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# FEDERAL COURTHOUSE CONSTRUCTION

# Nationwide Space and Cost Overages Also Apply to Miami Project

Statement of Mark L. Goldstein, Director
Physical Infrastructures

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# Highlights

Highlights of GAO-13-461T, a testimony before Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

March 8, 2013

# FEDERAL COURTHOUSE CONSTRUCTION

## Nationwide Space and Cost Overages Also Apply to Miami Project

## Why GAO Did This Study

From 2000 to 2010, GSA and the judiciary coordinated to construct 33 courthouses, including the Ferguson Courthouse that was completed in 2008 at a cost of approximately $163 million. However, rising costs and other budget priorities slowed the overall construction program.

This statement discusses the Ferguson Courthouse and the other 32 federal courthouses completed from 2000 to March 2010, particularly (1) whether the courthouses contain extra space and any costs related to that space, (2) how the actual sizes of the courthouses compare with the congressionally authorized sizes, (3) how courthouses space based on the judiciary's estimates compares with the actual number of judges, and (4) whether the level of courtroom sharing supported by data from the judiciary's study could have changed the amount of space needed in these courthouses. This testimony is primarily based on GAO's June 2010 report on federal courthouse construction. For the 2010 report, GAO analyzed documents related to the 33 courthouses completed from 2000 to 2010.

## What GAO Recommends

GAO recommended that GSA establish controls to help ensure courthouses remain within their authorized size and that the judiciary should improve its estimation of future judgeships and expand courtroom sharing policies to reflect actual scheduling and use of district courtrooms. GSA and the judiciary agreed to implement these recommendations

View GAO-13-461T. For more information, contact Mark Goldstein at (202) 512-2834 or goldsteinm@gao.gov.

## What GAO Found

The Wilkie D. Ferguson, Jr. U.S. Courthouse in Miami, Florida, along with the other 32 federal courthouses completed from 2000 to March 2100 include 3.56 million square feet of extra space consisting of space that was constructed (1) above the congressionally authorized size, (2) because of overestimating the number of judges the courthouses would have, and (3) without planning for courtroom sharing among judges. Overall, this extra space represents about 9 average-sized courthouses. The estimated cost to construct this extra space was $835 million in 2010 dollars, and the annual cost to rent, operate, and maintain it is $51 million. The Ferguson Courthouse specifically included approximately 238,000 extra square feet of space, which GAO estimated increased the construction cost by $48.5 million (in constant 2010 dollars) and an additional $3.5 million annually.

The Ferguson Courthouse, along with 26 others completed since 2000, exceed their congressionally authorized size by a total of about 1.7-million square feet. Specifically, the Ferguson Courthouse exceeds its authorized size by 97,477 square feet because of judiciary and common spaces that are larger than the congressionally authorized plan. For example, the 16 courtrooms in the Ferguson Courthouse exceed judiciary standards by 7 to 17 percent. The General Services Administration (GSA) did not inform its oversight committees that the courthouses were larger than authorized and did not attribute any of the cost increase to this difference. However, there is no statutory requirement for GSA to notify congressional authorizing or appropriations committees if the size exceeds the congressionally authorized square footage.

The Ferguson Courthouse, along with 22 other courthouses have fewer judges than was estimated. The federal judiciary (judiciary) overestimated the number of judges that would be located in these courthouses, causing them to be approximately 887,000 square feet larger than necessary resulting in unnecessary construction and operating costs. In the Ferguson Courthouse, the judiciary estimated in 2000 that it would have 33 judges in Miami by 2010; it had 27 at the time of GAO's 2010 report. This 2000 estimate resulted in 57,000 extra square feet of space, including space for 2 courtrooms that were never finished.

Using the judiciary's data, GAO designed a courtroom sharing model, which shows that there is enough unscheduled courtroom time for substantial courtroom sharing. Sharing could have reduced the number of courtrooms needed by 126 courtrooms in 27 of the courthouses built from 2000 to 2010—about 40 percent of the total courtrooms constructed—covering about 946,000 square feet. In Miami, GAO found that courtroom sharing would have allowed a reduction of 12 courtrooms covering 83,000 square feet. GAO's 2010 findings, raise questions about whether the Ferguson Building needed to be constructed. Based on the number of judges located in Miami, the judiciary would need only 17 courtrooms based on GAO's sharing model, and there were already 29 courtrooms in the judiciary's existing buildings.

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Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee:

I am pleased to be here to discuss our work on federal courthouse construction and how it specifically relates to Miami, Florida. Since the early 1990s, the General Services Administration (GSA) and the federal judiciary (judiciary) have undertaken a multibillion-dollar courthouse construction initiative that to date has resulted in 78 new courthouses or annexes,[1] with 16 additional projects in various stages of development. However, rising costs and other budget priorities have slowed the construction program. This testimony discusses the Wilkie D. Ferguson, Jr., U.S. Courthouse in Miami (the Ferguson Courthouse) among the 33 federal courthouses completed from 2000 to March 2010, particularly (1) whether these courthouses contain extra space and any costs related to that space, (2) how the actual sizes of the courthouses compare with the congressionally authorized sizes, (3) how courthouse space based on the judiciary's 10-year estimates of the number of judges compares with the actual number of judges, and (4) whether the level of courtroom sharing supported by data from the judiciary's 2008 study of district courtroom sharing could have changed the amount of space needed in these courthouses.

This testimony is primarily based on our June 2010 report on federal courthouse construction.[2] For our June 2010 report, we analyzed planning, construction, and budget documents associated with all 33 federal courthouses or major annexes completed from 2000 through March 2010. In addition, we selected 7 of the federal courthouses in our scope to analyze more closely as case studies, including the Ferguson

[1] An annex is an addition to an existing building. For the purpose of this report, projects that include construction of an annex are considered new courthouse projects.

[2] GAO, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417 (Washington, D.C.: June 21, 2010). We also updated the status of the courthouse construction initiative, Miami courthouses, and related GAO recommendations.

Courthouse.[3] We conducted that performance audit from September 2008 to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. More detail on our scope and methodology is available in the full report.

## Background

The Administrative Office of the U.S. Courts is an organization within the judicial branch that serves as the central support entity for federal courts, and is supervised by the Judicial Conference of the United States. The Judicial Conference serves as the judiciary's principal policy-making body and recommends national policies and legislation, including recommending additional judgeships to Congress. *The U.S. Courts Design Guide* (*Design Guide*) specifies the judiciary's criteria for designing new court facilities and sets the space and design standards for court-related elements of courthouse construction. In 1993, the judiciary also developed a space planning program called AnyCourt to determine the amount of court-related space the judiciary will request for a new courthouse based on *Design Guide* standards and estimated staffing levels. GSA and the judiciary plan new federal courthouses based on the judiciary's estimated 10-year space requirements. For courthouses that are selected for construction, GSA typically submits two detailed project descriptions, or prospectuses, for congressional authorization: one for site and design and the other for construction. Prospectuses are submitted to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for authorization.[4] Once

[3] The seven case study courthouses include the Bryant U.S. Courthouse Annex in Washington, D.C.; the Coyle U.S. Courthouse in Fresno, California; the D'Amato U.S. Courthouse in Central Islip, New York; the DeConcini U.S. Courthouse in Tucson, Arizona; the Eagleton U.S. Courthouse in St. Louis, Missouri; the Ferguson U.S. Courthouse in Miami, Florida; and the Limbaugh, Sr., U.S. Courthouse in Cape Girardeau, Missouri.

[4] For purposes of this testimony, we refer to these committees as "authorizing committees" when discussing the submission of the prospectuses and providing additional information relating to prospectuses to these committees. Furthermore, for purposes of this testimony, we refer to approval of these projects by these committees as "congressional authorization." See 40 U.S.C. § 3307.

authorized, Congress can appropriate funds for courthouse projects, often at both the design and construction phases. GSA manages the construction contract and oversees the work of the construction contractor. After courthouses are occupied, GSA charges the judiciary and any other tenants rent for the occupied space and for their respective share of common areas.

In Miami, Florida, the judiciary is spread across several courthouses with a total of 43 courtrooms. Figure 1 illustrates the location and orientation of these buildings in downtown Miami.

- Wilkie D. Ferguson, Jr. U.S. Courthouse. Constructed in 2008 at a cost of approximately $163 million, the courthouse has 14 finished courtrooms and unfinished space for 2 additional courtrooms that were never completed.

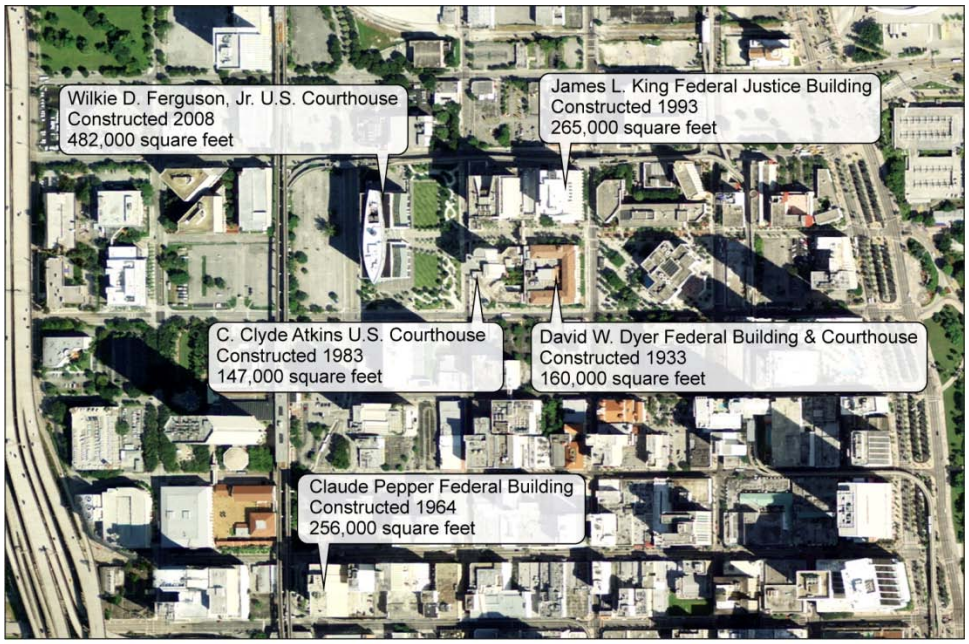
- James L. King Federal Justice Building. Constructed in 1993, the courthouse has 7 courtrooms and houses elements of the district and appellate courts along with other judiciary tenants.

- C. Clyde Atkins U.S. Courthouse. Constructed in 1983, the courthouse has 9 courtrooms.

- Claude Pepper Federal Building. Constructed in 1964, the courthouse has 3 courtrooms and houses other non-court-related federal tenants.

- David W. Dyer Federal Building and Courthouse. Constructed in 1933, the courthouse has 10 courtrooms and has been vacant since 2008.

**Figure 1: Location of Federal Judiciary Buildings in Downtown Miami, Florida**




Sources: USGS and GAO.

## Extra Space in Courthouses Costs an Estimated $835 Million in Constant 2010 Dollars to Construct and Costs $51 Million Annually to Rent, Operate, and Maintain

Thirty-two of the 33 federal courthouses completed since 2000 include extra space totaling 3.56 million square feet. Overall, this extra space amounts to about 9 average-sized courthouses. The estimated cost to construct this extra space, in 2010 dollars, is $835 million.[5] The extra space and its causes are as follows:

- 1.7-million square feet because of construction in excess of congressional authorizations;
- 887,000 square feet because the judiciary overestimated the number of judges the courthouses would have in 10 years; and
- 946,000 square feet because district and magistrate judges do not share courtrooms.[6]

In addition to higher construction costs, the extra square footage in these 32 courthouses results in an additional $51 million in annual rent, operations, and maintenance costs. Based on our analysis of the judiciary's rent payments to GSA for these courthouses at fiscal-year-2009 rental rates, the extra courtrooms and other judiciary space increase the judiciary's annual rent payments by $40 million. In addition, we estimated that the extra space cost $11 million in fiscal year 2009 to operate and maintain.[7] Typically, operations and maintenance costs represent from 60 to 85 percent of the costs of a facility over its lifetime, while design and construction costs represent about 5 to 10 percent.[8] Therefore, the ongoing operations and maintenance costs for the extra square footage are likely to total considerably more in the long run than the construction costs for this extra space.

[5] The estimated construction cost of the extra space was $640 million in nominal (unadjusted) dollars. We adjusted for inflation, to constant 2010 dollars, using a price index for construction costs from the Bureau of Economic Analysis and Global Insight.

[6] Note: these numbers do not add to 3.56 million due to rounding.

[7] We did not attempt to calculate the rent attributable to the extra square footage due to exceeding congressionally authorized gross square footage because some of this extra square footage is for tenants other than the judiciary or occurs in building common or other space, the costs of which are not directly passed on to the judiciary in rent. We therefore calculated the annual operations and maintenance costs for all extra space due to exceeding congressionally authorized gross square footage and for the extra building common and other space due to overestimating the number of judges and judges not sharing courtrooms.

[8] The remaining lifetime costs include land acquisition, planning, renewal/revitalizations, and disposal.

The Ferguson Courthouse is an example that includes all three causes of extra space. It contains approximately 238,000 extra square feet of space, which we estimated increased the construction costs by $48.5 million dollars in constant 2010 dollars and costs an additional $3.5 million annually to rent, operate, and maintain. In addition to building the Ferguson Courthouse larger than necessary, the judiciary has abandoned the historic Dyer Courthouse, which has remained vacant since 2008, with its 10 courtrooms (see fig. 2). Considering the extent of the extra space built, it is unclear if the Ferguson Courthouse would have been necessary had the judiciary retained use of the Dyer Courthouse.

**Figure 2: The Center Courtroom Entrance and Interior in the Dyer U.S. Courthouse**

Source: GAO.

In response to our June 2010 report, GSA cited serious concerns with our methodology for determining the costs associated with the extra space. However, our methodology applied GSA's policies and used data directly from original documents and sources, and our cost estimation methodology balanced higher and lower cost construction space to create a conservative estimate of the costs associated with the extra space in courthouses. We believe that our findings were presented in a fair and accurate way and illustrated how unnecessary construction creates both extra construction and ongoing costs that could affect future courthouse projects if they are similarly planned and constructed.

## Most Courthouses Exceeded the Congressionally Authorized Size because of a Lack of GSA Oversight

According to GSA officials, controlling the gross square footage of a courthouse is the best way to control construction costs. However, as we reported in June 2010, 27 of the 33 federal courthouses constructed since 2000 exceeded their congressionally authorized size,[9] resulting in about 1.7 million more square feet than authorized. Fifteen of the 33 courthouses exceeded their congressionally authorized size by 10 percent or more, including the Ferguson Courthouse. Congress authorized 508,323 gross square feet for the Ferguson Courthouse, but the actual size of the building is 605,800 gross square feet—97,477 square feet above the authorized size.

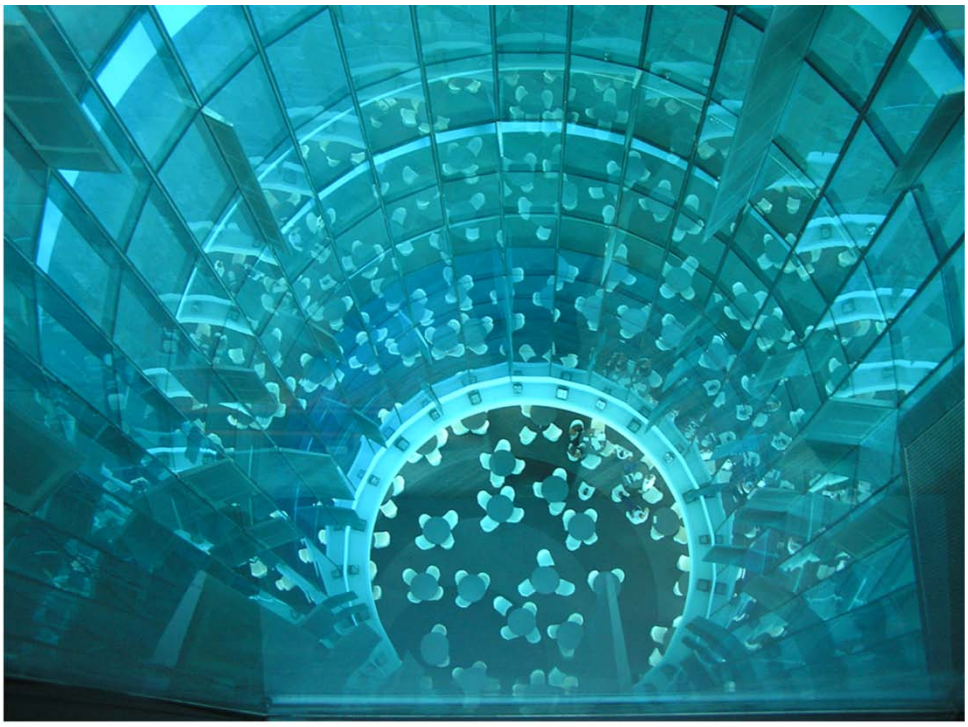
Our 2010 report found that space constructed above congressionally authorized levels was primarily the result of extra judiciary and common space. For example, the Ferguson Courthouse has 47,000 more square feet of judiciary space—such as courtrooms and offices—and 44,443 extra square feet of common space—such as lobbies and mechanical spaces—than in the congressionally authorized plan. Among other things, the 14 regular district courtrooms built in this courthouse are each about 2,800 square feet, 17 percent larger than the *Design Guide* standard. The 2 special proceedings courtrooms on the 13th floor are 3,200 square feet, or 7 percent larger than the *Design Guide* standard. GSA did not explain to its oversight committees that the courthouses were larger than authorized and did not attribute any of the cost increase to this difference. However, there is no statutory requirement for GSA to notify congressional authorizing or appropriations committees if the size exceeds the congressionally authorized square footage.

We also found in 2010 that GSA lacked sufficient controls to ensure that the 33 courthouses were constructed within the congressionally authorized gross square footage. Although GSA had established a policy for consistently measuring gross square footage by 2000, it had not ensured that its policy was understood and followed. According to GSA officials, until 2007, the agency did not focus on ensuring that the authorized gross square footage was met in the design and construction of courthouses.

[9] For all 33 courthouses in our scope, we used the congressionally authorized gross square footage for the construction of the courthouse. We compared the authorized gross square footage, including inside parking, with the actual gross square footage, including inside parking.

According to a GSA official, courthouses were designed, at times, to meet various design goals without an attempt to limit the size of the building's common or other space to the square footage allotted in the plans provided to congressional authorizing committees. Thus, spaces may have become larger to serve a particular design goal. Another element of GSA's lack of oversight in this area was that GSA relied on the architect to validate that the courthouse's design was within the authorized gross square footage without ensuring that the architect followed GSA's policies for how to measure certain commonly included spaces, such as atriums. Although GSA officials emphasized that open space for atriums would not cost as much as space completely built out with floors, these officials also agreed that there are costs associated with constructing and operating atrium space. Figure 3 illustrates the atrium in the Ferguson Courthouse.

**Figure 3: Atrium in the Ferguson Courthouse in Miami, Florida**



Source: GAO.

## Estimated Space Needs Exceeded Actual Space Needs, Resulting in Courthouses That Were Larger than Necessary

Of the 33 courthouses built since 2000, 28 have reached or passed their 10-year planning period and 23 of those 28 courthouses have fewer judges than estimated, including the Ferguson Courthouse. As we reported in June 2010, for these 28 courthouses, the judiciary has 119 fewer judges than the 461 it estimated it would have, resulting in approximately 887,000 extra square feet. In the Ferguson Courthouse, the judiciary estimated in 2000 that it would have 33 judges in Miami by 2010; it had 27 at the time of our report. This has resulted in 57,000 extra square feet of space, including space for 2 courtrooms that were never finished (see fig. 4).

**Figure 4: One of Two Unfinished Courtrooms in the Ferguson Courthouse, as of 2009**

Source: GAO.

We identified a variety of factors that led the judiciary to overestimate the number of judges it would have after 10 years, including:

- *Inaccurate caseload growth projections*: In a 1993 report, we questioned the reliability of the caseload projection process the judiciary used.[10] For our 2010 report, we were not able to determine the degree to which inaccurate caseload projections contributed to inaccurate judge estimates because the judiciary did not retain the historic caseload projections used in planning the courthouses. Judiciary officials at three of the courthouses we visited indicated that the estimates used for courthouse planning had inadvertently overstated the growth in district case filings and, hence, the need for additional judges.

- *Challenges predicting how many judges will be located in a courthouse in 10 years*: It is difficult to predict when a judge will take a reduced caseload through senior status or leave the bench entirely. It is also difficult to project how many requested judgeships will be authorized, how many vacancies will be filled, and where new judges would be seated.

The judiciary pointed out that some extra space in courthouses exists because the judiciary did not receive all the new judge authorizations it requested. We recognize that some of the extra courtrooms reflect the historic trend that the judiciary has not received all the new authorized judges it has requested.

[10]GAO, *Federal Judiciary Space: Long-Range Planning Process Needs Revision*, GAO/GGD-93-132 (Washington, D.C.: Sept. 28, 1993).

## Low Levels of Use Show That Judges Could Share Courtrooms, Reducing the Need for Future Courtrooms by More Than One-Third

Our June 2010 report concluded that courtroom sharing could have reduced the number of courtrooms needed in 27 of the 33 district courthouses built since 2000 by a total of 126 courtrooms—about 40 percent of the total number of district and magistrate courtrooms constructed since 2000.[11] In total, not building these courtrooms and associated other spaces would have reduced construction by approximately 946,000 square feet. GSA officials stated that courtroom space is among the most expensive of courthouse spaces to construct and that the *Design Guide's* criteria are in part meant to help ensure that courthouses are built to be cost-effective as well as functional. In Miami, we found that courtroom sharing would have allowed a reduction of 12 courtrooms covering 83,000 square feet. This raises questions about whether the Ferguson Building needed to be constructed. Based on the number of judges located in Miami, the judiciary would need only 17 courtrooms based on our sharing model, and there were already 29 courtrooms existing in the King, Atkins, Pepper, and Dyer buildings.

We also found that most courthouses constructed since 2000 have enough courtrooms for all of the district and magistrate judges to have their own courtrooms. According to the judiciary's data, courtrooms are used for case-related proceedings only a quarter of the available time or less, on average.[12] Using the judiciary's data, we applied generally accepted modeling techniques to develop a computer model for sharing courtrooms. The model ensured sufficient courtroom time for all case-related activities; all time allotted to noncase-related activities, such as preparation time, ceremonies, and educational purposes; and all events cancelled or postponed within a week of the event. During our interviews and discussions with experts on courtroom sharing, some judges remained skeptical of sharing and raised potential challenges to courtroom sharing, but other judges with sharing experience said they had overcome those challenges when necessary without postponing trials. The primary concern judges cited was the possibility that all courtrooms could be in use by other judges and a courtroom might not be

[11] Our analysis indicated that sharing would not reduce the number of courtrooms in six courthouses for the following reasons: four already had sharing between judges; one had only one district and one magistrate judge; and one courthouse had only bankruptcy judges and was out of our scope for district and magistrate sharing opportunities.

[12] Federal Judicial Center, *The Use of Courtrooms in U.S. District Courts: A Report to the Judicial Conference Committee on Court Administration & Case Management* (Washington, D.C., July 18, 2008).

available. To address this concern, we programmed our model to provide more courtroom time than necessary to conduct court business. Another concern stated was that sharing courtrooms between district and magistrate judges was difficult because of differences in responsibilities and courtroom size. To address this concern, our model separately analyzed district and magistrate judges. After addressing judge concerns in these ways, the model showed the following courtroom sharing possibilities: 3 district judges could share 2 courtrooms, 3 senior judges could share 1 courtroom, and 2 magistrate judges could share 1 courtroom with some courtroom time remaining available.

In 2008 and 2009, the Judicial Conference adopted sharing policies for future courthouses under which senior district and magistrate judges will share courtrooms at a rate of two judges per courtroom plus one additional courtroom for courthouses with more than two magistrate judges. Additionally, the conference recognized the greater efficiencies available in courthouses with many courtrooms and recommended, but did not mandate, that in courthouses with more than 10 district judges, district judges also share. Our model's application of the judiciary's data shows that more sharing opportunities are available.

The judiciary stated that at the time the 33 courthouses we reviewed were planned, the judiciary's policy was for judges not to share courtrooms and that it would be more appropriate for us to apply that policy. Our congressional requesters specifically asked that we analyze how a courtroom sharing policy could have changed the amount of space needed in these courthouses. The judiciary also raised concerns with the assumptions and methodology used in developing the courtroom sharing model. Our model provides one option for developing a sharing policy based on actual time during which courtrooms are scheduled and used.

## Prior Recommendations

Our June 2010 report included recommendations that the Administrator of GSA take the following actions:

- Establish sufficient internal control activities to ensure that regional GSA officials understand and follow GSA's space measurement policies throughout the planning and construction of courthouses. These control activities should allow for accurate comparisons of the size of a planned courthouse with the congressionally-authorized gross square footage throughout the design and construction process.

- Report to congressional authorizing committees when the design of a courthouse exceeds the authorized size by more than 10 percent, including the reasons for the increase in size.

GSA and the judiciary agreed with one of our recommendations and expressed concerns with our methodology and key findings. GSA concurred with our recommendation to notify the appropriate congressional committees when the square footage increase exceeds the maximum identified in the prospectus by 10 percent or more. GSA did not concur with our recommendation to establish internal controls to ensure that regional GSA officials understand and follow GSA's space measurement policies throughout the planning and construction of courthouses, stating that their current controls and oversight were sufficient. Currently these recommendations remain unimplemented as there have not been any courthouses planned and completed since the recommendations were made.

We also recommended that the Director of the Administrative Office of the U.S. Courts, on behalf of the Judicial Conference of the United States, take the following three actions:

- Retain caseload projections for at least 10 years for use in analyzing their accuracy and incorporate additional factors into the judiciary's 10-year judge estimates, such as past trends in obtaining judgeships.

- Expand nationwide courtroom sharing policies to more fully reflect the actual scheduling and use of district courtrooms.

- Distribute information to judges on positive practices judges have used to overcome challenges to courtroom sharing.

The judiciary concurred with our recommendation to expand sharing policies based on a thorough and considered analysis of the data but raised concerns related to the applicability of our model as guidance for the judiciary's system. The judiciary did not comment directly on its plans to retain caseload projections, but stated that it would continue to look for ways to improve its planning methodologies. Finally the judiciary did not provide comment on its intent to distribute information on the positive practices judges have used to overcome challenges to courtroom sharing. These recommendations also remain unimplemented at the current time.

Chairman Mica, Ranking Member Connolly, and Members of the Subcommittee, this concludes our testimony. We are pleased to answer any questions you might have.

## Contact Information

For further information on this testimony, please contact Mark L. Goldstein, (202) 512-2834 or by e-mail at goldsteinm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Keith Cunningham (Assistant Director), Melissa Bodeau, and George Depaoli.

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