility requirements using a standardized methodology. In 1991, the Judicial Conference approved space standards that define the needs of the federal courts and are now used as a guide to plan new facilities. The planning process and the use of standards ensures that buildings are sized appropriately for current and projected requirements.

In September 1995, the Judicial Conference also initiated a comprehensive examination of space and facilities management in the federal judiciary. At its March 1996 session, the Judicial Conference adopted a comprehensive plan to improve space management, control rent costs, and ensure optimal use of facilities. Recognizing our shared determination to reduce government spending, the goal of this plan is to provide only the facilities the judiciary needs to fulfill its constitutional mission economically

Now on p. 9.
See p. 25.

Now on pp. 4-5
and pp. 17-19,
respectively.
Modified text. See
p. 17 and GAO
comment 1.

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without impeding the administration of justice. Actions implemented to date under this plan are expected to reduce rent costs by more than \$12.4 million annually.

- 2. The judiciary has recently adopted a major policy change on courtroom sharing, including courtroom sharing for senior judges. The report should be revised on pages 7-8 and pages 28-32 to include the recent Judicial Conference action on courtroom sharing for active, senior and visiting judges.**

This past March, the Judicial Conference adopted a major policy initiative for determining the number of courtrooms needed in a facility (Enclosure 1). This policy balances the essential need for judges to have an available courtroom to fulfill their responsibilities with the economic reality of limited resources. It continues the basic standard of providing one courtroom for each active district court judge. In addition, with regard to senior judges who do not carry a caseload requiring substantial use of a courtroom and visiting judges, the policy establishes a non-exclusive list of factors for circuit judicial councils (which have the statutory obligation to review and approve court accommodations) to consider when determining the number of courtrooms needed at a facility. Factors include an assessment of the workload anticipated to be carried by a senior judge, the number of years a senior judge is likely to carry such a caseload, and an evaluation of the complement of courtrooms throughout the entire district. Courts are also encouraged to provide for flexible and varied use of courtrooms.

- 3. As part of its ongoing efforts to study carefully its needs for judicial facilities, the Judicial Conference has adopted criteria for circuit councils to consider in establishing or closing non-resident facilities. The draft should be revised on pages 7-8 and pages 28-32 to reflect these efforts.**

In addition to the policy on determining the number of courtrooms in a facility, the Judicial Conference approved criteria for circuit councils to use in determining whether to establish or close a non-resident facility (a facility that does not have a permanently assigned judge). These facilities, often located in rural areas, are provided so that the public does not have to travel long distances to conduct business in a federal court. The number of days a non-resident facility is likely to be used for court proceedings, the distance from the next closest facility in the district, and the cost per day of use of the facility are all considerations courts will use to determine need.

Now on pp. 4-5 and pp. 17-19, respectively. Modified text. See pp. 17-18 and GAO comment 2.

Now on pp. 4-5 and pp. 17-19, respectively. See GAO comment 3.

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In addition to these three basic factors, courts are encouraged to consider: the travel and *per diem* costs involved for litigants, victims, court staff, jurors, and U.S. marshals to travel to a distant facility; jury pool representativeness; and cultural, community, and historic reasons for establishing or closing a facility. This policy must be viewed in conjunction with the courtroom sharing policy described above at section 3, as both policies will guide courts in determining the facilities and number of courtrooms they need in their particular circuits to perform judicial duties.

4. It is the policy in fifty states to provide one trial courtroom for each judge. The report should reflect on pages 3 and 9 that the states' courts also have the standard of one courtroom for every judge.

A survey conducted by a consultant for the judiciary entitled *Courtroom Sharing Practices Among State and Local Courts* concluded that "In only very few instances do state trial court judges share courtrooms as a matter of general policy... When this does occur, it is primarily because the number of available courtrooms has not kept pace with the addition of new judges to the court."²

5. The cost estimates of providing courtrooms for projected new judgeships based on the *Long Range Plan for the Federal Courts* are misleading, given the judiciary's commitment to limit growth, Congressional restraint, availability of senior judges, and other factors that influence cost projections. We recommend that the cost estimates be deleted from the draft at page 11.

On page 11, the draft report states, using the cost to build a courtroom in Washington, DC (\$800,000), that the cost of providing one courtroom for each new judgeship, in 1995 dollars, could range from about \$500 million to \$1.4 billion. It is not likely that each courtroom across the country would cost \$800,000, nor is it sufficiently probable that the judiciary would request and the Congress approve the number of judgeships projected to assure these numbers are valid.

We suggest that, taken out of context, this statement inaccurately reflects the position of the judiciary. As stated by the FJC in its response to the draft report, the judiciary's commitment to limit growth, Congressional restraint, availability of senior judges and other factors will influence cost projections.

²Dan Hardenbergh, "Courtroom Sharing Practices Among State and Local Trial Courts" 1 (September 13, 1996).

Now on p. 2 and p. 5,
respectively,
Modified text.
See p. 16
and GAO comment 4.

Modified text.
See p. 7
and GAO comment 5.

Now on p. 7.

Now on p. 7.

Now on p. 21.
See GAO comment 6.

6. **In its report, RAND acknowledged the complexity of any study on courtroom utilization and that factors other than actual time spent in the courtroom and construction costs should be considered. The draft should be revised to include these findings on pages 34-35.**

Recognizing that courtroom utilization is an extremely complex issue, two well-respected research institutions, RAND and the Federal Judicial Center (FJC),³ have studied the complexity of the issue presented. Both acknowledge the danger inherent in basing courtroom sharing policy exclusively upon hours of courtroom use. The draft report should provide a more complete discussion of RAND's findings with regard to courtroom sharing. For example, the following important statements that were included in the RAND report on courtroom utilization should be included:

“The core question of this research is: How will courtroom sharing affect costs, case processing, case outcomes, and the delivery of justice. For example, changing the courtroom-per-judge ratio may save construction money, but what may be optimal from the construction cost viewpoint may or may not be detrimental when a broader viewpoint is taken. Would total costs - to the taxpaying public, to the courts, and to lawyers and litigants - be higher or lower? Would the procedural and case processing consequences be harmful or beneficial? Would judicial and staff productivity go up or down? Would the capacity of the federal court system to deliver justice be impaired or enhanced?”⁴

Another important statement which should be included is:

“In fact, considering that the provision of adequate courtroom space is the **sine qua non** of effective judicial operation, it is difficult to see how satisfactory decisions about court construction programs can be made without knowing, just what “adequate” means and how case processing and judicial operations are affected by the courtroom per judge ratio.”⁵

³Federal Judicial Center, “The Impact of Providing Fewer Than One Courtroom Per Judgeship” (August 28, 1996).

⁴RAND Report at 38.

⁵RAND Report at 1-2.

Now on p. 18.
See GAO comment 7.

- 7. Until the pioneering study conducted by Leekley and Rule, there was virtually no other research at the state or federal level on the impact of changing the ratio of courtrooms to judges. The draft should be revised on page 29 to reflect the importance of this study.**

Prior to the report by Drs. Leekley and Rule⁶ on the impact of providing less than one courtroom per judge, there was virtually no federal, state, or local research available about courtroom sharing. GAO staff has acknowledged that they were unable to find any relevant research in this area. We commissioned the pathbreaking Leekley/Rule study to determine if there was any way to develop a methodology that could be applied in all courts to determine the appropriate ratio of courtrooms to judges mathematically. Of course, individual courts have been reporting for a long time that sharing courtrooms was very difficult to implement and maintain on a long term basis.

In addition, RAND and the FJC were asked to comment on the Leekley/Rule study. All of the researchers agree that determining whether the ratio of courtrooms to judges could be less than one to one is a complex issue, and the Leekley/Rule study served well in demonstrating that point.

- 8. Court scheduling data was offered to GAO staff, but was not considered. The draft report should be revised on page 27 to reflect that scheduling data was offered to GAO staff at various court locations.**

Although it acknowledges their importance at page 7, the draft report methodology does not consider two important sources of data that are critical to determining whether sharing is realistic: scheduled courtroom use and latent courtroom use. Courtrooms are scheduled for trial long before the actual trial date. If a case settles on the eve of trial or an out-of-custody criminal defendant waits until the morning of trial to plead guilty, neither of which is uncommon, that courtroom is suddenly empty and cannot be rescheduled immediately because of basic due process noticing requirements to parties, witnesses, and attorneys. In practical terms, attorneys may have scheduling conflicts with other judges or courts, and witnesses and U.S. marshals may be unavailable on such short notice.

⁶Edward H. Leekley and William T. Rule, II, "The Impact of Providing Fewer Than One Courtroom Per Judgeship" (September 1996).

Now on p. 16.

Now on p. 4.
Modified text. See
pp. 4, 16, and 22;
See GAO comment 8.

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Now on p. 16.

The draft reflects on page 27 that scheduling data was not available to GAO staff. However, it was reported to us that your audit teams were offered data on scheduled usage of courtrooms but chose to count only actual time spent in the courtroom and declined offers to consider the rationale for including this information.

Now on p. 12.

As stated in the draft report on page 21 "...the district judges averaged a 65 percent usage rate." Consideration of scheduled use data in addition to trial and "non-trial" usage would result in a more realistic and complete analysis. For example, in the Western District of Washington (Seattle), the judges maintain a "trailing calendar," on which they record all scheduled trial matters by type of proceeding and projected length of trial. From studying this calendar, the audit team would have discerned that more trials are scheduled than courtroom availability on a monthly basis.

The consideration of scheduling data would have confirmed the basic premise that the judiciary depends on most cases settling before they go to trial. If all cases went to trial, the federal court system, at its current size, would be unable to function. In order to promote settlement, a judge must set an early and firm trial date. An available courtroom must be assured for this purpose. Setting an early and firm trial date was required by Congress in the Civil Justice Reform Act of 1990.⁷ Indeed, one of the key findings by the RAND Corporation in a recently-completed five-year study on cost delay and reduction under the Civil Justice Reform Act is that the setting of an early and firm trial date is the best way to reduce cost and delay in litigation.⁸

Not having an available courtroom on the day trial is scheduled has many repercussions, some more serious than others. First, those cases that are prepared to go to trial must wait. Waiting costs money -- lawyers will be paid whether they are in court or waiting in the corridor. Litigants, witnesses, jurors, and victims and their families, who have often traveled long distances, either have to travel again or get lodging. Since the federal government is the largest litigant in the courts, delay increases costs to the government.

More serious, however, is the long term effect of not having available courtrooms. In our adversary system of justice, cases settle when the courtroom availability is assured. If it becomes clear that a courtroom may not be available,

⁷28 U.S.C. § 473(a)(2)(B).

⁸RAND Institute for Civil Justice, *Just, Speedy, and Inexpensive? An Evaluation of Judicial Case Management Under the CJRA 1* (1996).

settlements will be much more difficult to obtain. Criminal defendants will have leverage to seek more favorable plea arrangements and civil litigants will gamble that the case will be delayed. The assured availability of the courtroom to promote settlements is the “latent” use of the courtroom. It is difficult to measure, but ignoring its importance can have disastrous effects on the system.

- 9. Courtrooms are the necessary site for certain pre-trial proceedings; scheduling difficulties will follow if courtrooms are not available. The report should be revised on page 26 to acknowledge that certain pre-trial proceedings involve many parties and a courtroom is either necessary or the best venue.**

The draft does not reflect how civil and criminal cases are actually managed. This is particularly evident in the suggestion that many of the non-trial proceedings could be handled in smaller conference or hearing rooms (page 20). The report should reflect that other legal proceedings, such as motion hearings and pre-trial conferences, are as essential to resolving a case as a trial. Indeed, issues resolved at these pre-trial and trial-related proceedings often lead to settlement.

On page 20, the draft gives the impression that a full sized courtroom is needed only in a multi-defendant trial. In fact, a full-sized courtroom is often needed in jury trials with only one defendant.

Although pretrial proceedings may at times be conducted in chambers or other types of hearing rooms, often they involve many parties and a courtroom is either necessary or is the best venue.

- 10. Security issues might arise if conference rooms were used in criminal cases. The report should acknowledge on p. 26 the importance of providing secure courtrooms for all criminal proceedings.**

In criminal cases, where the defendant is required to be present at every proceeding, including all pre-trial proceedings, the room must be secure. Serious security issues might arise if arraignments or pleas are held in hearing rooms that are not near adjoining holding cells or if the space between the defendants, prosecutors, and the judge is limited. The judge, evaluating the security concerns for all parties involved, is in the position to choose the type of room appropriate for the proceeding. Congress should understand that the judge should not be placed in the position of having to be forced to use a smaller room because there are not enough available

Now on p. 15.
Modified text. See
p. 12 and GAO comment
9.

Now on p. 12.

Now on p. 15.
See GAO comment 10.

courtrooms at the facility. Moreover, room must be provided for the public and press who have a have a right to attend these proceedings.

- 11. If varied sizes of courtrooms are built rather than one standard-size courtroom for each district judge in order to save construction costs, there will be other costs involved due to greater need for coordinated scheduling, and delay to litigants, victims, and others because the proper size room might not be available. The draft should acknowledge at page 20 that construction costs are not the only costs involved if fewer courtrooms are provided.**

If conference rooms or smaller hearing rooms are to replace courtrooms, the report should address the consequences. This issue is more complex than described in the report. Although construction money may be saved, there are other costs. For example, scheduling problems would be increased. A judge would not only have to schedule a courtroom, but would have to make sure the right type of room is available. If a proceeding took longer than anticipated, costs to the parties waiting to use the room and to the taxpayer would escalate.

- 12. Video equipment is not a substitute for a fully-equipped courtroom. The draft should be revised on page 26 to eliminate the suggestion that fewer than one courtroom per judge may be adequate because some proceedings can be conducted via videoconferencing.**

The judge is in the best position to determine, based on the unique characteristics of each case, whether to use remote technology such as videoconferencing. He or she should not be forced to use it because there are not enough courtrooms in a facility. Certain limited proceedings might lend themselves to audio or video conferencing, but most would not. The federal rules limit the use of videoconferencing in both criminal and civil cases. In proceedings where videoconferencing may be permissible, in a particular situation, a judge may choose not to use it due to fairness and quality of justice concerns. Moreover, having parties physically present in the courtroom together is often a major incentive to settlement.

Now on pp. 11-12.
See GAO comment 11.

Now on p. 15.
Modified text.
See p. 14
and GAO comment 12.

See GAO comment 13.

- 13. When a case settles before trial, time and money is saved. The report should take into account the money saved by a case settling rather than going to trial.**

The empty courtroom may often be a measure of cost-saving success rather than a misuse of the taxpayer's dollar. The report should take into account savings to the judiciary caused by a settlement and also savings in resources and money to the litigants, government agencies, witnesses, and others involved in the costly trial process.

See GAO comment 14.

- 14. The audit teams should conduct the promised exit interviews with each chief judge whose court was studied. The report should reflect the views of the judges whose courts were studied.**

GAO staff might have obtained a more accurate and comprehensive assessment of the importance of an available courtroom if they had talked to judges at all court locations surveyed. In a number of courts, we understand the audit teams did not discuss their findings with the chief judges, although each was promised an exit interview. Several judges have stated that the audit team members' minds were made up before they entered the court and that they were not interested in hearing how to get the complete picture. For example, in Denver, the auditors spoke briefly to the chief judge and clerk, but nothing of particular significance was discussed specific to courtroom utilization in Denver. Not only did the GAO staff fail to interview the judges in Denver, but apparently declined to do so despite offers that they were available for that purpose. The team also did not follow up on a suggestion that they interview a particular judge who had significant experience with courtroom sharing in state court.

See GAO comment 15.

- 15. The views of other court users such as United States Attorneys would have provided information on the non-construction related costs of courtroom sharing.**

The report should include input from the U.S. attorneys, the biggest litigator in the federal courts, and other court users. The draft would then reflect the concerns raised by courtroom sharing, such as the need for constant scheduling and rescheduling when trials run one day longer than expected, the need to notice large numbers of people in criminal cases when a trial date is changed, the concern that criminal cases might be slowed down causing Speedy Trial Act problems, and that civil cases would be more delayed. Security concerns would also be a factor if criminal defendants are

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forced to be moved around the courthouse or brought to courtrooms without holding cells.

16. The data collected should not be used to project usage for other time periods, even in the courts that were studied. The draft should acknowledge at page 15 the limitations on the data collected.

Courtrooms are constructed to be used for at least 50 years. A “snapshot” of courtroom use over a short period of time is a poor predictor of the number of courtrooms needed in a particular district because the number of cases on a court's docket and the number of trials held in a particular court does not remain stable over time.

In the courts studied by the GAO staff, there are wide variations between the number of trials held in 1995 and the number of trials that took place in the prior five years. For example, in the District of Columbia, there were 285 trials in 1995, but in 1991 the same court held 720 trials, 153 percent more trials than in 1995. The average number of trials per year in that court for the years 1990-1994 was 552, 94 per cent higher than in 1995. Clearly, the 1995 data for that court used in the draft report does not provide an accurate picture of the type of trial activity that has customarily and might still take place in the future in that court. The number of trials per year in 1995 was also well below the 1990-1994 average for six of the other courts studied. The number of trials held in 1995 for these courts also varied from the maximum prior year within the prior four year period from 8 to 81 percent below the maximum number. The data used in the report should not be used to project to the universe of district courts nationwide, as is acknowledged at page 15, it also should not be used to project usage in any other courts, even the courts which were studied, for any other period of time. A chart setting forth the variations in trials in the study courts is included as Enclosure 2.

It should also be noted that the relationship between criminal case filings and defendants tried in the federal district courts generally has tended to vary significantly over time. Some aspects of this variability, as discussed in the law review article *Criminal Caseload in U.S. District Courts: More than Meets the Eye*,⁹ have significant implications for the need for courtrooms and the problems with using limited time period data to assess that need. For example, in statistical year 1995 (the year ended 9/30/1995) a total of 54,980 defendants were terminated, of which about 78% entered a plea, 13% were

⁹David L. Cook, et. al., *Criminal Caseload in U.S. District Courts: More than Meets the Eye*, 44 Am.U.L.Rev. 1579 (1995).

Now on p. 9.
Modified text. See
pp. 9 and 41; see
GAO comment 16.

Now on p. 9.

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dismissed and 9% tried. Were the rate of pleas to decline to 72% (about the level that prevailed in 1990 and 1991), with the same dismissal rate, the number of defendants terminated through trial in 1995 would have been 8,247, a 73% increase. In terms of total trial days (including civil) this would have generated an increase of about 36% in 1995.

The report should recognize that new legislation or changes in prosecutorial priorities can dramatically and quickly change a court's docket, as can an unexpected vacancy on the bench. For example, in the Western District of Washington, one judge had a criminal docket of 10 criminal cases in 1995, the year studied in the draft report, while in 1996, she had a criminal docket of 56 cases. These types of changes are not unusual - a court's docket must be studied over a long period of time in order to get a more accurate picture of the amount of courtroom-related work at a specific location.

If a courtroom is used for 50 years, which is not unusual, the government is making a capital investment of \$16,000 per year in 1995 dollars (50 years/\$800,000) per courtroom - a comparatively small amount considering costs of delay to litigants and the value society places on the expeditious disposition of cases. If, however, the projection of the number of courtrooms needed is too low and courtrooms need to be added, the cost of building additional courtrooms after a building is up and running is considerably more expensive than building them at the time of initial construction.

17. Courtrooms that were not usable should not have been counted in the statistics on courtroom usage. The draft statistics on page 17 and contained in Appendix III reflecting courtroom use should be revised accordingly.

Courtrooms that were not in use because of flooding, building maintenance problems, bomb threats or because they were under renovation nonetheless were counted as available for use. Staff in the Southern District of Florida report that the GAO team members factored into their percentages three courtrooms in the Miami courthouse that are not assignable to a full time judge; they counted 18 courtrooms rather than the 15 that were in use. The resulting statistics give the picture that the overall time spent in courtrooms is less than it actually is.

18. Vacant judgeships should not have been counted in the courtroom usage statistics. For a more correct picture of courtroom use, the draft statistics at Appendices I and III should be revised accordingly.

Vacant judgeships should not be counted as if they were occupied by active judges; this gives an invalid suggestion of less actual use. For example, two vacancies

Now on p. 10.
See GAO comment 17.

See GAO comment 18.

in the Southern District of Florida were counted in calculating courtroom usage rates.

See GAO comment 19.

- 19. An empty courtroom in Las Cruces is not a realistic alternative to a courtroom in Albuquerque, approximately 225 miles away. The draft should be revised in Appendix IV regarding the New Mexico figures to eliminate the clear impression that those courtrooms are interchangeable.**

A distortion is apparent in usage figures for the Las Cruces and Albuquerque courthouses in the District of New Mexico. The inclusion of courtroom utilization statistics at different locations within a district presents a distorted picture of usage. The distance between the two locations (approximately 225 miles) demonstrates that the courtrooms at Las Cruces are not realistic alternatives to scheduling events without a great deal of lead time for travel of all concerned. Additional locations in a district serve many purposes, such as providing easier access to justice and allowing for varied jury pools. These other factors must be taken into account when determining the usage at these other facilities. They are not alternate available courtrooms and should not be counted in the same way as courtrooms at the same location for utilization purposes.

A related distortion in the draft report involves the Southern District of Florida. The auditors only gathered data at the Miami courthouse. Four of the Miami judges also sit in Key West, and all of them sometimes sit in Fort Lauderdale and West Palm Beach. Therefore, it would be impossible for them to be in court for 250 days in Miami. Because the judges can only be in one place at one time, the percentages in the draft report for Miami are misleading.

See GAO comment 20.

- 20. Two hundred fifty days is an unrealistic number of days to use as the number of days court can be held. The draft should be revised in Appendix I to use a more realistic number.**

Two hundred fifty days is an unrealistic number to use as the number of days court could be held. Judges are not available 250 days per year in any court. There are days during the year that all judges of a court are required to be in district-wide meetings. Judges also attend training, and as in the Southern District of Florida, often sit in other divisions within the district. Using such a high number of days distorts the picture.

We understand that you and your staff had a limited mission to complete within a short time frame. As a result, a small selected group of courts was studied using incomplete data. We certainly agree that this limited study does not provide

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See pp. 25-26.

information that would permit a projection of the number of courtrooms actually needed throughout the districts. We hope that you will recognize the steps taken by the judiciary thus far, as well as the plans it has for the future to enhance space management practices in the courts. We also hope that you recognize the consequences of providing the Congress and the public with selectively edited data and information that could lead to unintended and erroneous conclusions. We have provided our comments to balance the presentation in recognition of its complexity.

See p. 24.

Again, we recommend that before making a final decision to embark upon a new and extensive study that will be time consuming and expensive, it would be most prudent for the Court Administration and Case Management and Security, Space, and Facilities Committees, which studied the courtroom usage issue and reported to the Judicial Conference, to monitor the implementation of this policy with regard to its impact on case management and its effectiveness in contributing to the judiciary's efforts to reduce space costs. The results of this monitoring will provide invaluable information in determining further courses of action for study or implementation.

Sincerely,



Clarence A. Lee, Jr.
Associate Director

Enclosures

cc: Honorable Ann C. Williams, Chair,
Committee on Court Administration and Case Management

Honorable Norman H. Stahl, Chair,
Committee on Security, Space, and Facilities

ENCLOSURE 1

*APPROVED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES
MARCH 1997*

**STATEMENT ON COURTROOM SHARING TO BE
INCORPORATED IN THE UNITED STATES
COURTS DESIGN GUIDE**

Recognizing how essential the availability of the courtroom is to the fulfillment of the judge's responsibility to serve the public by disposing of criminal trials, sentencing, and civil cases in a fair and expeditious manner, and presiding over the wide range of activities that take place in courtrooms requiring the presence of a judicial officer, the Judicial Conference adopts the following policy for determining the number of courtrooms needed at a facility:

With regard to district judges, one courtroom should be provided for each active judge. In addition, with regard to senior judges who do not draw a caseload requiring substantial use of a courtroom, and visiting judges, judicial councils should utilize the following factors, as well as other appropriate factors in evaluating the number of courtrooms at a facility necessary to permit them to discharge their responsibilities.

- An assessment of workload in terms of the number and types of cases anticipated to be handled by each such judge;
 - The number of years each such judge is likely to be located at the facility;
 - An evaluation of the current complement of courtrooms and their projected use in the facility and throughout the district in order to reaffirm whether construction of an additional courtroom is necessary;
 - An evaluation of the use of the special proceedings courtroom and any other special purpose courtrooms to provide for more flexible and varied use, such as use for jury trial; and
 - An evaluation of the need for a courtroom dedicated to specific use by visiting judges, particularly when courtrooms for projected authorized judgeships are planned in the new or existing facility.
- In addition, each circuit judicial council has been encouraged by the Judicial Conference to develop a policy on sharing courtrooms by senior judges when a senior judge does not draw a caseload requiring substantial use of a courtroom.

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ENCLOSURE 2

VARIATIONS IN NUMBER OF TRIALS IN COURTS STUDIED IN DRAFT REPORT*

District	1995 Trials per Judgeship	1995 Trials	1990-1995 Maximum (Year)	1990-1994 Average	Ratio of Maximum to 1995	Ratio of Average to 1995
FL,S	39	624	675 (1990) ¹	643.8	108%	103%
TX,N	33	396	468 (1993)	424.0	118%	107%
DC	19	285	720 (1991)	552.0	253%	194%
CA,S	31	248	448 (1992)	349.8	181%	141%
CO	35	245	280 (1993)	261.8	114%	107%
NM	38	190	330 (1992)	280.4	174%	148%
WA,W	23	161	182 (1991)	159.6	113%	99%
CA,E	21	147	147 (1993-95)	121.0	100%	82%
UT	15	75	130 (1993)	109.4	173%	146%

See GAO comment 16.

* We have taken basic data from the 1995 Court Management Statistics to characterize the GAO's choice of year (calendar 1995) relative to historical levels of trials in the districts studied. This was accomplished by multiplying the trials completed per judgeship by the number of authorized judgeships in each year and comparing to 1995. It should be noted that CMS is based on 12-month periods ending 9/30, not calendar year. Nevertheless, the essential point should remain the same: 1995 was not a typical year.

In every case the number of trials in 1995 was less than or equal to the high for the prior five years. In one district (CA,E) the number of trials in 1995 equaled the prior five year maximum. In every other district the prior years' maximum exceeded the number of trials in 1995 by from 8% in FL,S to 153% in DC.

Compared to the average number of trials in each district in the years 1990 through 1994, 1995 was above the average in CA,E (by about 20%) and at the average in WA,W. In every other district under study the 1990-1994 average exceeded the number of trials in 1995 by from 3% in FL,S to 94% in DC.

¹ It should be noted that extending the period under analysis to 1985 increases the maximum trial level in FL,S from 675 to 840 (1987), an increase of just over 24%. Further, it should be noted that in each of the years 1985 through 1988 the number of trials in FL,S exceeded the 675 maximum observed in 1990.

GAO Comments

1. AOUSC observed that the judiciary had undertaken a comprehensive plan to improve space management and indicated that our report should recognize those actions. Although our objectives were to evaluate courtroom usage rather than assess the judiciary's space management program, we have noted the judiciary's space management activity in the report.
2. AOUSC noted that the judiciary has recently adopted a policy change that includes consideration by judicial councils of the feasibility of courtroom sharing for senior and visiting judges. We have included that information in the report. However, AOUSC acknowledges that the policy reaffirms the practice of providing one courtroom for each active judge. Accordingly, we believe the additional analyses we recommend are still necessary to fully evaluate the need for courtrooms.
3. AOUSC noted that the Judicial Conference has adopted criteria for judicial council's to consider in establishing or closing nonresident facilities, that is facilities that do not have permanently assigned judges. We did not include detailed information about this initiative in our report because the use of nonresident facilities was outside the scope of our review.
4. AOUSC cited a survey report that indicated that states also have policies of providing one trial courtroom for each judge and suggested that we include this information in our report. Although state court activities were outside the scope of our review, we did discuss courtroom usage issues with a representative of the National Center for State Courts, who was unaware of any completed research on the issue at the time of our meeting. As a result, we had not included information about state courts in our draft report. However, we have added information to the report concerning the September 1996 study referred to by AOUSC.
5. AOUSC stated that the cost estimates used to provide background information about the significance of the issue of courtroom use were misleading given that other factors—such as congressional restraint or availability of senior judges—would influence actual costs in the future and recommended that the discussion of cost be deleted. It was not our objective to project future courtroom costs in this report. However, we believed that some information about possible costs was important to provide an understanding of the significance of the assignment and construction of courtrooms. We recognized that costs vary by location and selected the estimate for Washington, D.C., because it is used by GSA as a

benchmark and because it was representative of the lower part of the overall range of costs; thus, it was intentionally conservative. AOUSC also stated that our use of the judiciary's "Long Range Plan for the Federal Courts" to estimate the number of judgeships needed in the future as a basis for an overall estimate of potential costs was misleading because it is unlikely that Congress would authorize the number of judgeships called for in that plan. Although we recognize that many factors will have an effect on the actual costs of building courtrooms in the future, the judiciary's estimates of the need for judges was the best available estimate at the time of our study.

6. AOUSC cited the RAND study of courtroom utilization, in particular its observations about the complexity and importance of any research on courtroom usage. We discuss the RAND study on pages 19-21 of our report and agree with its observations that many factors and trade-offs must be analyzed to fully evaluate courtroom utilization. The need for a comprehensive study of this sort is the principal basis for our recommendation.

7. AOUSC noted that until the study it commissioned (the Leekley and Rule study discussed on page 18 of our report), there was no research available on the impact of changing the ratio of courtrooms to judges, and it suggested that we further emphasize the importance of this study in our report. We agree that research on this issue has been limited. However, our and others' assessments of the Leekley and Rule study indicated that it has limited value in meeting its objective of determining the ratio of courtrooms to judges. We believe we have provided sufficient information about the study for readers to understand its contribution to debate on this issue.

8. AOUSC stated that court scheduling data were offered to our staff during this work but were not considered. We acknowledge that some judges in some locations maintained data on how their courtrooms were scheduled (as opposed to used), and they discussed those data with us. However, the statement that the data were not considered is incorrect. We did consider whether such data could be used in our methodology but concluded that it could not be used for several reasons, including (1) such data were not available for all judges in all locations; and (2) even if such data had been available, translating them into estimates of courtroom usage was methodologically difficult because, for example, scheduling multiple events at the same time was a common practice. We acknowledge in the report that other factors, such as latent use and scheduling, should

be considered in any comprehensive study of courtroom usage, and we have revised our report to clarify that such data exist in some locations.

9. AOUSC noted that courtrooms are either necessary or the best venue for certain pre-trial activities and suggested that our report acknowledge this. The draft report stated that nontrial (including pre-trial) activities could potentially be held in some cases (and our work showed that they sometimes were) in hearing rooms, conference rooms, or chambers. However, we have added language to the report to make explicit that in some cases trial courtrooms may be the best venue for such activities.

10. AOUSC observed that security issues might arise if conference rooms were used instead of courtrooms in criminal cases and that in some cases appropriate space must be provided for press and the public who have a right to attend many proceedings. We agree that security is an important issue and that many other factors need to be considered in determining the number of courtrooms that are needed. We believe our recommendation for a comprehensive study of courtroom usage should include all of these relevant factors.

11. AOUSC expressed concern that if varied sizes of courtrooms are built to reduce costs rather than one standard sized courtroom for each judge, other costs will be incurred because of complications of coordinated scheduling or possible delays in proceedings if a courtroom of appropriate size is not available. We agree that consideration should be given to other costs that could arise from alternatives to the standard-sized-courtroom-for-each-judge practice. Our recommendation specifically includes consideration of a wide range of factors. We note, however, that judges we met with during this review told us that hearing rooms were used for some nontrial activities or even criminal case functions when security was provided. Additional information as contemplated in our recommendation is necessary to assess the likelihood that such additional costs would occur.

12. AOUSC noted that videoconferencing is not a substitute for a fully equipped courtroom, and suggested we eliminate consideration of such alternatives from our discussion. We did not suggest that videoconferencing be used when a full-sized courtroom is needed. However, enhanced technology such as videoconferencing may be effective for certain proceedings, and thus reduce the need for as many full-sized courtrooms or other space. FJC, in its comments on the draft of this report, said that some federal courts are using two-way

videoconferencing for some civil proceedings and that federal judges have used the telephone for hearing motions and other matters for more than 20 years. We believe that this technology could be one tool to help the judiciary use its limited resources effectively.

13. AOUSC pointed out that money is saved when a case is settled before trial and that such savings should be considered in evaluating the need for courtrooms. We agree that savings are derived when cases settle before trial, and the role courtrooms play in achieving them should be part of the judiciary's consideration of how many and what types of courtrooms are needed. Currently, the judiciary does not make this type of comparison.

14. AOUSC stated that our audit team should conduct the promised exit conferences with each chief judge whose court was studied, and the judges' views should be included in our report. Our staff did meet with the chief judges or their designees at all locations visited to obtain their views on the importance of an available courtroom and on courtroom sharing. We summarized those views in our report. We also shared and discussed the data we developed at each location with the judges and other court officials with one exception, Denver. In Denver, we collected data on courtroom usage that are presented in a separate letter on courtroom usage in locations additional to those discussed in this report, and we issued that data in response to another congressional request (GAO/GGD-97-59R). In that case, court officials were unable to schedule an exit conference at the time we completed our detailed field work (in February 1997), although we did provide the court with a copy of our analysis and findings. Since then we have made numerous requests to arrange an exit conference. We discussed this problem with AOUSC officials during our exit conference with them on March 21, 1997, and those officials told us that the chief judge and district clerk were probably too busy with the Oklahoma City bombing trial to return our calls.

AOUSC officials also said that several judges stated that the audit team's members' minds were made up before they entered the court and they were not interested in hearing how to get the complete picture. AOUSC also noted that our audit team did not follow up on a suggestion to interview a particular judge who had significant experience with courtroom sharing in state court. AOUSC did not provide any specific information that would permit us to comment further on those observations. However, our work was conducted in accordance with generally accepted government auditing standards. Those standards include rigorous processes, procedures, and internal controls to ensure objective analysis and

reporting of our findings. The reviews inherent in those processes have provided no evidence that the work was not conducted in accordance with our standards. We acknowledge that we were unable to talk to every judge or other official suggested to us in the course of our review, but we note that we did meet with a number of judges and others who had experience or views on courtroom sharing, both positive and negative.

15. AOUSC observed that obtaining the views of other court users such as U.S. attorneys would have provided additional information about courtroom sharing. Our objective for this review was to obtain information about how often and for what purposes courtrooms have been used in selected locations and examine steps the judiciary has taken to assess space and courtroom usage issues. Accordingly, the views of other possible participants in courtroom activities were outside the scope of our review. However, we agree that the views of such participants could be important in a comprehensive assessment of courtroom usage as we recommend.

16. AOUSC stated that the data collected should not be used to project courtroom usage for other time periods, even in the courts that were studied. AOUSC offered some additional data concerning districtwide trial rates as evidence that our data may not be representative. We agree that our data cannot be used to project usage for the courts generally or for the locations or districts we visited, and we have added language to our discussion of methodology to clarify that point. For a variety of reasons, we do not believe that the trial rate data provided by AOUSC is a definitive indicator of courtroom usage. For example, because some trials can take a few hours to complete while others take months, the relationship between the number of trials and courtroom usage is uncertain.

17. AOUSC stated that the courtrooms that were not usable should not have been included in our data, and in particular we should have deleted three specific courtrooms in Miami from our analysis because they were not assigned to a full-time judge. Our analysis included only the courtrooms assigned to or used for trials or other legal proceedings by active and senior district judges and by visiting judges. Thus, we did not include unused or unusable courtrooms, and we adjusted our data where appropriate to take into consideration courtrooms that were temporarily out of service. The three unassigned courtrooms in Miami were included in our analyses because they were used for trials and other proceedings by visiting judges from other locations.

18. AOUSC stated that vacant judgeships should not have been counted in the courtroom usage data we reported. We did not do so. Our analysis included information on the usage of district trial courtrooms at each location by the judges who used those courtrooms. We provided information on judicial vacancies as background to inform the reader that some courts had fewer judges than they were authorized.

19. AOUSC observed that our analysis contained “distortions” because of our inclusion of courtroom usage in districts where judges routinely heard cases in courtrooms located in different cities many miles apart, such as New Mexico and Miami (where judges hear cases in Key West). We do not agree that the data we reported for New Mexico or Miami were distorted. We recognized that these situations were different from the other locations we reviewed. In the case of New Mexico, we presented courtroom usage data from two perspectives—districtwide and for each of the three locations we visited. (Another location—Roswell—was not included because there was no district judge sitting there, and district judges did not use that courtroom in 1995.) AOUSC officials told us that they believed that when judges were holding court in other locations, we should not have considered their assigned courtroom available for use. However, Miami court officials told us that when Miami district judges visited other locations in the district, their assigned courtrooms were available for use by other judges. Thus, we included in our analyses the use of the Miami courtrooms by any judge.

20. AOUSC stated that 250 days is an unrealistic number of days to use as the number of days court could be held. In particular, AOUSC stated that there are days when all judges in a district are required to be in districtwide meetings. We recognize that there are reasons, such as districtwide meetings or other factors such as illness or vacations, that may result in judges not being available to use a courtroom. In fact, AOUSC could consider such factors when deciding how many full-sized courtrooms are needed. We focused our work on how often and for what purposes courtrooms were used, not the reasons why judges did not use them. In the absence of any other estimate of available days, the number of federal workdays in 1995—250—seemed like a reasonable starting point for such an analysis.

Comments From the Federal Judicial Center

THE FEDERAL JUDICIAL CENTER
THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING
ONE COLUMBUS CIRCLE, N.E.
WASHINGTON, DC 20002-8003

RYA W. ZOBEL
DIRECTOR

TEL: 202-273-4160
FAX: 202-273-4019

April 7, 1997

Michael E. Motley
Acting Director, Government
Business Operations
General Government Division
United States General Accounting Office
Washington, D.C. 20548

RE: **GAO/GGD-97-39**
GAO/GGD-97-59R

Dear Mr. Motley:

Thank you for your letter of March 24, providing the opportunity to comment on your draft report, COURTHOUSE CONSTRUCTION: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking and your draft correspondence, COURTHOUSE CONSTRUCTION: Information on the Use of District Courtrooms at Selected Locations.

My letter deals first with the report's recommendation, which is directed in part to the Federal Judicial Center, and then comments on some other aspects of the report and correspondence that you may wish to review in preparing them for issue later this month. We have already provided GAO staff some technical suggestions. (Page references below are to the copy of the report that your staff provided us on March 25, which has slightly different pagination from the report that you provided to the Administrative Office, one copy of which the AO provided us on March 24. We found no discrepancy in the pagination of the correspondence.)

Congress clearly has a legitimate interest in the cost of courtroom construction and in the policies that guide such construction, but so too of course do the federal courts, because courtrooms are an integral part of the case management process. I commend the draft report for its recognition that courtroom use policy is a complex matter involving many variables, not all of which are subject to easy measurement.

1. **Your recommendation**—At page 37, you recommend that the Federal Judicial Center work with the Administrative Office to examine courtroom use—more specifically, as I read the report, to establish criteria against which to measure courtroom use, to develop better data on the relationship between courtroom availability and the effective administration of justice, and to use these data to evaluate current and alternative practices in light of the criteria established.

As evidenced by the Center study cited in your report at pp. 29ff, the Center is able and willing to analyze these issues if requested. Of course, the items presented on pp. 37 and 38 are not, and do not purport to be, a research design. Anyone who undertakes the examination for which you call would necessarily adjust research tasks and methods in the course of learning more about the nature of the problem.

I believe the final report should state that these issues are best examined in cooperation with the Judicial Conference and its committees, for two reasons. First,

See p. 26.

Now on pp. 22-23.
Modified text.
See pp. 22-23.

Now on p. 18.
See p. 26.
Now on pp. 22-23.

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Now on pp. 22-23.

committee members have insights about the interplay between case management and courtroom use in district courts of different size, geographic location, and case mix. Second, though, and more important, the task called for at pp. 37-38 is really two tasks: "establishing criteria for determining effective courtroom utilization" and undertaking various types of data analysis in light of the criteria. Although the tasks are usually undertaken through an iterative and consultative process of policy refinement through research, they are distinct. Determining criteria for courtroom use is a policy function: for example, is the more effective courtroom use that which facilitates the fair resolution of disputes while minimizing the amount of time a courtroom is dark or while promoting the efficient use of judge time? A courtroom use policy implicates other important policy issues as well—access to justice, public and press access to public proceedings, public respect for the dignity of the federal justice system, and legislative interest in keeping courthouses open in sites of low activity.

Modified text.
See pp. 17-18.
Now on p. 17.

In this regard, I also believe your final report should provide more detail about the significant efforts that the judicial branch has taken and is taking to limit courtroom construction costs while maintaining judicial efficiency. Since your draft report was prepared, including the references at p. 28, the Judicial Conference has approved proposals of its Court Administration and Case Management Committee concerning judicial council policy with respect to senior judges and visiting judges, and with respect to closing non-resident facilities. At its March meeting the Conference also approved recommendations of its Security, Space and Facilities Committee concerning models for use in determining courtroom requirements and making projections of courtroom requirements. It is important that the impact of these actions be taken into account in considering whether additional changes are necessary.

Now on p. 9.
Modified text.
See pp. 8-9, 32, and 41.

2. **Aspects of report and draft correspondence**—Below are observations about policy and operational assumptions in the report that you may wish to review in preparing the final versions. As noted above, I commend the draft for its recognition of the complexity of the subject. However, because courtroom use is so prone to superficial quantitative analysis, the report would be improved by more specific attention to particular aspects of this complexity that I discuss below. The report also properly notes that GAO "cannot project the results of [its] work to the universe of district courtrooms nationwide" (p. 14). The report might benefit from an elaboration of the limits of your sample—although 89 courtrooms were studied for the report and correspondence, they represent only eleven of the roughly 300 places of holding court. Courtroom use is affected by many variables, including judicial vacancies, senior judge availability, case mix, the number of judges and number of places of holding court in a district, the availability of court reporters, and other factors. There is substantial interdistrict variability on many of these dimensions. The report recognizes this to some extent (e.g., in Appendix I at p. 51), but the report's implications might be clearer with an explicit recognition, perhaps in the discussion at p. 11, that the districts were judgmentally selected with an eye to only a few of the relevant factors.

Now on p. 41.

Now on pp. 7-8.

Now on p. 7.
Modified text. See
p. 7 and app. VII,
GAO comment 5.

a. **Workload projections and cost projections**—At p. 10, the draft presents General Services Administration figures on courtroom construction costs, and also cites judgeship projections from the Judicial Conference's *Long Range Plan for the Federal Courts*. The information from these two sources, taken together, creates implicit courtroom construction cost projections. Although courtroom construction clearly has cost implications, it is misleading to base cost projections on the *Long Range Plan's* judgeship projections, which assume jurisdictional and thus workload expansion at historical rates. All of those forecasts assume no change in the factors that influence the number of judges—the most extreme projections assume that the Judicial Conference will continue to ask for judgeships based on the formula now in place, that Congress will grant the judgeships, and that nothing will occur to curtail the jurisdiction or size of the judiciary. Although the draft speaks

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conditionally ("district judgeships could double or perhaps increase even more significantly" and costs "could range"), those qualifications will be likely be lost as the report enters the legislative debate on courtroom sharing. Furthermore, the *Long Range Plan*, the source of the data, regards the judicial system that would result from such expansion as an "alternative future" that it does not believe will well serve the nation and therefore wishes to avoid.¹

The maximum projections reported in the plan were based simply on the current formula for assessing whether a district meets the basic threshold for a new judgeship, without accounting for adjustments that are or will be made in the formula's application. For example, there are already about 10% fewer district judgeships than straightforward application of the formula would yield (647 versus the 714 or so that would be predicted using current data). Formula adjustments, the increasing availability of senior judge resources, the judiciary's commitment to limited growth, and Congressional restraint are likely to limit the growth of the federal judiciary considerably more than your projections would suggest.

b. Numerous influences on courtroom use—The statement at pp. 2 and 35 that the "judiciary's process for administering justice is dynamic and complex" (emphasis added) could leave readers with the impression that the judges have total control over the process, complex or otherwise. In fact much of the complexity and dynamism is due to the fact that numerous actors can and do influence it. For example, many of the variables that influence courtroom use are strongly affected by strategic decisions of the criminal and civil bars, as well as national and local changes in prosecution policies. Furthermore, most observers would agree that, within limits, these influences are legitimate in helping to cause procedurally and substantively correct outcomes.

c. Others have endorsed one judge per courtroom—I think the final report would benefit from a summary of state court policies with respect to the ratio of courtrooms to trial judges of general jurisdiction. Although the Center has not researched the issue, it is my understanding that most, if not all, states recognize the importance of courtroom availability to the efficient delivery of justice and attempt to provide a courtroom for each judge.

d. Demands created by different types of proceedings and uses—The report reflects practical research decisions about courtroom use: (1) *what* activities should be counted, and how? and (2) *whose* activities should be counted?

(1) *What activities should be counted?* The draft report evinces much fairness in the decisions about the first question, by counting as a day's use fractions of days, as for example at p. 4, and by treating all reported nontrial proceedings as courtroom proceedings even when they might have occurred elsewhere.

Throughout, the report and correspondence draw a sharp distinction between "trial" and "nontrial" events and analyzes whether courtrooms were used for "trial and nontrial activities" and "nontrial purposes" (p.18). Although we would disagree with any inference from the trial/nontrial distinction that the only legitimate use for a courtroom is a trial, the distinction does seem a logical first cut. Presumably, most of the activities that might be suited for the less expensive settings contemplated in the report would be found in the nontrial category. Nevertheless, the final report might note that more exacting analysis would have to consider whether some pretrial proceedings or motions hearings may have greater need for a courtroom (albeit not a jury box) than some trials.

¹ See Judicial Conference of the United States, *Long Range Plan for the Federal Courts* chs. 3 and 10 (1995).

Now on pp. 2 and 21, respectively. See GAO comment 1.

Modified text. See p. 11 and app. VII, GAO comment 4.

Now on p. 2.

Now on p. 11.

Modified text. See p. 12.

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Now on p. 12.
Modified text. See
p. 12.
Now on p. 22.

Now on p. 21.
Now on p. 12.
See GAO comment 2.

Now on p. 4.

Now on pp. 14 and 15,
respectively.
Modified text.
See p. 14 and
app. VII, GAO comment
12.

Modified text.
See p. 5.

Now on p. 5.

See GAO comment 3.

In the same general area, the draft report may be somewhat tendentious in its assertion at p. 19 that "certain circumstances demand a full-sized courtroom that accommodates multi-defendant criminal trials and seat [sic] 12 jurors and 6 alternates." One could draw the implication that single defendant criminal trials and civil trials need something other than a full-size trial courtroom. However, I can envision legitimate criteria, the development of which you call for at p. 37, that could support on policy grounds a full-size courtroom for such cases. Furthermore, the feasibility and advisability of constructing different size courtrooms for criminal and civil jury trials would have to be examined in light of the actual size of civil juries—frequently greater than six—and the debate over their proper size.

The draft report at p. 35 refers to "courtrooms [that] were, on average, not used about one-half of the time they were available." P. 19's reference to "available days" is similar. The report's focus on the number of days for which a courtroom had no recorded use is understandable in light of the limited information available for the study, but the conclusion is less meaningful than readers might infer. An empty courtroom is not necessarily available to be used for the activity for which it is needed; for example, as the draft acknowledges in principle at p. 6, a room that suddenly becomes available for a day or two because a case scheduled for trial settles is not realistically available for a longer trial or for one that will require extensive setup work such as installation of audiovisual equipment. Current data would not have allowed analysis at this level of detail, but it might be well to recognize the crudeness of the "unused day" measure.

Finally, the draft suggests at pp. 22 and 25 the possibility of using audio and video links to obviate the need for a courtroom. The final report should note that some federal courts are now using two-way videoconferencing for some civil proceedings, including trials in civil rights cases brought by prisoners wherein some witnesses testify from the correctional facility. (This development began before Congress mandated it in the April 1996 Prison Litigation Reform Act.) And of course, federal trial judges have used the telephone for hearings on motions and other matters for over 20 years. Furthermore, the draft should note that there could be potential constitutional problems in conducting criminal trials by video or audio.

(2) *Whose activities should be counted?* The report's answers to the second question are more problematic. We agree that courtroom users such as law school moot court teams or visiting school children on tour are properly classified as miscellaneous users; the characterization implies that their activities, while legitimate, are not critical to the operation of the court. The more difficult issues involve magistrate judges, senior judges, and visiting judges. I offer comments below on the first two of those.

(a) Magistrate judges' role in district court case processing—The possibility of oversimplification in the trial-nontrial bifurcation appears with respect to magistrate judges, in that the draft may assume that magistrate judge proceedings are necessarily different from district judge proceedings. The final report and final correspondence should refine statements at pp. 7 and 4(note 3), respectively, that district "courts have two categories of district judges who hear cases and use courtrooms." In addition to active and senior district judges, magistrate judges sometimes use district judge courtrooms and in some courts are essentially part of the draw by which civil cases are assigned.

Variation in district court policies on the use of magistrate judges creates obvious complications for policy research. It is not the report's responsibility to account for these complications, given its limited sample of districts examined, but it should note the difficulty the magistrate judge factor would create for establishing national criteria for courtroom use. It is not always clear how the draft report treats magistrate judges in its analysis, but it appears that for at least some courts, magistrate judge courtroom use was

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Now on p. 11.

coded as nontrial or miscellaneous use even though the magistrate judge may have conducted a trial or other proceeding needing a courtroom. Note 1 to Table 2, p. 18, indicates that "Nontrial use" "reflect[s] some miscellaneous use in the nontrial category by court personnel other than district judges," but the appendices state that "nontrial time" included, among other things, "miscellaneous activities by . . . magistrate judges" (p. 54, Dallas), "hearings conducted by someone other than a federal district judge" (p. 61, Miami), and "hearings conducted by magistrate judges" (p. 79, San Diego). Correspondence p. 16 has a similar assertion. It is not clear whether the report assumes that proceedings over which magistrate judges preside are, by definition, not trial proceedings. Such an assumption would be in error. The implications for your immediate conclusions appear to be minimal because of the courtrooms you studied, but the implications for the larger study you recommend, and for any resulting policies, may be quite significant.

Now on p. 42.
Now on p. 46.
Now on p. 55.

Now on p. 13.

(b) Senior judges' role in district court case processing—The draft states at p. 22 that courtroom construction costs might be reduced in part by "changing the practice of assigning individual courtrooms to senior judges." I suggest that you qualify any implication that the senior judge factor will bear a consistent relationship to the need for courtrooms, and that courtroom policy can thus use a national discount for senior judges. As the draft implicitly recognizes in Appendix I at p. 51, the need for courtrooms is based on judicial duties, not judge status, thus complicating any effort to use judges' active or senior status as a proxy for courtroom space needs. Although one might generalize that seniors have less need for courtrooms to the degree they "do not carry as many criminal cases as the district judges" (p. 20), that is a generalization subject to many exceptions—some seniors take a full draw, for example, and others a virtually full draw—and it fails to account for countervailing factors such as nonrandom assignments of some senior judges to complex civil cases, which create a high demand for courtrooms.

Now on p. 40.

Any study should also consider whether it is possible to project the likely availability of senior judges in the future, taking into account the courtroom planning model approved by the Judicial Conference last month (and referenced above in §1 of this letter). It may be quite convenient for two or three senior judges carrying reduced loads to share a courtroom, but courtroom scheduling will become increasingly complicated as the number of senior judges grows (as it is certain to do).

Now on p. 12. See app. VII, GAO comment 2; and app. VIII, GAO comment 4.

More broadly, despite our concerns about the trial/nontrial and district judge/magistrate judge distinctions made in the report, we hasten to add that in developing a more refined method for assessing and projecting courtroom space needs one should also tackle the question of which activities should ordinarily be conducted in a courtroom and which are conducive to less expensive settings. But the answer to that policy question is likely to turn on the nature of the activity, not the status of the actor.

Now on p. 16.

e. Data to create a courtroom use policy—The draft states at p. 26 that "[t]he judiciary does not have data to substantiate the degree to which [last minute settlements and other dynamic factors] affect the number of courtrooms needed." It is unclear whether the draft is suggesting that the judiciary's standard statistical reporting system should be revamped to allow the routine collection of information bearing on this question. I do not believe it should and suggest that the final report clarify the point. (In practical terms, consider the feasibility of having a judge or a clerk complete a routine data collection protocol with an entry such as: "Was settlement influenced by the availability of a courtroom? Yes_/No_/ If 'Yes,' please estimate the influence of the availability of a courtroom.") Revising the system to require such estimates for every case would entail unwarranted costs. The Center would gather data relevant to the phenomenon of "latent" courtroom use in a targeted study using samples rather than recommend a permanent revision to the Administrative Office statistical collection system.

See GAO comment 5.

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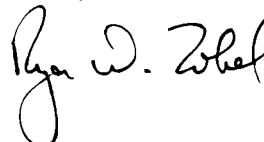
Now on p. 20.

See GAO comment 6.

f. Impact of courtroom use data on behavior—We stand by our 1996 paper's observation on the need for revised and expanded data collection on trial court processes, which you reference at p. 32. Nevertheless, in preparing your final report, I suggest you take care to avoid any implication that courtroom use policy should be based only on quantifiable factors. Over 25 years ago, one of the first textbooks on court management noted that misused court statistics could "distort" judicial activity by encouraging activity that the statistical system seemed to value most.² So too with respect to courtroom use: restricting the criteria to quantifiable measures, to the exclusion of the totality of case management processes, could lessen the attention given to case management approaches that seek to resolve appropriate disputes without taking testimony in a formal proceeding, and even create subtle inducements for some judges to hold more in-courtroom proceedings than they might otherwise. Judges would not consciously change their practices simply to create a more favorable statistical picture, but quantification affects behavior in all facets of life and could do so here.

I appreciate the opportunity to submit these comments.

Sincerely,



Rya W. Zobel

cc: The Chief Justice and Members of the
Board of the Federal Judicial Center

² Friesen, Gallas & Gallas, *Managing the Courts* 197 (1971).

GAO Comments

A number of FJC's comments were essentially the same as those provided by AOUSC. To avoid redundancy, we do not comment if the matter was addressed in our response to AOUSC's comments.

1. FJC observed that many parties—not just judges—influence courtroom use. We agree that judges do not have total control over the process and that numerous factors can and do influence it. However, as discussed in our report, the judiciary has not analyzed how these factors affect courtroom usage, compiled data on how often and for what purposes courtrooms are actually used, or developed criteria based on such analyses for determining how many and what types of courtrooms are needed to effectively administer justice. Without these basic data and criteria, the judiciary is not in a good position to fully assess how other factors, such as national and local changes in prosecution policy, influence judges' control and courtroom usage.
2. FJC points out that courtrooms not in use on a specific day may not be available for other needs such as a longer trial. We recognize that when some courtrooms are available on a particular day, they may not always be suitable for meeting all court needs. On the other hand, as mentioned in the report, on most nontrial days, courtrooms were used for 2 hours or less. Therefore, opportunities may exist to use courtrooms that become available unexpectedly to more efficiently manage those activities that take up shorter blocks of time. Further analyses could include exploring how different-sized blocks of unused courtroom time could efficiently accommodate different types of court activities. We agree with FJC that the judiciary currently lacks data to adequately analyze this possible use. Our data on unused days offer useful insights that could be a starting point for a thorough examination of courtroom usage patterns and, relatedly, courtroom needs.
3. FJC noted that the use of courtrooms by other parties, such as magistrate judges, further complicates analysis of courtroom usage. We agree this could add to the complexity of the analysis. However, our methodology centered on trying to determine how each district courtroom was used. In general, we found that magistrate judges at the locations we visited typically conducted proceedings in their own courtrooms or chambers. In the few instances where magistrate judges used a district courtroom, we verified this type of use with court personnel and recorded it as district courtroom use.

Essentially, we recorded magistrate judges' trial and nontrial activities conducted in district courtrooms using the same criteria that we used for district judges.

4. FJC pointed out that not all senior judges carry reduced workloads and thus this factor cannot be assumed to reduce the need for courtrooms. We recognize that senior judges can carry full caseloads and agree this should be taken into account as part of any attempt to change how they are assigned courtrooms. However, our data clearly show that on average, senior judges used their courtrooms significantly less frequently than active judges. Further, as mentioned in the report, judges we talked to said that if changes are to occur related to assigning courtrooms, senior judges are the most likely candidates for courtroom sharing. Also, according to AOUSC's comments, the Judicial Conference recently adopted a policy change related to courtroom use that included an effort to explore courtroom sharing among senior judges.

5. FJC said it was unclear whether our observation that the judiciary does not have data to substantiate the extent to which latent use affects courtroom use implied that the judiciary's standard statistical data system should be revamped to include such information, which FJC said would be impractical and undesirable. We did not intend to imply that the judiciary's lack of data in this regard should be remedied by changing the reporting system. We believe there could be alternative methodologies for gathering data on latent use and other factors so that the impact of these factors can be assessed. We believe that the methodology for capturing this information should be left to the discretion of the judiciary or the study group doing the research.

6. FJC expressed concern that we avoid the implication that courtroom use policy should be based solely on quantifiable measures. It is not our intent to limit the judiciary's flexibility in determining how best to develop courtroom usage data, consider other factors, or fully explore this issue. It seems reasonable that qualitative and quantitative measures would both be used in developing the evidence needed to determine the number, type, and location of needed courtrooms.

Comments From the General Services Administration



U.S. GENERAL SERVICES ADMINISTRATION
Public Buildings Service

APR 11 1997

Mr. Michael E. Motley
Acting Director, Government
Business Operations Issues
General Government Division
General Accounting Office
Washington, DC 20548

Dear Mr. Motley:

This letter responds to your March 24, 1997, request for the General Services Administration's (GSA's) comments on the General Accounting Office's (GAO's) draft GAO Audit (GAO/GGD-97-59R) and draft GAO Report (GAO/GGD-97-39).

Both documents discuss the magnitude of the courthouse construction program (pages 11 and 36 of the draft audit and page 1 of the draft report). We wish to provide more current data for your use in these reports.

A number of years ago, the judiciary's long-range planning process identified approximately 200 court locations which would be out of space within 10 years. The estimated cost to satisfy the courts' housing requirements at those locations was \$10 billion.

Since that time, GSA and the judiciary have determined that the housing requirements in 160 locations will be satisfied by construction of a new courthouse or an annex to an existing building for an estimated total cost of \$8 billion. In the other locations, expansion of the courts' housing is no longer needed, or will be satisfied through leasing actions or building modernizations. Of the 160 locations, 40 projects have received approximately \$3 billion in funding. The remaining 120 projects will require an estimated \$5 billion in funding.

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See pp. 26-27.

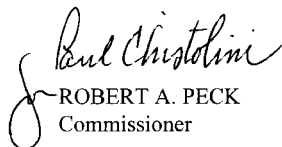
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In addition, most of the larger courthouse projects are already well into the design and construction process. In general, the remaining projects will be smaller courthouses and will offer less flexibility for sharing courtrooms.

Thank you for giving PBS the opportunity to review and comment on the draft documents. If you wish to discuss this matter, please telephone Mr. Bill Guerin, Program Executive, Courthouse Management Group, on (202) 501-1139.

Sincerely,


ROBERT A. PECK
Commissioner

Major Contributors to This Report

General Government Division, Washington, D.C.

Gerald Stankosky, Assistant Director, Government Business Operations
Issues
John F. Mortin, Assignment Manager
William J. Dowdal, Senior Evaluator
David E. Sausville, Senior Evaluator
Martin H. de Alteriis, Senior Social Science Analyst

Dallas Field Office, Dallas, Texas

Sherrill H. Johnson, Assistant Director, Government Business Operations
Issues
James G. Cooksey, Evaluator-in-charge
J. Paul Rodriguez, Senior Evaluator
Patricia Sari-Spear, Senior Evaluator
Dorothy M. Tejada, Evaluator
David W. Bennett, Evaluator

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