

April 2002

# COURTHOUSE CONSTRUCTION

## Information on Courtroom Sharing



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Accountability \* Integrity \* Reliability

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United States General Accounting Office  
Washington, DC 20548

April 12, 2002

The Honorable Steven C. LaTourette  
Chairman  
The Honorable Jerry Costello  
Ranking Democratic Member  
Subcommittee on Economic Development,  
Public Buildings and Emergency Management  
Committee on Transportation and  
Infrastructure  
House of Representatives

This report responds to your request for information on the judiciary's efforts to have district judges share courtrooms, especially district judges with senior status, also known as senior judges.<sup>1</sup> As agreed, our specific objectives were to (1) examine the judiciary's courtroom sharing policies for senior judges, (2) obtain information about the extent to which senior judges are currently sharing courtrooms and their experiences with courtroom sharing, and (3) determine the judiciary's efforts to explore the potential for senior judges to share courtrooms in future courthouse construction projects.

Over the last few years, various members of Congress and the administration have become increasingly concerned that district judge trial courtrooms may be underutilized and that more courtrooms than needed have been, and continue to be, constructed. The judiciary continues to believe that it should retain its one-judge, one-courtroom policy for active district judges because of the potential negative effects courtroom sharing may have on effective judicial administration. However, the judiciary did determine that courtroom sharing may be possible among some senior judges. Given this, you wanted updated information on the status of courtroom sharing in the judiciary by senior district judges. To meet our objectives, we examined existing policies on courtroom sharing for all district courts, obtained information about district judges' courtroom sharing experiences at locations where

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<sup>1</sup> The judiciary has two categories of district judges who hear cases and use courtrooms. Active district judges carry full caseloads. District judges with senior status, whom we refer to in this report as senior judges, have retired from their active judgeships, but continue to carry a full or partial caseload. Senior status can be achieved when a district judge reaches the age and service eligibility requirements for retirement.

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courtroom sharing was occurring, and reviewed courtroom needs assessment studies done by the judiciary for 33 proposed projects in the judiciary's 5-year construction plan to identify where courtroom sharing was planned. On March 5, 2002, we received written comments on a draft of this report from the Administrative Office of the U.S. Courts (AOC)—the judiciary's administrative arm. These comments are discussed later in this letter.

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## Results in Brief

The judiciary's current policies recognize that senior district judges with reduced caseloads are the most likely candidates to share courtrooms. Some active and senior judges were sharing courtrooms at facilities in some locations. However, these judges were sharing courtrooms primarily because there were not enough courtrooms to accommodate these judges. Active judges at these facilities, along with some senior judges, generally opposed courtroom sharing because, in their view, it often interferes with the courts' business and can adversely affect the effective administration of justice. The judiciary has plans for some senior judges to share courtrooms in future courthouse construction projects. However, given the judiciary's belief in the strong relationship between ensured courtroom availability and the administration of justice, its overall concerns about the workability of courtroom sharing, and the wide discretion given to circuits and districts in deciding when and how courtroom sharing may be implemented, it appears that a significant amount of courtroom sharing will not occur in the foreseeable future, even among senior judges. AOC generally agreed with the information contained in this report.

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## Background

The judiciary has a total of 94 federal districts 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. The 94 districts are organized into 12 regional circuits, each of which has a court of appeals, also known as a circuit court, which hears appeals from its district courts. To help administer the operations of its circuit and district courts, each circuit has a judicial council whose membership includes the chief circuit judge as chair of the council and an equal number of other circuit and district judges. Among other things, the council is authorized to issue orders and establish policies to help ensure that the circuit and district courts function as effectively as possible so that they can provide the public with the effective and expeditious administration of justice. The Judicial Conference, which is chaired by the chief justice of the United States and includes the chief judge of each judicial circuit and a district judge from each circuit, is the judiciary's national policy-making body.

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The judiciary and the General Services Administration (GSA) have embarked on a multibillion-dollar courthouse construction initiative to address the space needs of the federal district courts and related agencies. The judiciary's most recent 5-year construction plan for fiscal years 2002 through 2006 identified new courthouses or annexes that are to be built to accommodate new judgeships created because of increasing caseloads and to replace obsolete courthouses occupied by existing judges. The plan identified a total of 45 proposed courthouse construction projects that are expected to cost a total of about \$2.6 billion. This courthouse construction initiative includes plans to construct hundreds of new district judge trial courtrooms to replace inadequate facilities and to accommodate future increases in federal judgeships. The results of our past work on courthouse construction have shown that district judges' trial courtrooms may be underutilized, and that trial courtrooms are expensive to build.<sup>2</sup>

For several years, there has been much debate about whether district judges could share courtrooms—operate in a courthouse with fewer courtrooms than judges—to save taxpayer dollars without compromising effective judicial administration. There has been a belief among various stakeholders outside the judiciary, including some subcommittees and members of Congress as well as the Office of Management and Budget (OMB), that courtroom sharing may be possible and could lead to cost savings. Trial courtrooms, because of their size and configuration, are expensive to build and constructing any unneeded courtrooms would waste taxpayer dollars.<sup>3</sup> On the other hand, the judiciary believes that the availability of a trial courtroom is an integral part of the judicial process because judges need the flexibility to resolve cases efficiently. The judiciary and other key stakeholders believe that the judiciary should retain its one-judge, one-courtroom policy for active district judges to avoid ineffective judicial administration. However, the judiciary has recognized that courtroom sharing may be possible among visiting judges—judges from other locations who temporarily use courtrooms—and senior judges who have reduced caseloads. According to AOC, as of

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<sup>2</sup> U.S. General Accounting Office, *Courthouse Construction: Sufficient Data and Analysis Would Help Resolve the Courtroom-Sharing Issue*, [GAO-01-70](#) (Washington, D.C.: Dec. 14, 2000); and U.S. General Accounting Office, *Courthouse Construction: Better Courtroom Use Data Could Enhance Facility Planning and Decisionmaking*, [GAO/GGD-97-39](#) (Washington, D.C.: May 19, 1997).

<sup>3</sup> According to a May 2000 study by Ernst and Young—*Independent Assessment of the Judiciary's Space and Facilities Program*—the cost of constructing a courtroom is estimated to be about \$1.5 million.

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September 2001, the judiciary had a total of 906 district judges, which consisted of 592 active judges and 314 senior judges.

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## Judiciary Policies on Courtroom Sharing

In March 1997, the Judicial Conference issued a policy statement that discussed courtroom sharing by district judges and provided guidance for determining the number of courtrooms needed in courthouse facilities. The statement addressed three main topics: (1) courtrooms for active judges, (2) factors to be considered in deciding whether senior judges who do not draw caseloads requiring substantial use of courtrooms could share courtrooms, and (3) planning assumptions to be used in determining the number of courtrooms needed in a facility. As part of its statement, the Judicial Conference recognized the potential for courtroom sharing by some senior judges and asked circuit councils to consider the number of years a senior judge will need a courtroom after taking senior status for which the Judicial Conference recommended a 10-year time frame. However, the policy was very clear that senior judges who had caseloads that required substantial use of courtrooms should have their own courtrooms and that courtroom sharing for any district judge—active or senior—is not required. According to AOC officials, the Judicial Conference requested that each circuit judicial council develop a policy on sharing courtrooms by senior district judges.<sup>4</sup> The Judicial Conference policy statement encouraged circuit judicial councils to develop policies on courtroom sharing only for senior judges whose caseloads do not require substantial use of courtrooms.

The Judicial Conference policy clearly stated that one courtroom must be provided for each active judge. Also, the Judicial Conference policy recommended that senior judges retain courtrooms for 10 years after taking senior status because they usually have caseloads sufficient to keep their own courtrooms. Senior judges with more than 10 years in senior status appeared to be the primary candidates for courtroom sharing. As of September 2001, 118 of the judiciary's 314 senior judges had more than 10 years in senior status. Therefore, about 38 percent of the total number of senior judges would be considered the primary candidates for courtroom sharing.

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<sup>4</sup> 28 U.S.C. § 462(b) provides circuit judicial councils with authority to approve accommodations for judges, including chambers and courtrooms.

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Much of the Judicial Conference policy is devoted to a discussion of the five factors that should be used in deciding whether some senior judges could share courtrooms and the nine assumptions for circuit councils to consider in determining the number of courtrooms needed in their courthouse facilities. For example, one factor was the judicial workload in terms of the number and types of cases anticipated to be handled by each judge. Another factor is the number of years each judge is likely to be located at the facility. Some of the assumptions, which primarily relate to caseload projections and the time frames in which replacement, senior, and new judges will occupy the facility, included (1) the percentage of the total district's caseload handled at a particular location and (2) the number of years before replacement judges will be on board after a judge takes senior status. The full text of the Judicial Conference policy, including the five factors and nine assumptions, is contained in appendix I.

In 1997 and 1998, after the Judicial Conference policy took effect, the 12 circuit councils issued their own policy statements related to the courtroom sharing issue. Our analysis showed that like the Judicial Conference policy, all of the circuit councils' policies recognized that senior judges who do not draw caseloads requiring substantial use of courtrooms would be candidates for courtroom sharing.

Eight of the 12 circuit councils' policy statements made reference to and used much of the language in the Judicial Conference policy, particularly the language related to the various factors to be used in deciding when senior judges should share courtrooms and the assumptions that should be considered in determining the number of courtrooms needed in courthouse facilities. Some of the eight circuit councils' policy statements also included general discussions of their approaches to courtroom sharing. For example, the first circuit council policy stated that the council had a strong preference that, wherever feasible, each senior judge should be given a courtroom dedicated to his or her use. However, the first circuit council went on to say that it intended to comply with Judicial Conference policy regarding senior judges sharing courtrooms, where appropriate. The eleventh circuit council took a different approach and explained that the methods employed by district courts for courtroom sharing by senior judges who do not draw caseloads requiring substantial use of courtrooms varied greatly, not only throughout the judiciary, but also within the eleventh circuit. Given this, the district courts were in the best position to formulate courtroom sharing policies that would be most applicable to their local operations.

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According to AOC, as of September 2001, one of the nine district courts within the eleventh circuit—the Southern District of Florida—had developed its own local courtroom sharing policy. This policy stated that each senior judge will be allowed a courtroom unless courtroom use hours and cases assigned to that judge fall below the caseload requirements within a 5-year period for substantial use of a courtroom. If the senior judge does not maintain a caseload requiring substantial use of a courtroom in the 5-year period, the courtroom will be made available for others to use. The policy also stated that on the basis of historical data, senior judges are expected to occupy a courtroom for 15 years after taking senior status and that this time frame should be used for planning for courtroom needs. AOC was unaware of any other district court policies on courtroom sharing.

The policy statements for the four remaining circuit councils—including D.C. and the fifth, seventh, and eighth councils—were not as detailed as the other eight circuit councils' statements. The four circuit councils primarily issued brief policy statements that generally described their positions on courtroom sharing. For example, the D.C. circuit council policy basically stated that courtrooms should be provided for each active judge and each senior judge who requires substantial use of a courtroom and that courtroom sharing will be achieved on a collegial basis. The fifth, seventh, and eighth circuit councils also issued policy statements that recognized the need for senior judges to maintain courtrooms if such judges continued to perform full judicial assignments. The fifth and eighth circuit councils' policy statements go on to say that, when appropriate, the circuit council may direct the joint use of courtrooms and adjunct facilities as dockets and other circumstances warrant. The seventh circuit council stated in its policy that decisions as to the assignment of chambers and a courtroom for a senior judge who performs less than a full judicial assignment shall be made by that judge's court. According to the seventh circuit council's policy, a full judicial assignment means that the senior judge continues to be assigned and perform the same work, both casework and other assignments, as an active judge of the same court.

The Judicial Conference and the circuit councils' policies did not use actual courtroom use data—how often and for what purpose courtrooms are being used—as criteria for deciding whether senior judges should share courtrooms. Instead, the policies used judges' caseloads and substantial use of a courtroom as a primary basis for making decisions about senior judges sharing courtrooms. According to AOC, under statute, the decision as to whether senior judges should share courtrooms is left to the discretion of each circuit judicial council. More information from the

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12 circuit councils' courtroom sharing policy statements is included in appendix II.

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## Extent of and Judges' Views on Courtroom Sharing at Selected Facilities

Because the judiciary believes that courtrooms are an integral resource for the administration of justice, judicial policies do not generally encourage widespread courtroom sharing. However, some sharing was occurring in existing facilities among some active and senior district judges. As of December 2001, our analysis of AOC data showed that district judges were sharing courtrooms in 11 facilities. According to AOC, there are a total of 337 federal district court facilities nationwide, but not all of these facilities would be candidates for courtroom sharing. For example, some facilities may have only one judge. Some of the facilities where courtroom sharing was occurring were located in major metropolitan areas, such as Brooklyn, New York, and Philadelphia, Pennsylvania, while others were in smaller cities such as Benton, Illinois, and Fayetteville, Arkansas. Table 1 identifies the locations of the 11 facilities, the number of district courtrooms in these facilities, and the number and types of district judges at these facilities.

**Table 1: Information on 11 Facilities Where Courtroom Sharing Was Occurring**

Circuit	Location of facility	Number of district courtrooms in facility	Number and types of district judges at facilities where courtroom sharing was occurring			Total number of active and senior district judges
			Active district judges	Senior district judges with 10 years or less in senior status	Senior district judges with more than 10 years in senior status	
First	San Juan, Puerto Rico	1	0	3	0	3
Second	Brooklyn, New York	10	10	5	0	15
Third	Philadelphia, Pennsylvania	29	18	7	5	30
Sixth	Nashville, Tennessee	6	4	3	0	7
Seventh	Benton, Illinois	1	1	1	0	2
Eighth	Fayetteville, Arkansas	1	1	1	0	2
	Rapid City, South Dakota	2	1	1	1	3
	Sioux City, Iowa	1	1	1	0	2
Tenth	Salt Lake City, Utah	7	4	4	0	8
Eleventh	Jacksonville, Florida	3	3	1	1	5
	Orlando, Florida	4	4	1	1	6
<b>Total</b>		<b>65</b>	<b>47</b>	<b>28</b>	<b>8</b>	<b>83</b>

Source: Data from AOC and 11 facilities where courtroom sharing was occurring.

The facilities varied in the types of district judges involved in courtroom sharing. For example, some facilities had active judges, senior judges with 10 years or less in senior status, and senior judges with more than 10 years in senior status sharing courtrooms, while others had only senior judges with 10 years or less in senior status sharing courtrooms. Table 2 shows the types of district judges who were sharing courtrooms on a regular basis at the 11 facilities.

**Table 2: Types of District Judges Sharing Courtrooms on a Regular Basis at 11 Facilities**

Circuit	Location of facility	Types of district judges sharing courtrooms		
		Active judges	Senior judges with 10 years or less in senior status	Senior judges with more than 10 years in senior status
First	San Juan, Puerto Rico		√	
Second	Brooklyn, New York	√	√	
Third	Philadelphia, Pennsylvania	√	√	√
Sixth	Nashville, Tennessee		√	
Seventh	Benton, Illinois	√	√	
Eighth	Fayetteville, Arkansas		√	
	Rapid City, South Dakota		√	
	Sioux City, Iowa		√	
Tenth	Salt Lake City, Utah		√	
Eleventh	Jacksonville, Florida	√	√	√
	Orlando, Florida	√	√	√

Source: Data from AOC and 11 facilities where courtroom sharing was occurring.

At the 11 facilities, courtroom sharing was occurring because active and senior district judges have to operate in facilities with fewer district courtrooms than district judges. For example, at the Brooklyn facility, courtroom sharing among judges was occurring because of an increase in the number of judges at the facility and the partial demolition of the courthouse complex in preparation for a new courthouse. Another example involved the San Juan facility where, because of space limitations, only one district courtroom was built to accommodate three senior judges. According to AOC officials, construction projects are currently planned or under way at the locations where active judges were sharing courtrooms.

Available data show that in 7 of the 11 facilities, each facility had one less courtroom than district judges. For example, the Nashville facility had a total of 6 district courtrooms to accommodate 7 active and senior judges. At the remaining 4 facilities, the differences between the total number of

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courtrooms and the total number of district judges were greater. Specifically, the Brooklyn facility had a total of 10 district courtrooms to accommodate 15 active and senior judges; the San Juan facility had 1 district courtroom for 3 senior district judges; Jacksonville had 3 district courtrooms for 5 active and senior judges; and Orlando had 4 courtrooms for 6 active and senior judges.

The data also showed that 4 facilities had a total of 8 senior judges with more than 10 years in senior status and that 5 of these judges were in the Philadelphia facility. The 8 judges make up a small part of the 118 senior judges with more than 10 years in senior status who were on board as of September 2001. According to AOC officials, there are reasons why some senior judges with more than 10 years in senior status are not sharing courtrooms. For example, although the Judicial Conference policy recommends that senior judges with more than 10 years in senior status would be the primary candidates for sharing courtrooms, such sharing is generally not needed in facilities that have a sufficient number of courtrooms to accommodate judges. Also, some senior judges with more than 10 years in senior status may not require the use of a courtroom. The officials pointed out that if the large number of judicial vacancies was filled, it is likely that more of these senior judges would be sharing courtrooms. According to AOC officials, data to show which of these senior judges have their own courtrooms were not readily available.

At the time we completed our audit work, we had received survey responses from 10 of the 11 facilities where courtroom sharing was occurring. One of the facilities—Rapid City, South Dakota—did not respond to our survey. In large part, active judges at the 10 facilities, including some chief judges, generally viewed courtroom sharing as problematic for various reasons. For example, at the Brooklyn facility, which had the greatest difference between the total number of district judges and courtrooms—15 judges and 10 courtrooms—judges reported several problems associated with courtroom sharing. The problems included frequent delays with sentencing convicted defendants and starting lengthy trials; the inability to deal effectively with unforeseen trial events or take full advantage of visiting judge resources; having to hold court proceedings in conference rooms, hearing rooms, and chambers; an inordinate proportion of staff time devoted to scheduling as opposed to case management; and adverse impacts on the court, litigants, private counsel, the U. S. Marshals Service, and the United States Attorney's Office due to frequent time and location scheduling changes of court proceedings. The chief judge at the Salt Lake City facility reported that the courtroom sharing situation has become more difficult to manage because,

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recently, the number of senior judges who are sharing a single courtroom has increased from two to three. Thus, judicial officials have the difficult task of either allocating time for the use of this courtroom among three senior judges or finding the judges alternative space in the facility. The chief judge also cited various administrative problems associated with courtroom sharing, such as having to move evidence and equipment from one courtroom to another in the middle of an extended trial, and problems in notifying litigants, counsel, and the public of changes in courtroom locations. Judges from the other facilities also described similar experiences that illustrated courtroom sharing problems and presented their views regarding the negative effects that courtroom sharing has on the efficient and effective administration of justice.

In contrast, unlike active judges, some senior judges at various facilities generally believed that courtroom sharing did not pose significant problems for them. Some senior judges mentioned that although they would prefer having their own courtrooms they acknowledged that, in facilities with limited courtroom capacity, the sharing of courtrooms was particularly appropriate for senior judges with reduced caseloads. For instance, at the Nashville facility, three senior judges—all of whom have reduced caseloads—share the use of two courtrooms. One of the judges explained that, by working collegially together along with proper advanced planning, the judges have a courtroom sharing process that has generally worked well. Also, at the Benton facility, the senior judge often shares a courtroom with a magistrate judge and sometimes shares a courtroom with a bankruptcy judge. The senior judge said that, for the most part, courtroom sharing at the Benton facility has posed no major problems mainly because he has a reduced caseload, and any minor problems with the scheduling of courtrooms at the Benton facility have always been worked out amicably. This senior judge said that he knows how convenient it is for a judge to have his or her own courtroom and that one becomes very possessive about it. He went on to say that judges use courtrooms only part of the time and sharing can almost always be accomplished with proper scheduling and without any negative impact on the efficient and effective administration of justice.

In addition to their comments about specific courtroom sharing experiences, some judges who are sharing courtrooms provided their views on the concept of courtroom sharing and how such sharing could affect courthouse operations and the administration of justice. For instance, at the Orlando facility, a judge stated that, in the real world, courtroom sharing leads to delays of justice, interference with management of the court's caseload, and erosion of collegiality in a district

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that has frequent hearings and trials. The judge went on to say that in a district such as Orlando, with a heavy caseload and frequent trials, the number and length of trials cannot be controlled and the number, length, and timing of hearings cannot be predicted; therefore, courtroom sharing becomes an impediment to the dispensing of justice. More information on various judges' courtroom sharing experiences at 10 facilities and their views about courtroom sharing is included in appendix III.

In addition to the 11 facilities, AOC initially identified Rochester, New York, as another facility that had fewer district courtrooms than district judges and where courtroom sharing may be occurring. The chief district judge in Rochester did not view his operation as courtroom sharing. He explained that, in Rochester, there were a total of six judges and six courtrooms—an equal number of courtrooms for an equal number of judges—which meant that the situation in Rochester did not meet our criteria for courtroom sharing defined as district judges operating in a courthouse with fewer courtrooms than judges. The chief judge said that, at the Rochester facility, there are six judges—two active district judges, one senior district judge, one bankruptcy judge, and two magistrate judges. He stated that the bankruptcy judge uses his courtroom exclusively. However, the other five judges use all the courtrooms on occasion, usually depending on the nature and the size of the court proceeding. The chief judge referred to the use of courtrooms in this manner as “courtroom trading” rather than courtroom sharing. In commenting on these matters, the chief judge stated that:

The system works fairly well, but there have been problems. We do have three district judges, and we all try criminal cases. So far, we have been able to schedule matters so that the two large courtrooms are utilized for criminal matters and so far we have not had a situation where all three district judges needed to utilize the large courtrooms for big criminal trials. That would create a very real problem. The courtroom trading is not perfect. It does involve coordination among five judges, some travel from one floor to another, which disrupts staff, and it does often present difficulties in scheduling matters on an emergency basis.

Another unique courtroom sharing experience that AOC identified involves the Little Rock, Arkansas, facility. Judicial officials at the Little Rock facility reported that it had a total of 12 judges—5 active judges, 2 senior judges, and 5 magistrate judges—and 11 courtrooms. According to AOC, in the summer of 1998, one of the senior judges decided to take a reduced workload and to give up his courtroom so that two of the magistrate judges would not have to share a courtroom. This senior judge now shares courtrooms with the other district judges. Judicial officials at

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the Little Rock facility pointed out that courtroom sharing for a senior judge with a 30 percent caseload has not had any negative effect on the efficient and effective administration of justice. However, the officials stated that, occasionally, it is difficult to schedule a courtroom for one senior district judge, even with the availability of other district courtrooms, because cases are scheduled months in advance, and it can be difficult to identify which courtroom, if any, would be available. In addition, the Little Rock officials mentioned that there are security concerns with courtroom sharing in older facilities, which were not designed to be used exclusively as courthouses. Specifically, they stated that there is no separate, secured circulation for judges and prisoners and both must use the same public hallways as other parties in the cases.

In addition to the Rochester and Little Rock facilities, AOC identified two other facilities—Austin, Texas, and Sioux Falls, South Dakota—where courtroom sharing was occurring. According to the district court clerk, the situation at the Austin facility is unique because one of the two senior judges who shares a courtroom at this facility, which is located in the Western District of Texas, is an Eastern District of Texas judge who has been designated by the fifth circuit judicial council to reside at the Austin facility. This senior judge hears cases not only at the Austin facility, but also he may hear cases at any facility in the Western District of Texas. One of the senior judges at the Austin facility explained that he and the other senior judge share the facility's district courtroom not only with each other, but also with judges from the court of appeals. The judge further stated that courtroom sharing has had no negative effect on the efficient and effective administration of justice mainly because the judges have been resourceful and flexible in scheduling the use of the courtroom. However, the judge mentioned that, on several occasions, he has had to use a bankruptcy courtroom in the Austin facility to conduct district court proceedings or reschedule a matter to avoid conflicts. At the Sioux Falls facility, courtroom sharing was no longer occurring because, according to the district court clerk, a senior judge had become inactive at the end of 2001.

In addition to district judges who reside at a facility, some district judges travel outside their districts to hear cases in another district. According to AOC officials, these judges—commonly referred to as visiting judges—temporarily use the courtroom of a judge at the location visited. AOC considers this use of courtrooms by visiting judges as a form of courtroom sharing that would have some impact on the availability of courtrooms, but the full extent of this impact is unknown. During fiscal year 2000, AOC data indicated that judges visited and conducted judicial business on 35

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occasions in the districts where the 11 facilities were located. The chief judge for the Middle District of Florida reported that, during calendar years 1999 through 2001, an average of about 15 judges visited the district each year, and their visits usually ranged from 2 to 6 weeks. Also, during January and February 2002, the district received assistance from 8 visiting judges whose visits typically ranged from 2 to 6 weeks. The chief judge pointed out that during this time period, the district had to occasionally decline offers of assistance from some visiting judges because the district had no courtrooms available for these judges to use. AOC had no readily available data to quantify how often and for how long visiting judges used other judges' courtrooms in all districts.

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## Courtroom Sharing in Future Courthouse Construction Projects

In addition to the courtroom sharing currently taking place, the judiciary also has plans for courtroom sharing in some future courthouse construction projects. The judiciary's updated long-range plan—*Five-Year Courthouse Construction Plan (Fiscal Years 2002-2006)*—contained 45 proposed new courthouse construction projects. The judiciary had completed courtroom needs assessment studies for 33 of the 45 projects. These studies estimate the number of courtrooms that will be needed for 10 years after a project's anticipated design date. Of the 33 courtroom needs studies, 19 indicated that some courtroom sharing was anticipated to be occurring at the end of the planning time frame, and the remaining 14 studies did not.

Our analysis showed that the 19 proposed courthouse projects are expected to have 113 active judges, 90 senior judges, and 158 courtrooms at the end of the 10-year planning time frame. This equates to about 5 judges for every 4 courtrooms. Consistent with the Judicial Conference policy, courtroom sharing in these projects is expected to involve senior judges with more than 10 years in senior status. Specifically, the plans have 44 senior judges sharing courtrooms in these projects, and all of these judges will have more than 10 years in senior status. Our analysis also showed that three senior judges with over 10 years in senior status at these projects were not scheduled to share because courtrooms were available for these judges to use. Table 3 provides more information on the number of district judges and courtrooms at these 19 locations that are included in the judiciary's long-range plan for fiscal years 2002 through 2006.

**Table 3: District Judges and Courtrooms at 19 Project Locations with Planned Courtroom Sharing**

Project location	Estimated number of district judges			Total number of active and senior judges	Number of courtrooms
	Active judges	Senior judges with 10 years or less in senior status	Senior judges with more than 10 years in senior status		
Austin, Texas	3	2	2	7	5
Benton, Illinois	2	1	1	4	3
Buffalo, New York	4	1	2	7	5 <sup>a</sup>
Charlotte, North Carolina	3	2	1	6	5
Fresno, California	5	1	2	8	5
Greensboro, North Carolina	4	2	2	8	6
Harrisburg, Pennsylvania	3	1	1	5	4
Little Rock, Arkansas	7	4	2	13	11 <sup>a</sup>
Los Angeles, California	26	8	11	45	34
Mobile, Alabama	4	2	3	9	8 <sup>a</sup>
Nashville, Tennessee	5	1	3 <sup>b</sup>	9	7
Norfolk, Virginia	5	2	2	9	7 <sup>a</sup>
Orlando, Florida	7	2	1	10	9
Salt Lake City, Utah	7	2	4	13	9
San Diego, California	16	5	5	26	21 <sup>a</sup>
San Jose, California	5	2	2	9	7
Savannah, Georgia	2	2	1	5	4
Sioux Falls, South Dakota	2	1	1	4	3
Toledo, Ohio	3	2	1	6	5
<b>Total</b>	<b>113</b>	<b>43</b>	<b>47</b>	<b>203</b>	<b>158</b>

<sup>a</sup>Courtrooms will be in both the old and new facilities.

<sup>b</sup>At the Nashville facility, three senior judges are expected to have more than 10 years in senior status at the end of the planning cycle. However, AOC pointed out that two of these senior judges will not have more than 10 years in senior status until late in the planning cycle and thus would qualify for their own courtrooms for most of the planning cycle.

Source: GAO analysis of AOC data.

The 14 projects that did not include courtroom sharing over the 10-year planning time frame generally did not anticipate having senior judges with more than 10 years in senior status—a key criterion for determining if courtroom sharing should occur. According to AOC officials, senior judges at these projects may very well be sharing courtrooms after the 10-year planning period. For the 4 projects that anticipated having senior judges with more than 10 years in senior status, courtrooms were not shared because of specific circumstances at those locations. For example, in Anniston, Alabama, the senior judge will be the only judge at the facility and thus will be assigned the facility’s only courtroom, but visiting judges also hear cases at the Anniston location. Table 4 provides more

information on the anticipated number of district judges and courtrooms planned for these 14 locations.

**Table 4: District Judges and Courtrooms at 14 Project Locations with No Planned Courtroom Sharing**

Project location	Estimated number of district judges			Total number of active and senior judges	Number of courtrooms
	Active judges	Senior judges with 10 years or less in senior status	Senior judges with more than 10 years in senior status		
Anniston, Alabama	0	0	1	1	1
Cape Girardeau, Missouri <sup>a</sup>	0	0	0	0	2
Cedar Rapids, Iowa	2	0	1	3	3
El Paso, Texas	5	1	0	6	6
Erie, Pennsylvania	1	0	0	1	1
Eugene, Oregon	2	0	0	2	2
Fort Lauderdale, Florida	5	2	2	9	9
Fort Pierce, Florida	1	0	0	1	1
Greenville, South Carolina	3	1	0	4	5
Jackson, Mississippi	4	2	0	6	6
Las Cruces, New Mexico	3	0	0	3	3
Richmond, Virginia	3	1	1	5	5
Rockford, Illinois	1	1	0	2	2
San Antonio, Texas	5	2	0	7	7
<b>Total</b>	<b>35</b>	<b>10</b>	<b>5</b>	<b>50</b>	<b>53</b>

<sup>a</sup>No active or senior judges reside at this facility. Workloads at this facility are handled by district judges who reside in different locations within the district.

Source: GAO analysis of AOC data.

The judiciary plans to incorporate courtroom sharing in some future courthouse construction projects, but the amount of sharing that will take place within the 10-year planning time frame at these courthouse locations will depend on how well the planning assumptions used to estimate courtroom needs materialize. For example, in planning for courtroom sharing at a facility, the judiciary assumed that the number of new judge positions created by law and the appointment and confirmation of the judges to fill positions will be timely.<sup>5</sup> This assumption may not be fully realized. Past experience indicates that creating new judge positions and

<sup>5</sup> In its policy statement, the Judicial Conference recommends that a 3-year time frame be used when planning for the number of years it will take for a new judge position to be approved by the Judicial Conference and Congress.

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appointing and confirming judges to fill positions may not always be timely. For example, from 1976 through 2001, data provided by AOC officials showed that the Judicial Conference had requested new judge positions 14 times. However, during this 25-year time period, Congress enacted legislation to increase the number of new judge positions only five times—specifically, in 1978, 1984, 1990, 1999, and 2000.<sup>6</sup> In addition, getting judges appointed and confirmed to fill judge positions has been no easy task. The difficulty is demonstrated by the length of time that some judge positions have been vacant. For example, on November 23, 2001, there were 102 judge vacancies, of which 29 had been open for more than 2 years. In fact, 1 of the 29 vacancies had been open for more than 7 years. The timing of legislation creating new judge positions, and the length of time it takes for the appointment and confirmation of judges to fill positions will influence the extent to which and when courtroom sharing will occur.

Another courtroom planning assumption the judiciary has used is that all active judges will opt for senior status within the first year of eligibility, which, according to AOC officials, is generally when judges reach at least 65 years of age and have 15 years of service. Under the judiciary's courtroom needs assessment studies, when an active judge elects to take senior status, a facility needs two courtrooms—one for the new senior judge and one for the active judge that will replace him or her. However, if an active judge defers taking senior status when he or she becomes eligible, the facility will need a courtroom for only one judge at that time, which reduces the need for courtroom sharing.

In July 2001, AOC issued a memorandum to the chief justice and members of the Judicial Conference that, among other things, identified trends in the timing of judges' decisions to take senior status. To identify these trends, AOC examined available data on all judges eligible to take senior status from 1984 through 2000 and reported that of 579 judges, 355, or about 61 percent, took senior status within 1 year of eligibility. AOC further reported that from 1984 through 1995, 27, or about 7 percent, of 388 judges deferred taking senior status for more than 5 years after they became eligible. The extent to which judges defer taking senior status can

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<sup>6</sup> The 1978 legislation was Public Law 95-486; the 1984 legislation was Public Law 98-353; the 1990 legislation was Public Law 101-650; the 1999 legislation was Public Law 106-113; and the 2000 legislation was Public Law 106-553.

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directly affect the amount of courtroom sharing that will actually take place.

In preparing courtroom needs assessment studies, the judiciary estimates which judges will be at the facilities over the course of the 10-year planning cycle. The studies identify the judges who will be provided their own courtrooms, and the judges who will not be provided courtrooms because they will be expected to share courtrooms. In this type of estimate, there will always be some uncertainty associated with trying to predict which judges will be at the facilities, especially senior judges with more than 10 years in senior status. The 44 senior judges who are indicated in the studies as sharing courtrooms at the end of the planning cycle will have more than 10 years in senior status and will be from 75 to 98 years old. As with any planning process, the assumptions that have to be made will always involve some uncertainty. In this instance, the extent to which these senior judges continue to serve will affect how much and when courtroom sharing actually occurs.

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## AOC Comments and Our Evaluation

On March 5, 2002, AOC's associate director provided written comments on a draft of this report and generally agreed with the information contained in the report. AOC also provided additional information on the judiciary's courtroom sharing efforts. In its comments, AOC said that the information in our report on judges' courtroom sharing experiences confirms the judiciary's position that courtroom sharing is feasible only in limited circumstances. The information we obtained from judges at the facilities where courtroom sharing was occurring was limited to those facilities and was only intended to describe the judges' experiences with and views on courtroom sharing. Given this, the information cannot be generalized to facilities in all judicial districts. Furthermore, we did not attempt to determine the extent of the courtroom sharing problems cited by judges or whether those problems could have been mitigated by such means as courthouse design changes, use of different scheduling practices, or additional staff training. We clarified the report's scope and methodology to better reflect these limitations. AOC also raised some points about the report, which we believe need further discussion. A discussion of these points and a copy of AOC's written comments are included in appendix IV. On February 27, 2002, AOC provided oral technical comments on a draft of this report, which we incorporated, where appropriate.

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## Scope and Methodology

To meet the first objective, which was to examine the judiciary's courtroom sharing policies for senior judges, we obtained, analyzed, compared, and contrasted the various judicial policies regarding courtroom sharing. Specifically, we examined the Judicial Conference policy, which is in the *U.S. Courts Design Guide*, and the individual policies established by the circuit judicial councils and discussed them with AOC officials.

To meet the second objective, which was to obtain information about the extent to which senior judges are currently sharing courtrooms and their experiences with courtroom sharing, we worked with AOC staff to identify the locations where district judges were sharing courtrooms. We also used a brief survey document and follow-up telephone calls to contact the district court clerks at these locations and collect information on the district judges who were sharing courtrooms. In addition, we solicited information about the judges' experiences with and views on courtroom sharing. We analyzed the information obtained and discussed the results of our work, as necessary, with judiciary officials. We did not attempt to determine the extent of the courtroom sharing problems cited by judges or whether the problems could have been mitigated by such means as courthouse design changes, use of different scheduling practices, or additional staff training. Furthermore, the results of our work can be applied only to the facilities discussed in the report and, therefore, cannot be generalized to facilities in all judicial districts.

To meet the third objective, which was to determine the judiciary's efforts to explore the potential for senior judges to share courtrooms in future courthouse construction projects, we reviewed the methodology that the judiciary used to prepare its courtroom needs assessment studies and analyzed the studies that had been completed for 33 of the 45 proposed projects in the judiciary's long-range construction plan for fiscal years 2002 through 2006. We identified the projected number of judges and courtrooms planned for each of the 33 projects and analyzed the studies to determine how much sharing was planned for these projects. Our analysis focused on identifying the active and senior district judges who were expected to be permanently assigned to the 33 projects and the senior judges who were expected to share courtrooms on a regular basis at these projects. We did not include visiting and rotating judges in our analysis of these studies because their visits are temporary in nature and usually for short periods of time. In addition, we reviewed the legislation increasing the number of district judges and data on the ages of senior judges expected to share courtrooms in the 33 projects. We discussed our results with AOC officials.

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To obtain general information related to all of our objectives, we reviewed previous studies on or related to courtroom sharing that were done by us, AOC, the Rand Institute for Civil Justice, the Federal Judicial Center, and private consulting groups and discussed the courtroom sharing issue with AOC representatives. We did our work from June through December 2001 in accordance with generally accepted government auditing standards. On March 5, 2002, AOC provided written comments on a draft of this report. On February 27, 2002, AOC provided oral technical comments on a draft of this report, which we incorporated, where appropriate.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of the report until 15 days from the report date. At that time, we will send copies of this report to appropriate congressional committees; the director, AOC; the director, OMB; and the administrator, GSA. Copies also will be made available to others upon request.

Major contributors to this report were William Dowdal, Anne Hilleary, Gerald Stankosky, and John Vocino. If you or your staff have any questions, please contact me on (202) 512-8387 or at [ungarb@gao.gov](mailto:ungarb@gao.gov).



Bernard L. Ungar  
Director, Physical Infrastructure

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# Appendix I: Judicial Conference Policy Statement

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In March 1997, the Judicial Conference of the United States adopted a policy statement that provided guidance for determining the number of courtrooms needed in facilities. The policy was included in the December 1997 version of the *U.S. Courts Design Guide*. As stated in the *Guide*, the policy encourages courts to take several factors into account when considering the construction of additional courtrooms. Also, the policy encourages circuit judicial councils to develop policies on courtroom sharing by senior judges when such judges do not draw caseloads requiring substantial use of courtrooms. The complete text of the policy statement follows.

“Recognizing how essential the availability of a 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 must 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.

“The following assumptions, endorsed by the Judicial Conference in March 1997, should be considered to determine courtroom capacity in new buildings, new space, or space undergoing renovation. This model allows assumptions to be made about caseload projections, and the time frames in which replacement, senior, and new judgeships will occupy the facility. The model affords flexibility to courts and circuit judicial councils when making decisions about the number of courtrooms to construct in a new facility, since adjustments to the assumptions can be made to reflect a specific housing situation ‘on-line.’

- The number of new judgeships approved by the Judicial Conference and recommended for approval by Congress, and the year approval is expected;
- The number of years senior judges will need a courtroom after taking senior status (a ten-year time frame is recommended);
- The average age of newly-appointed judges at the court location;
- Caseload projections based upon the district’s long range facility plan (other caseload measures such as raw or weighted filings might also be considered);
- The percentage of the total district caseload handled at the location;
- The ratio of courtrooms per active and senior judge (at present the model assumes a ratio of one courtroom per judge);
- The number of years it will take for a new judgeship to be approved by the Judicial Conference and Congress once weighted filings reach the level that qualifies a court for an additional new judgeship (a three-year time frame is recommended);
- The number of years before replacement judges will be on board after a judge takes senior status (a two-year time frame is recommended); and
- The year the judges are expected to take senior status once they become eligible (a court or council should assume a judge will take senior status when eligible).

“The planning assumptions described above are subject to modification by courts in consultation with the respective judicial council.”

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# Appendix II: Information From the Twelve Circuit Judicial Councils' Policy Statements Related to Courtroom Sharing

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## First Circuit

**Date of circuit council policy statement:** April 7, 1998.

**Information from the circuit council policy statement:**

- The first circuit council strongly preferred that, wherever feasible, each senior judge be given a courtroom dedicated to his or her own use. However, the council intended to comply with Judicial Conference policy regarding senior judges sharing courtrooms in those cases where appropriate.
- The first circuit council suggested that, when courtrooms are designed, consideration should be given to making district, magistrate, and bankruptcy courtrooms interchangeable where permitted by program requirements.
- The decision as to whether to include one or more visiting judge's chambers in a new construction or substantial renovation project would depend upon an evaluation of the caseload to be handled in that location.

## Second Circuit

**Date of circuit council policy statement:** February 11, 1998.

**Information from the circuit council policy statement:**

In determining whether to provide dedicated courtrooms for senior and visiting judges in new construction and alteration projects, the second circuit council will consider all relevant factors, as applicable, including the Judicial Conference policy's courtroom sharing factors.

## Third Circuit

**Date of circuit council policy statement:** October 20, 1997.

**Information from the circuit council policy statement:**

- For the construction of new facilities and major renovations of existing judicial facilities, the third circuit council stated that, in evaluating the number of courtrooms needed at such facilities to permit senior and visiting judges to discharge their responsibilities, the council will consider the Judicial Conference's courtroom sharing factors in concert with other factors it deems appropriate.
- The third circuit council also described the overall process to be used in preparing, reviewing, and approving district courts' proposed plans for determining the number of courtrooms in the construction or major renovation of judicial facilities. This process included the use of a computer model planning document developed by the Administrative Office of the U.S. Courts (AOC), which the third circuit council plans to use as a tool to help district courts explain and justify their proposals for the construction of courtrooms in new facilities.

## Fourth Circuit

**Date of circuit council policy statement:** April 6, 1998.

**Information from the circuit council policy statement:**

- For the construction of new facilities and major renovations of existing judicial facilities, the fourth circuit council stated that, in evaluating the number of courtrooms needed at such facilities to permit senior and visiting judges to discharge their responsibilities, the council will consider the Judicial Conference's courtroom sharing factors in concert with other factors it deems appropriate.
- The fourth circuit council also described the overall process to be used in preparing, reviewing, and approving district courts' proposed plans for determining the number of courtrooms in facilities. This process included the use of a computer model planning document developed by

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AOC to help district courts explain and justify their proposals for the construction of courtrooms in new and existing judicial facilities.

**Fifth Circuit**

**Date of circuit council policy statement:** October 10, 1997.

**Information from the circuit council policy statement:**

- The fifth circuit council provided its December 1990 and May 1995 resolutions on courtroom sharing as its policy statement. In the resolutions, the fifth circuit council stated that the council may direct, when appropriate, the joint use of courtroom and adjunct facilities as dockets and other circumstances warrant.
- The fifth circuit council also addressed other matters related to providing chambers and staff and, if required, courtrooms to judges who plan to take senior status. Among the matters addressed are the following:
  - When the fifth circuit council has been advised that an active judge intends to take senior status and continue working at a level that qualifies under the council's guidelines for the assignment of chambers and staff, the council will take the immediate and necessary steps to provide appropriate senior judge chambers, and, if required, courtroom facilities.
  - Unless special circumstances cause the fifth circuit council to direct otherwise, a judge taking senior status, whose replacement will have the same official duty station, is to make available to the newly appointed active judge the chambers and facility used during the period of active service.
  - If two or more senior judges are occupying active judge chambers, the determination of which of those active judge chambers is to be occupied by the newly appointed active judge shall be made by the court in question.

**Sixth Circuit**

**Date of circuit council policy statement:** December 9, 1997.

**Information from the circuit council policy statement:**

The sixth circuit council stated that a separate courtroom will not be provided for each senior district judge or for visiting judges unless the council determines, after consideration of the Judicial Conference's courtroom sharing factors, among others, that a separate courtroom is necessary for the senior or visiting judge to discharge his or her responsibilities.

**Seventh Circuit**

**Date of circuit council policy statement:** September 30, 1997.

**Information from the circuit council policy statement:**

- The seventh circuit council stated that each senior judge who is designated and assigned to perform judicial duties shall be entitled to suitable chambers, including furnishings and supplies, and, if applicable, suitable courtroom facilities.
- A senior judge who continues to perform a full judicial assignment should not be required to give up the chambers or courtroom the judge occupied in active status, except to the extent that lack of facilities for new judges requires sharing of facilities. In that case, senior judges with a full judicial assignment should be treated the same as active judges in the determination of a sharing arrangement.

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- Decisions as to the assignment of facilities for senior judges who perform less than a full judicial assignment shall be made by that judge's court. The council defined the term "full judicial assignment" to mean that the senior judge continues to be assigned and perform the same work, both casework and other assignments, as if he or she were an active judge of the same court.

**Eighth Circuit**

**Date of circuit council policy statement:** April 15, 1998.

**Information from the circuit council policy statement:**

- When the eighth circuit council has been advised that an active judge intends to take senior status and continue working at a level that qualifies under the council's guidelines for the assignment of chambers and staff, the council will take immediate and necessary steps to provide appropriate senior judge chambers and, if required, courtroom facilities.
- The eighth circuit council may direct, when appropriate, the joint use of a courtroom and adjunct facilities as dockets and other circumstances warrant.

**Ninth Circuit**

**Date of circuit council policy statement:** March 19, 1998.

**Information from the circuit council policy statement:**

- The ninth circuit council stated that the courtroom sharing factors and planning assumptions are to be used as guidelines and may be modified on the basis of unique circumstances of each district and that they shall be used when the districts update long-range plans and prepare requests for adding/releasing space.
- The ninth circuit council further stated the following:
  - Each district is encouraged to develop a local policy to address senior and visiting judges sharing courtrooms.
  - The policy is to be provided to the circuit council's Space and Security Committee.
  - The policy shall be submitted when the district requests additional courtroom space or releases courtroom space.
- The ninth circuit council policy also stated that when considering the need for new courtrooms, districts
  - shall consider the factors discussed in the report prepared by the council's Space and Security Committee task force that affect the projection of courtroom needs, and
  - should take into consideration using space for multiple purposes to the extent feasible and with consideration of both initial and long-term fiscal impacts.

**Tenth Circuit**

**Date of circuit council policy statement:** October 22, 1997.

**Information from the circuit council policy statement:**

- The tenth circuit council stated that one courtroom should be provided for each senior judge who draws a caseload requiring substantial use of a courtroom.
- The tenth circuit council also stated that in determining the number of courtrooms in existing facilities for senior district judges who do not draw caseloads requiring substantial use of courtrooms, it will consider not only the Judicial Conference policy factors but also the availability of courtrooms and the feasibility or nonfeasibility of releasing courtroom space to the General Services Administration.

**Eleventh Circuit**

**Date of circuit council policy statement:** September 25, 1997.

**Information from the circuit council policy statement:**

In adopting the Judicial Conference's factors and assumptions, the eleventh circuit council discussed in its policy statement two major topics related to the courtroom sharing issue: (1) the process to be used in planning for the number of courtrooms in new facilities and (2) courtroom availability and sharing.

- **Planned number of courtrooms in new facilities.** In addressing this topic, the eleventh circuit council described the overall process to be used in preparing, reviewing, and approving district courts' proposed plans for determining the number of courtrooms in new judicial facilities. This process included the use of a computer model planning document developed by AOC, which the eleventh circuit council plans to use as a tool to help district courts explain and justify their proposals for the construction of courtrooms in new judicial facilities.
- **Courtroom availability and sharing.** In discussing this topic, the eleventh circuit council recognized that methods varied greatly throughout the judiciary and within the eleventh circuit for the sharing of courtrooms by senior judges who do not draw caseloads requiring substantial use of courtrooms. The council further recognized that district courts were in the best position to determine the need for courtrooms in facilities and the number of courtrooms that are necessary to ensure the fair, efficient, and expeditious handling of civil and criminal cases. Thus, the eleventh circuit council determined that, at the present time, it would not adopt a written courtroom sharing policy, but the council directed each district court to submit no later than January 1, 1998, a written report that described the district court's local situation and the courtroom sharing policy that the district court adopted to meet its own local needs.

As of September 2001, AOC identified one of nine district courts within the eleventh circuit—the Southern District of Florida—that had developed its own local courtroom sharing policy. This policy stated that each senior judge will be allowed a courtroom unless courtroom use hours and cases assigned to that judge fall below the caseload requirements within a 5-year period for substantial use of a courtroom. If the senior judge does not maintain a caseload requiring substantial use of a courtroom in the 5-year period, the courtroom will be made available for others to use. The policy also stated that, on the basis of historical data, senior judges are expected to occupy a courtroom for 15 years after taking senior status, and that this time frame should be used for planning for courtroom needs.

The eleventh circuit council also discussed other matters related to courtroom availability and sharing. Specifically, the council stated that the availability of a judge to hear a case and a courtroom within which to conduct a trial or hearing are the two principal elements that drive settlements or pleas and that, statistically, settlements or pleas are the means by which most controversies are concluded. The council recognized that current statistics on courtroom use do not adequately capture these activities and that better data must be collected in this area. In discussing this topic, the eleventh circuit council cited the May 1997 GAO report in which some data were captured that attempted to indicate the overall use of courtrooms, such as the actual number of hours that a courtroom was in use (i.e., whether the courtroom's lights were "on" or "off").

In an attempt to obtain more information on courtroom use, the eleventh circuit council required that district courts provide data that will more accurately reflect courtroom activities, including such data as when a courtroom has been "booked" for a trial (i.e., case set for trial); the number of days a trial is anticipated to take; and how a case was terminated (e.g., trial, plea, or settlement). The council stated its belief that this type of information would provide the hard data

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**Appendix II: Information From the Twelve  
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that will enable various stakeholders, including Congress, GAO, and the public, to understand the appropriate functions that a courtroom—even a seemingly “dark courtroom”—plays in the administration of the judicial system.

**D.C. Circuit**

**Date of circuit council policy statement:** October 22, 1997.

**Information from the circuit council policy statement:**

The judges of the U. S. District Court for the District of Columbia unanimously determined that

- a courtroom should be provided for each active judge and each senior judge who requires substantial use of his or her courtroom; and
- courtroom sharing will be achieved on a collegial basis, as is the tradition of the judges of the court.

The judicial council for the District of Columbia circuit supported the district court's determination.

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# Appendix III: Information from Active and Senior District Judges in Ten Facilities Where Courtroom Sharing Was Occurring

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## San Juan, Puerto Rico (First Circuit)

### Types of district judges sharing courtrooms on a regular basis:

- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 1.5 years.

### Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:

- **Positive experiences:** None reported.
- **Negative experiences:** When two or more senior judges need a courtroom at the same time, the conflict is resolved by giving precedence to the judge who first scheduled the courtroom. When two proceedings must occur at the same time, the courtroom deputy must negotiate with all the judges to accommodate their needs. The typical solution is for one of the judges to use the court of appeals courtroom, which creates two difficulties. First, using this courtroom involves an extra level of coordination because the appellate court controls the courtroom, and the courtroom may not be available every time that it is needed. Second, the court of appeals courtroom does not have the computers installed or network connections needed for district trials. Thus, the courtroom deputy cannot accomplish needed tasks that must be accomplished during proceedings. In addition, the court of appeals courtroom does not have a digital recording system so court reporter services, which are very hard to find in the Puerto Rico area, must be contracted.

**General comments:** The chief judge said that sharing courtrooms is not the best way to run trials efficiently because of the unpredictable nature of trial proceedings. Therefore, judges should have separate courtrooms for motions and hearings. If conflicts occur with the senior judges' courtroom sharing situation, these conflicts would be exacerbated if active judges with full schedules also needed to share the facility's courtrooms. The chief judge also believes that one courtroom for three judges does not promote efficiency in judicial proceedings.

## Brooklyn, New York (Second Circuit)

### Types of district judges sharing courtrooms on a regular basis:

- Active judges.
- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 4.5 years.

### Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:

- **Positive experiences:** None reported.
- **Negative experiences:** Sentencing of convicted defendants, both incarcerated and on bail, is frequently delayed.

Lengthy trials are often delayed, even though ready for trial, due to the inability to obtain a courtroom for the anticipated time required.

Severe security concerns because U.S. Marshals Service personnel are forced to transport prisoners through public corridors.

Proceedings involving defendants in custody are frequently conducted in conference rooms, hearing rooms, and chambers.

Inability to take full advantage of visiting judge resources.

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**Appendix III: Information from Active and  
Senior District Judges in Ten Facilities Where  
Courtroom Sharing Was Occurring**

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Inordinate proportion of staff time devoted to scheduling as opposed to case management.

Inability to effectively deal with unforeseen trial events. Any delay whatsoever in a scheduled trial proceeding affects the schedules of at least two other judges, which results in cascading delays.

Frequent time and location scheduling changes in court proceedings adversely affect the court, litigants, private counsel, the U.S. Marshals Service, and the United States Attorney's Office.

Proceedings delayed or interrupted, security breached; technology duplicated or compromised; housekeeping deteriorated.

One judge commented that he has had to switch courtrooms in midtrial, causing lawyers tremendous inconveniences such as having to move file cabinets and large exhibits. The judge also stated that he has had to postpone a late-day detention hearing because another judge needed the courtroom, causing the defendant to spend an additional night in jail. The judge commented further that with no "home" courtroom, he cannot keep all the books and materials he would otherwise have in court; thus, he often does not have a resource that he would use in helping him make decisions.

**General comments:** A district judge stated that when a judge is engaged in a trial of long duration, as is frequently the case in the Brooklyn district court, courtroom sharing is patently impossible. The judge commented that when he or she is not engaged in a trial, the day-to-day work of a district judge in a busy metropolitan court consists of a dizzying array of various matters, such as motions argued in civil and criminal cases; arraignments; pleas; sentencings; modification of bail hearings; and orders to show cause that may require immediate attention, such as those seeking temporary restraining orders or preliminary injunctions, Title 3 wire tap applications, and violation of bail or supervised release hearings. Such proceedings are held at intervals over an entire day and make courtroom sharing difficult, if not impossible.

**Philadelphia, Pennsylvania  
(Third Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Active judges.
- Senior judges with 10 years or less in senior status.
- Senior judges with more than 10 years in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 12 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** None reported.
- **Negative experiences:** The chief judge stated that active and senior judges have voiced their concerns that, on too many occasions, they cannot schedule proceedings on a regular, open-ended basis in the same courtroom. This situation has caused some confusion and consternation for the attorneys, jurors, and litigants who use the courtrooms on a shared basis and has also resulted in the wasteful and inefficient use of court support staff who must deal with the uncertainty of scheduling proceedings in courtrooms yet "to be announced."

**General comments:** The chief judge stated that, since 1989, active and senior judges have shared available courtrooms while a number of major construction projects were being completed. Since completion of the projects, sharing regularly occurs only in one courtroom. However, the chief judge expects that over the next few years, the district court will expand, and a major space crisis will occur because the present courthouse has reached its limit for accommodating judges. It is anticipated that

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**Appendix III: Information from Active and  
Senior District Judges in Ten Facilities Where  
Courtroom Sharing Was Occurring**

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more courtroom shortages will occur, causing more active and senior judges to have to share courtrooms.

The chief judge said that although the judges have been very understanding of the situation and very cooperative in arranging their calendars to cope with courtroom shortages, judges generally felt that permanently assigned courtrooms greatly improve courtroom management, increase the efficiency of judges and support staff, and expedite the timely administration of justice. Without the stability of permanently assigned courtrooms, some judges are concerned that the public's perception of the judiciary as an independent branch of government suffers when judges are compelled to share courtrooms.

In addition, the chief judge stated that the judges view a dedicated courtroom as a catalyst for the resolution of litigation. A judge's ability to schedule promptly a proceeding in a dedicated courtroom often results in the resolution of litigation disputes. The chief judge likened the availability of a dedicated courtroom to the availability of an ambulance or a fire engine. Although neither of these items is in constant use, both are essential for the expeditious delivery of safety and health services to citizens on an as-needed basis.

**Nashville, Tennessee  
(Sixth Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 3 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** The chief judge for the Nashville district court and a senior judge stated that the senior judges in Nashville are very collegial and operate with reduced caseloads, so courtroom sharing has worked. The chief judge said courtroom sharing has not posed problems for these judges. Through proper planning and mutual sacrifice, the three senior judges have worked together nicely to utilize two courtrooms.

One senior district judge went on to say that each of the three senior judges has a schedule of 6 weeks in courtroom and 3 weeks in chambers. If one of the senior judges has a multidefendant case that requires a larger courtroom, he or she can swap with an active district judge. Scheduling cases 6 to 9 months in advance is a reason that courtroom sharing has worked well. Also, one of the senior judges said that, if a senior judge occasionally has a case that exceeds the allotted time in the courtroom, the senior judges work it out.

- **Negative experiences:** The chief judge said that on occasion, the courtroom sharing arrangement for the senior judges does not work because litigation involves unpredictable variables, such as ancillary hearings; trial length; and availability of attorneys, witnesses, and jurors. When such events occur and a judge not scheduled for the courtroom needs one, the affected judge is forced to try to find an available active judge's courtroom or postpone the trial or proceeding. In some cases, this has necessitated one judge moving his hearings to another facility in Columbia, Tennessee.

**General comments:** The chief judge and a senior judge stated that courtroom sharing among active district judges would not be a good idea. The chief judge said such sharing would be inefficient, costly, and time-consuming and would defeat the purpose of personalized case management. Active judges handle all sorts of trials, motion hearings, emergency requests for injunctions or temporary restraining orders, guilty pleas, sentencings, suppression hearings and a variety of other hearings, as well as conferences. The time frames of such proceedings are often unpredictable, and many arise

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with short or no warning. Courtroom sharing would severely affect the judge's ability to move his cases through the judicial process in an efficient and effective manner. The attorneys and public also would suffer greatly.

The chief judge also stated that, as an active judge, he is in his courtroom conducting legal business almost every day. The courtroom deputy schedules cases in advance for most weeks throughout the year. The chief judge went on to say that he could not imagine sharing his courtroom with another judge on a regular basis without drastically sacrificing his productivity and efficiency.

A senior judge stated that active judges often need their courtrooms on short notice and have longer cases, which makes courtroom sharing more difficult to manage.

**Benton, Illinois  
(Seventh Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Active judges.
- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 9 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** The senior judge at the Benton facility said that there have been no major problems with courtroom sharing. The only problems have involved scheduling the use of courtrooms; but so far, such scheduling has always been worked out amicably. An important reason for the lack of problems is that the senior judge has a reduced caseload.
- **Negative experiences:** None reported.

**General comments:** The senior judge at the Benton facility stated that he has been on the federal bench for 29 years and knows how convenient it is for a judge to have his or her own courtroom—one becomes very possessive about it. However, he said the fact of the matter is that when all is said and done, judges only use courtrooms part of the time and sharing can almost always be accomplished with proper scheduling and without any negative impact on the efficient and effective administration of justice.

Also, according to the senior judge, the Benton facility has one district courtroom, one magistrate courtroom, and one bankruptcy courtroom. The district judges also use the latter two courtrooms, although the bankruptcy courtroom is suitable only for motion hearings or nonjury cases because it does not have a jury box. In addition, the active judge at the Benton facility said that using the courtrooms has worked very well and that all judges have been able to coordinate the use of these courtrooms.

**Fayetteville, Arkansas  
(Eighth Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 3 years, 1 month.

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**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** The senior judge thinks that given his situation, courtroom sharing is a good idea.
- **Negative experiences:** None reported.

**General comments:** The chief judge said that the Fayetteville facility has a district courtroom and a bankruptcy courtroom. The chief judge uses the district courtroom, and the senior judge and the bankruptcy judge use the bankruptcy courtroom. The senior judge decided that given his caseload and a desire to minimize scheduling conflicts with the district courtroom, it would be best for him to share the bankruptcy courtroom. The bankruptcy judge was receptive to this arrangement.

Although the chief judge reported no problems with this arrangement, he said that he had strong concerns about the notion of sharing courtrooms among active and senior judges in the Western District of Arkansas. He said that his district's experience at its Hot Springs facility cast doubts on the practicality of sharing. This facility has one courtroom and no assigned judge. Four judges—two district, one magistrate, and one bankruptcy—have had proceedings there at the same time. This experience has been unsatisfactory to all involved. The chief judge explained that, if attempts to schedule cases and coordinate the use of one courtroom by multiple, nonresident judges are difficult, the problems would be exacerbated if district judges had to share a courtroom where they were in residence.

The chief judge believes that convenience and efficiency in handling the court's dockets are decidedly reduced in the Hot Springs facility, and other facilities, where courtrooms are shared among multiple, nonresident judges. He believes that courtroom sharing among active or senior judges is not a good idea in his district and should be discouraged.

**Sioux City, Iowa  
(Eighth Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 5 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** According to the senior district judge, in this facility, there are four judges—a chief judge, a senior judge with 10 years or less in senior status, a bankruptcy judge, and a magistrate judge—and three courtrooms, including a district courtroom, a bankruptcy courtroom, and a magistrate courtroom. The senior judge explained that determining the present and future availability of a courtroom is easily done via computer and that he uses any of the three courtrooms when they are not being used by the other three judges. The senior judge went on to say that, on those few occasions when all three courtrooms were being used at the same time, he has used a video conference room in the basement of the facility as a courtroom with no problems.
- **Negative experiences:** The chief judge stated that, first and foremost, the negative impact of courtroom sharing in this facility is minimal. This is due to the cooperation and open communication among all four judges. Any negative impact would tend to be on the "efficient" rather than the "effective" administration of justice. There have been a few times when the chief judge and the senior judge have had trials set for the same week. Most often, one judge was able to hold court in either the bankruptcy or magistrate courtroom. However, there have been occasions where a trial had to be continued because a courtroom was unavailable. Also, in one of

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the chief judge's recent trials, the trial was held in a different courtroom each of the 3 days that the trial lasted. This was a major inconvenience for all involved and proved to be somewhat confusing and distressing to the jury.

The chief judge also mentioned that the space in the bankruptcy courtroom is extremely confined and has only a makeshift jury box. He said that such an atmosphere tends to take away from the dignity of the proceedings. Also, the lack of courtroom space limits the court's ability to do mass criminal trial settings. In addition, attempts to bring judges in from around the state to assist with the increasing criminal docket have been impeded because there is no courtroom in which to hold the trials.

**General comments:** The chief judge did not look on the courtroom-sharing situation in the Sioux City facility as a major problem. However, he said that, at times, the court has not been able to operate as efficiently as it could because of the lack of space. With the ever-increasing caseload, it may become more of a problem in the future.

The senior judge stated that sharing is not the right word for the use of courtrooms at the Sioux City facility. He said that the procedure for using courtrooms has worked well, and that the other judges have been very gracious and helpful. The senior judge also said that, from his point of view, this arrangement has had no negative impact on the efficient and effective administration of justice.

**Salt Lake City, Utah  
(Tenth Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Senior judges with 10 years or less in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 2 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** None reported.
- **Negative experiences:** At this facility, all four of the senior judges have reduced caseloads, but two of the four judges spend a significant amount of time in court, averaging more courtroom time per case than the active judges. Until recently, two of the four senior judges had their own courtrooms, and the remaining two senior judges were sharing the one courtroom that is located on the fourth floor of the building. The sharing arrangement involved the two judges sharing this courtroom on a rotating weekly basis, subject to changes that the judges worked out between themselves. In some instances, the two judges needed the courtroom at the same time, which required one of the two judges to find a courtroom that was vacant elsewhere in the building.

This situation has become more difficult to manage because, recently, one of the senior judges who had his own courtroom had to make it available for an active judge who is expected to come on board within the next 3 to 6 months. This senior judge has been relocated and now shares the fourth floor courtroom with the two other senior judges. Thus, at the present time, three of the facility's four senior judges are sharing courtrooms. The court is now faced with the difficulty of allocating time for the use of the fourth floor courtroom among three senior judges or coming up with another alternative.

One alternative involves one of the three senior judges using the first floor courtroom that is still assigned to the fourth senior judge, who has retained his own courtroom. To get to this courtroom, the senior judge who needs a courtroom must walk the length of the building—about one-half of a city block—and take the secured elevator, which is also used for prisoner transport, to the first floor. Then, the senior judge who needs a courtroom has to either walk through the chambers of

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the fourth senior judge or use a public corridor and enter the first floor courtroom through the attorney's entrance, an option that creates security issues. Clearly, for the judge to have to go such a long distance from his chambers on the fourth floor to get to a first floor courtroom presents a very awkward and inefficient situation. For example, the judge may want to call counsel into chambers in the middle of a jury trial for a brief conference, which is not an uncommon occurrence. If he is using the first floor courtroom, the judge would either have to take counsel all the way back up to his chambers on the fourth floor, leaving the jury waiting, or use the fourth senior judge's chambers, thus imposing on one of his colleagues.

Another reported difficulty that this facility experienced involved the fourth floor courtroom, which was the facility's only electronic courtroom. In addition to the senior judges who share this courtroom, active judges also occasionally needed to use the fourth floor courtroom. At the present time, a project is under way to provide electronic evidence presentation capabilities in the facility's remaining courtrooms. This project is expected to be completed in May 2002 and will eliminate the pressure on the use of the fourth floor courtroom.

Occasionally, one of the senior judges sharing the fourth floor courtroom may be involved in an extended and complex trial that takes several weeks to complete. Because one of the other two senior judges sharing the courtroom may need it during his week, the senior judge with the extended trial will have to prevail upon the attorneys to move their exhibits, equipment, and trial materials from one courtroom to another on a different floor. When a complex civil trial involves numerous boxes of documents, devices, equipment, or other nonpaper evidence, the need to move these items can impose a significant burden on the litigants. Additional administrative burdens, such as scheduling and notifying litigants, counsel, and the public of courtroom changes, also occur when proceedings are moved from one courtroom to another.

**General comments:** The chief judge is concerned that courtroom sharing inevitably affects courtroom availability and that judges will be placed in a difficult position when the availability of a courtroom has the potential to affect the administration of justice. He cited two examples of such difficulty—one related to motion hearings and the other to the scheduling of trials.

- **Motion hearings.** Judges have the discretion to grant or deny motions to hear oral argument on critical matters relating to a case before them. If they opt to grant the motion for oral argument, they also have the discretion to determine the length of oral argument. To the extent that courtroom sharing imposes constraints on the courtroom time a judge has available to him or her, the administration of justice may be compromised if such constraints are weighed among the factors for denying oral argument or restricting the amount of time the litigants seek to argue their case.
- **Scheduling trials.** The Constitution guarantees a right to trial, but a judge can exercise some influence over the parties' decision to opt for a trial. He or she may urge them to engage in settlement discussions as an alternative to trial. Alternatively, he or she may indicate a strong willingness to accept a plea bargain with the caveat that opting for trial may entail the full weight of the sentencing guidelines if the defendant is convicted on all counts. One factor that has the clear potential to affect how a judge approaches the issue of whether to proceed to trial is courtroom availability. A judge who has unlimited access to a courtroom is likely to be less inclined, other factors being equal, to avoid scheduling a trial than another judge whose courtroom access is limited and whose courtroom calendar already may be crowded with previously scheduled proceedings.

In both instances, the chief judge expressed a strong view that courtroom availability should not be a factor in the decision whether to schedule oral argument or whether to proceed with a trial if the judge believes that the substantive elements of the issue or the case at hand otherwise

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demand it. To the extent that courtroom availability does play into such decisions, serious questions are raised about the effective administration of justice.

**Jacksonville, Florida  
(Eleventh Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Active judges.
- Senior judges with 10 years or less in senior status.
- Senior judges with more than 10 years in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** Over 10 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** None reported.
- **Negative experiences:** Judges prefer having their own courtrooms because resources, such as books and files, can be kept in the courtroom and are always there when needed. A shared courtroom may not be adjacent to chambers and, thus, may restrict easy access to law clerks and equipment for printing transcripts.

Courtroom sharing can also affect the ease with which a courtroom's equipment, such as that used for real-time reporting, can be set up. In addition, with courtroom sharing, it may not be possible to identify and provide advance notice of the specific courtroom where the proceeding is to take place. Without this information, lawyers and the public will be confused about where to go to attend the appropriate proceeding.

**General comments:** All the judges share out of necessity and believe it affects their efficiency and the efficiency of their staffs. They would prefer having their own courtrooms. Also, although the court has not encountered any negative impact on the efficient and effective administration of justice, judges cited speedy trial issues as an area that could pose problems if courtrooms are not readily available.

**Orlando, Florida  
(Eleventh Circuit)**

**Types of district judges sharing courtrooms on a regular basis:**

- Active judges.
- Senior judges with 10 years or less in senior status.
- Senior judges with more than 10 years in senior status.

**Approximate length of time courtroom sharing has been ongoing at the facility:** 1.5 years.

**Reported experiences of active and/or senior judges at facilities where courtroom sharing was occurring:**

- **Positive experiences:** None reported.
- **Negative experiences:** In a court with a heavy caseload and active trial calendars, the logistics of scheduling can affect the dispensing of justice. For instance, if the courtroom scheduling process gives priority to the district judge with more time in active status, the judge with less time in active status has to wait to set cases or conduct hearings.

In addition, it is very difficult to coordinate courtroom use with six judges and four courtrooms, especially when lengthy trials and frequent trials are involved. When scheduling a single courtroom for more than one proceeding, the court staff must be sure that the length of time for one proceeding does not interfere with the scheduling of another proceeding. This is often

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impossible because proceedings often take longer than counsel estimate, which delays the other proceedings of all of the judges in a courtroom-sharing situation.

Another complicating factor is courtroom size. When possible, courtroom size must be taken into consideration when courtrooms are scheduled because the size of a courtroom may be inappropriate for the proceeding. The consequence of courtroom sharing is that multiparty cases, which may be best scheduled for a large courtroom, sometimes have to be convened in a small courtroom because another judge may already be using the larger courtroom.

Hearings and trials are sometimes delayed until a courtroom can be located.

Difficulty in locating courtroom space can result in hearings not being scheduled and cases decided on written submissions (i.e., motions) instead of valuable oral arguments.

Books and furniture for one judge must be moved to a different courtroom so that the materials used to make rulings are readily available for the judge when he or she needs them to make rulings.

**General comments:** Renovations for one of the four district courtrooms have been planned and will cause further problems with courtroom sharing. The Orlando facility will be left with three rather than the current four district courtrooms for six active and senior judges. Courtroom sharing will not work in facilities undergoing renovation.

Theoretically, and in an ideal world, courtroom sharing should work. However, in the real world, it leads to delays of justice, interference with managing the caseload, and the erosion of collegiality in a district that has frequent hearings and trials. In such a district, the number and length of trials cannot be controlled, and the number, length, and timing of hearings cannot be predicted. When all the judges in a division carry a substantial caseload and have frequent trials, courtroom sharing becomes a nightmare and defeats the purpose of the court, which is to dispense justice without delay.

The court provided an example of the cascading effects of trying to deal with courtroom needs. A district judge was recently moved to a magistrate judge's courtroom, which left the magistrate judge without a courtroom. There were plans to renovate the facility's grand jury suite for magistrate judges to use as an alternate courtroom in the event that a district judge needed to use the magistrate judge's courtroom. However, after the grand jury suite has been renovated, space will be needed for the grand jury to meet.

# Appendix IV: Comments from the Administrative Office of the U.S. Courts

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



LEONIDAS RALPH MECHAM  
Director

## ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

March 5, 2002

Mr. Bernard L. Ungar  
Director, Physical Infrastructure  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Ungar:

The Administrative Office appreciates the opportunity to comment on the draft report entitled *Courtroom Construction: Information on Courtroom Sharing*. Administrative Office staff met with representatives from your office on February 27, 2002, and based on discussions with them, we understand that the General Accounting Office (GAO) is incorporating suggested technical corrections. We would like to make a few additional points regarding the report.

First of all, GAO has performed a valuable service in collecting and reporting information from senior judges who have experience with sharing courtrooms, and in describing an array of problems caused when sharing is required as well as a few particular situations where it has been found to work. This information confirms the judiciary's position that courtroom sharing is feasible only in limited circumstances. Mindful of the importance of a readily-accessible courtroom to the efficient administration of justice, nevertheless, the judiciary has demonstrated its commitment to identifying opportunities for courtroom sharing by senior district judges where it is feasible. As reflected in GAO's report, in March 1997, the United States Judicial Conference issued a policy on courtroom sharing with recommended planning assumptions for use by the circuit judicial councils in determining courtroom needs when planning courthouse projects. This policy recognizes that some senior district judges may not draw a caseload requiring substantial use of a courtroom. Also noted in GAO's report, each circuit judicial council has endorsed this concept and developed related policies for its implementation in planning new facilities.

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A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

See p. 18.

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See comment 1.

See comment 2.

GAO's report confirms the findings of Ernst & Young<sup>1</sup> in May 2000, which is that these policies have resulted in a 20 percent reduction in the number of courtrooms planned for new facilities. GAO reports that courtroom sharing is planned in more than half of the projects involving senior judges. Some of the other projects are listed as having no planned courtroom sharing but, in fact, if visiting and rotating judges had been counted by GAO, these facilities also would be categorized as planning to include courtroom sharing. Other projects show no planned courtroom sharing for the simple reason that they will not have senior judges meeting the criteria for sharing within the 10-year planning horizon. Since courthouses are used well beyond this horizon, courtroom assignments will, of course, change over time. Last year, the Administrative Office reported to Congress that the change in the judiciary's courtroom-planning guidelines would result in an estimated savings of \$84.2 million over a three-year period.<sup>2</sup> This substantial cost-avoidance clearly demonstrates the judiciary's commitment to reducing the cost of courthouse construction without impairing the judiciary's mission to administer justice.

See comment 3.

The GAO report accurately describes some of the judiciary's courtroom-planning assumptions and recognizes the inherent uncertainties of long-range planning. We were disappointed that the report did not comment on the validity of the planning assumptions, which are derived from historical data and reflect the best estimates available. As part of a comprehensive assessment of the judiciary's space and facilities program, the judiciary asked the consulting firm of Ernst and Young to evaluate the planning assumptions. Ernst & Young concluded that, "based on our analysis of data...these assumptions appear to be generally accurate."<sup>3</sup>

See comment 4.

GAO's discussion of the uncertainties in planning may unintentionally leave some readers with the impression that the precise timing of events is important, such as predicting exactly when an active judge will take senior status (most, but not all do so within the first year of eligibility) or when a judgeship vacancy will be filled. In fact, the timing of these events is immaterial in the long term. For example, GAO points out that Congress does not pass judgeship bills as frequently as the judiciary identifies new

<sup>1</sup>Ernst & Young LLP, *Independent Assessment of the Judiciary's Space and Facilities Program*, May 2000, at 1-7.

<sup>2</sup>Administrative Office of the United States Courts, *Report to Congress on the Optimal Utilization of Judicial Resources*, February 2001, at 14.

<sup>3</sup>Ernst & Young LLP, *supra*, at IV-10.

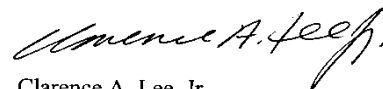
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judgeship requirements. The judiciary's planning process recognizes that there is a delay in the congressional authorization process by assuming that new judgeships will be approved three years after they are needed. Even if Congress waits longer than this to provide a particular judgeship, whenever the position is ultimately created – whether it is in year two or year five – it is necessary for the requisite facilities to be available.

The key purpose of a long-range planning process is to ensure that needed space will be constructed in new facilities. Ernst & Young concluded that “the judiciary has developed a logical process to assess its long-term housing needs...[that is] providing a reasonably accurate assessment of judges and staff, and associated facilities needs.”<sup>4</sup> Also, the judiciary's long-range facility planning process was nationally recognized when the Administrative Office received the General Services Administration's Annual Achievement Award for Real Property Innovation in 1998.

Notwithstanding these achievements, we will continue to refine and improve the planning process and construct only the number of courtrooms needed. We appreciate the effort GAO has put into this report and hope that the findings will contribute to a better understanding of both the difficulties of courtroom sharing and the judiciary's efforts to implement courtroom sharing where it is cost-effective to do so.

Sincerely,



Clarence A. Lee, Jr.  
Associate Director

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<sup>4</sup>Ernst & Young LLP, *supra*, at I-6.

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The following are GAO's comments on AOC's letter dated March 5, 2002.

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## GAO Comments

1. AOC said that the report confirmed the May 2000 Ernst and Young findings that courtroom-sharing policies resulted in a 20 percent reduction in the number of courtrooms planned for new facilities. Our report does state that 19 courthouse projects expect to have 113 active judges, 90 senior judges, and 158 courtrooms. This equates to about 5 judges for every 4 courtrooms, which would indicate a 20 percent reduction. In the 19 projects, the 44 senior judges expected to share courtrooms will have more than 10 years in senior status and will range in age from 75 to 98 years old at the end of the planning time frame. The 20 percent reduction would appear to be reasonable if it is assumed that, without the current courtroom sharing policies, the judiciary would have planned construction of new trial courtrooms for these senior judges.
2. AOC mentioned that some future construction projects listed as having no plans for courtroom sharing would have been categorized as having courtroom sharing if we had counted visiting and rotating judges. Our analysis focused on identifying active and senior district judges who were expected to be permanently assigned to the 33 future courthouse construction projects for which the judiciary prepared courtroom needs assessment studies. We also focused on identifying senior judges who were expected to share courtrooms on a regular basis at these projects. We did not include visiting and rotating judges in our analysis because their visits are temporary in nature and usually for short periods of time. We clarified our scope and methodology to reflect this point.
3. AOC expressed disappointment that we did not comment on the validity of the judiciary's courtroom planning assumptions. Our work was not designed to perform a detailed assessment of these assumptions, and, as such, we are not in a position to comment on their validity.
4. AOC pointed out that our discussion of the uncertainties associated with the planning assumptions may unintentionally leave some readers with the impression that the precise timing of events is important, such as predicting exactly when an active judge will take senior status or when a judgeship vacancy will be filled. AOC goes on to say that the timing of these events is immaterial in the long term. As mentioned in the report, the timing of events will have a direct impact on the extent

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of and when courtroom sharing will occur during the planning period. Our discussion of the planning assumptions was intended to show that there is always some uncertainty associated with any assumptions used in a planning process and that the expected outcomes will be dependent on how well the assumptions materialize.

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