

**FJC Courtroom Use Study
Final Report Technical Appendices**

Technical Appendix Eight

The Proposed Study Design

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Design for the Courtroom Use Study

In response to the Court Administration and Case Management (CACM) Committee's request for a study of courtroom use, we prepared an outline of the principal components of our proposed study design. We gave this document to the Committee's Subcommittee on Courtroom Use in March 2006. We gave the same document to the Government Accountability Office's Office of Physical Infrastructure Issues (GAO) in April 2006 and to the full CACM Committee in June 2006.

This appendix provides that study design. We referred to the design as preliminary when we drafted the document for presentation to the Subcommittee on Courtroom Use, but no changes were made before or after we gave the document to GAO and CACM.

As we proceeded with the project, we followed the general outlines of the design we presented, but we departed from it in two significant ways. First, we shortened the data collection period from twelve months to six months in response to Congressional interests in receiving the findings sooner. Thus, the schedule set out in the design document is different from the one we actually followed. Second, as explained in Appendix 4, we did not conduct the retrospective component of the study.

We should note that this design document provided only the broad outlines of how the study would be conducted. We developed the details—for example, identification of specific data elements, selection of sample and case study districts, and procedures for collecting data—as we proceeded with the project. See section II and Appendix 4 for more information about how the study was conducted.

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Preliminary Design for a Study of Courtroom Use

Prepared for the Courtroom Subcommittee of the Court Administration and Case Management Committee

Federal Judicial Center

March 10, 2006

I. Introduction: Brief History of the Study and Purpose of this Preliminary Design

This document provides a preliminary design for a study of courtroom use in the U.S. district courts. The Federal Judicial Center offers this design for consideration by the Courtroom Subcommittee of the Court Administration and Case Management Committee. Further steps will include, in addition to any revisions made after discussions with the Subcommittee, consultation with the Government Accountability Office, further consultation if necessary with the Subcommittee, and review and approval of a final design by the full Court Administration and Case Management Committee.

The Center offers this preliminary design, and will undertake the subsequent study, at the request of the Court Administration and Case Management Committee. The Committee is undertaking the study at the request of Congressman Bill Shuster, chair of the Subcommittee on Economic Development, Public Buildings and Emergency Management of the House Committee on Transportation and Infrastructure. Consultation with GAO staff will be undertaken in response to Congressman Shuster's request that the study be designed with their input.

This preliminary design describes a study that attempts to be responsive to Chairman Shuster's request and to questions raised by the judiciary and others. To meet this goal, the study would include several components. This document describes the study components, discusses the analysis of data collected by the study, and briefly notes several administrative matters.

II. The Three Components of the Study

A. Component One: Courtroom Use

Congressman Shuster has asked the judiciary to "document how often courtrooms are actually in use (meaning that there are people in the courtroom for official functions). . . ." To answer this question, we propose to collect data on courtroom use in a sample of districts.

In the sample districts, we would record the amount of time persons are in each courtroom for official business, who is in the courtroom, and what type of proceeding is taking place. Because courtrooms are not all alike nor perfectly interchangeable, we would also record in-

formation about the courtroom itself: what kind of equipment it provides, how many people it will accommodate, and other characteristics that are important for answering questions about the use of courtrooms. For completeness in understanding use of space, we would also record the occurrence of case-related proceedings conducted in non-courtroom space (for example, conference rooms and chambers).¹

We propose that this information be collected prospectively during a defined study period, rather than asking judges and their staff to reconstruct past use of their courtrooms. The Center would develop the necessary forms and instructions for recording courtroom use (which would include time spent setting up and breaking down the courtroom), but we would rely on staff at the court to record time spent in the courtroom.² We would expect to travel to each study court shortly before data collection begins to discuss the project, to obtain information on courthouse and courtroom characteristics, as well as scheduling and case management practices, and to provide instruction on collecting the data.³

Several important decisions for this component of the study are:

1. Which districts and judges to include in the study

Congressman Shuster's letter asks for a "statistically significant sampling" of districts, which we take to mean a representative sample. We would expect to select the sample districts by identifying a small number of key characteristics by which the ninety-four districts could be distinguished and grouped and then randomly selecting at least one district from each group. Potential characteristics for grouping the districts are the number of judgeships, the weighted caseload, and the number and use of courthouses (or divisions) in a district.⁴

¹ Currently some judges, under certain circumstances, conduct some proceedings in chambers. Other judges, or even the same judge under different circumstances, will conduct the same proceedings in the courtroom or other public space (for example, a conference room). It is important, therefore, that the study capture all case-related proceedings regardless of where they are conducted to obtain a true accounting of the demand for space that a court must accommodate. This is especially important for estimating the need for future courtroom space if any type of courtroom sharing and centralized scheduling might be anticipated.

² Courts using the latest version of CM/ECF have the option of entering time that district and magistrate judges spend in court proceedings directly into the docket entry for the proceeding. It is possible, therefore, that these docket entries could provide a way of capturing courtroom time as part of the standard docketing process rather than using study-specific data collection forms as currently anticipated. Unfortunately, the number of courts using the new docketing procedures are few and not necessarily representative of all courts, plus the information collected in the new procedures does not capture all details required by the study. As we develop a more complete data collection design, we will investigate whether the limitations of the new docketing procedures could be addressed sufficiently to allow those procedures to become our principal source of data. A comparison of data collection options could be evaluated during the pilot test of the study.

³ It is possible that pre-study instruction by itself could be done using videoconferencing or some other non-face-to-face method. However, interviewing judges and court staff to obtain information on courtroom characteristics, court procedures, and scheduling issues is more effective in a face-to-face setting. Both instruction and interviewing could be done on site in the same visit.

⁴ Using three characteristics with two or three values each might yield, for example, a table of twelve or eighteen cells—or groupings of courts.

We are aware that several districts with unique characteristics or circumstances might provide useful insights on the question of courtroom use, such as the Southern District of New York, where judges are currently sharing courtrooms due to construction. We would attempt to identify these districts and include them in the study.⁵ We are also aware that there may be districts that should be excluded from the study—for example, a district with an abnormally high judicial vacancy rate—and we would identify and exclude these districts from the population from which the random sample is drawn.

We propose that the final random sample include approximately twenty to twenty-four districts and that we select a few additional districts for their unique circumstances (for example, New York Southern). This would yield a final sample of twenty-four to twenty-eight districts.

Regarding the types of judges to include in the study, Congressman Shuster's letter does not specify a particular type, but conversations with his staff indicate that the study should not be limited to courtroom use by one type of judge. We assume the study will involve all three types of judges in district courts—senior and active district judges and magistrate judges.

2. What the time frame should be

We propose that data collection for this component of the study cover a twelve-month period. There are two reasons, one statistical and one practical, for this proposal. First, the scheduling of proceedings varies from month to month, a variation that should be accounted for by the data and the analyses. Second, because we cannot realistically expect a single court to record time for a full year and because the work involved in managing a twenty-four-court sample is substantial, we would structure data collection into four three-month time periods and distribute the sample districts across those time periods. A time line for the full project, including planning, pretesting, surveys (see next two components), analysis, and writing, follows this document.

B. Component Two: Latent Use

In his letter, Congressman Shuster invited the judiciary to “incorporate [into the study] such other factors as you deem necessary.” One such factor is the impact an available courtroom has on scheduling and thus on cases and caseloads—or, as it has been called, the latent use of courtrooms. It is well known that judges schedule substantially more events for their courtrooms than are actually held in those courtrooms. We would examine the use of courtrooms for these purposes. We would also examine how often courtrooms are dark because a scheduled event has been cancelled without an opportunity to reschedule other events for that time.

⁵ The data from these districts might be appropriate for some analyses involving the randomly selected districts, but we expect also to analyze these districts separately for the special circumstances they present.

We propose to collect information about the latent use of courtrooms by asking clerks' office or chambers staff in the study courts to provide us with scheduling information during the study period. We would then compare the scheduled use of courtroom space to actual use. But we think it is important, in this component of the study, to expand the inquiry to all judges in district courts. Thus, we propose to ask each judge to provide us information about their courtroom schedules for a single day in the recent past.⁶ We may make this request several times throughout the period of the study. This additional information would serve as an important supplement to the detailed data collected from the clerks in the sample districts. It would also provide a means for all judges to participate in a study in which they all have an interest.

3. Component Three: Views of Use

Information about latent use would add an important, and so far missing, dimension to our knowledge of how courtrooms are used, but we would be missing an important part of the picture without examining the less tangible role courtrooms play beyond their use for specific events—for example, in litigant strategies, public perceptions of the courts, or judicial perceptions of their role.

To understand the broader significance of courtrooms, beyond counting the hours spent and number of events held, we would need to talk with judges, lawyers, and perhaps litigants. A questionnaire provides the best method for tapping the views of these users. We would not overlook opportunities to speak face-to-face with judges about courtroom use—for example, at Center education programs—but a questionnaire will provide more information more efficiently, thus reflecting more broadly the significance of courtrooms to those who use them.

While it is tempting, and methodologically acceptable, to limit this component of the study to a sample of judges, we think there would be substantial benefit in sending the questionnaire to all district and magistrate judges. We think it is potentially quite important for addressing judges' concerns and for providing Congress with a fuller understanding of the role of federal courtrooms.

III. Data Analysis

A. Descriptive Data Analysis

Upon completion of the data collection described above, we would provide a detailed descriptive analysis of courtroom use in the study courts. Relying on the actual use data, this analysis would include:

⁶ We would ask, for example, what events or matters were scheduled, which of these events or matters actually occurred in the courtroom, which were cancelled or concluded without the use of a courtroom and why, the date on which the cancelled or concluded events or matters were rescheduled (if they were), and where the matters will be conducted.

- descriptions of use overall and broken down for relevant subgroups, such as type of judge, type of proceeding, and type of space;
- average use for all courts as well as variations from the average due to court size, case mix, or seasonal differences;
- basic computations of the percentage of time courtrooms are in use; and
- information on the concurrent use of all courtrooms in a courthouse.

The descriptive analysis would also present empirical findings about latent use—that is, the scheduled use of courtrooms that ultimately remained dark. It would also combine cancelled time that cannot be rescheduled with actual use time to obtain a more complete picture of courtroom use and availability.

We would report, as well, the data obtained from judges and others via questionnaires and interviews, including findings about scheduling practices, courtroom space assignment procedures, and the expected impact on judges, lawyers, and litigants of possible changes to the current policy on courtrooms.

B. Possible Additional Analyses

If the descriptions of courtroom use outlined above do not fully resolve the questions regarding current courtroom policy, the Committee may want to investigate the issue further. When we report the descriptive analyses to the Committee, we would include (1) an assessment of the patterns and level of use revealed by the data and (2) a comparison of our findings to those from previous studies of courtroom use.⁷ This assessment would be provided to help the Committee determine whether additional analyses are called for. The types of additional analyses that could be pursued at that time would include:

- Building and running a computer simulation of courtroom use. The simulation would allow us to assess the impact of implementing various changes to court measures, such as caseload size and available resources. We could, for example, alter the number of courtrooms in the model and test how such a change would affect case processing statistics, such as disposition time, frequency of rescheduling, time added due to rescheduling, and ability to meet speedy trial deadlines. The simulation could also test the potential effects of changing other parameters, such as increasing the number of

⁷ Previous studies by GAO and others have found that courtrooms are in use by judges for some amount of time on 65% of the workdays in a year. These studies have suggested that, with this level of use, it may be possible to conduct all proceedings that need to be held using fewer courtrooms than one per judge. The data on which these studies relied, however, were not sufficient to investigate in detail the complexities of the issue. In particular, previous data were insufficient for determining what amount of flexibility in scheduling (or latent use) is required or whether changing the number of courtrooms could be accomplished without adversely affecting the timing of those proceedings or overall management of judges' caseloads. GAO and others have recommended collection of better data and use of computer simulations to model the impact of changing the number of courtrooms.

cases filed or varying the case mix to account for differences in the number of proceedings held in different types of cases.⁸

- Evaluating the possible consequences of changing the number of courtrooms on the functioning of the court. This evaluation would entail identifying the changes to court procedures, case management procedures, scheduling practices, and so on that would result from changing the number of courtrooms, and then quantifying the effect of these changes, in terms of additional costs, time, and effort, on the courts and litigants. For example, would new employees need to be hired to handle centralized scheduling? What would it cost to design and implement new software? What changes would be needed in judges' chambers? Would additional notifications to litigants need to be implemented? Would witnesses be required to make additional visits to the court? Would there be an effect on the need for space for court employees, the movement and storage of case materials, or the scheduling of bench trials? Would fewer courtrooms have an effect on attorney strategies or public perceptions?
- Conducting a cost-benefit analysis. This analysis would consist of weighing the potential construction and maintenance cost savings from building fewer courtrooms against the tangible and intangible costs associated with likely court and litigation changes.

These analyses require information on a large array of variables, including, for example, judges' and clerk's scheduling practices, the types of events held in courtrooms and chambers, the kind and amount of equipment present in courtrooms, case filing rates, the likelihood of holding a proceeding and the timing of proceedings within a case, the federal judiciary's policies on courtroom use, and many other variables. Fortunately, the study components described above would provide most of the data for these analyses, and several other sources, such as the courts' CM/ECF databases and the Center's database from the recent District Court Case Weighting Study, would also provide useful data. We would need to obtain required construction cost information from Administrative Office or GAO Physical Infrastructure staff, recent courthouse construction bids, or a private contractor.

IV. Administrative Matters and Next Steps

The Center expects to work closely with the Courtroom Subcommittee of the Court Administration and Case Management Committee and with the staff of the Administrative Office on all aspects of the project. We appreciate comments and information already received from Administrative Office staff and look forward to discussing the study design with the Courtroom Subcommittee on March 15.

⁸ Center staff would design and build the computer model, but would consult with operations research or simulation experts when needed. The Center currently owns discrete event simulation software for running the simulations. It is likely, however, that we would need to purchase an update or additional modules to handle more complex situations.

We will make any necessary revisions to the design following the March 15 conference call, and then, as requested by Congressman Shuster, will consult with the Government Accountability Office on the design. We hope to schedule our first meeting with GAO staff in April. If that consultation requires further discussions with the Subcommittee, we will schedule those, then prepare a final proposed design for consideration by the full Committee in June.

We will give particular attention to communicating with the court family throughout the project, working closely with the Subcommittee, courts, and Administrative Office to address concerns about the project. As the study progresses, we will want to discuss with the Subcommittee, for example, the content and timing of communications with the courts. We will also consider whether to establish a technical advisory group of clerks and IT staff for guidance on data collection procedures.

The proposed study has significant resource demands that may go beyond the Center's anticipated appropriations. We have had preliminary discussions with the Administrative Office about supplemental funds for the project and will continue those discussions.

Timeline for Courtroom Study

(As of March 10, 2006)

Task	Time Frame
Proposed design reviewed by Courtroom Subcommittee	March 15, 2006
Discussions with GAO	April, 2006
Discussions with Courtroom Subcommittee	April-May, 2006
Proposed design reviewed by CACM	June, 2006
Contact study courts	June, 2006
Consult with technical advisory groups	Summer, 2006
Inform courts and judges about the study	Summer, 2006
Run pilot test of forms, instructions, and procedures	September, 2006
Conduct survey (by questionnaire) of all judges	Sept-Oct, 2006
Visit First Wave courts for interviews and instructions	November, 2006
Status report to CACM	December, 2006
Data collection in First Wave courts	Jan-March, 2007
Visit Second Wave courts for interviews and instructions	Feb-March, 2007
Data collection in Second Wave courts	April-June, 2007
Conduct retrospective study of courtroom calendars	Jan-June, 2007
Visit Third Wave courts for interviews and instructions	May-June 2007
Status report to CACM	June, 2007
Data collection in Third Wave courts	July-Sept, 2007
Visit Fourth Wave courts for interviews and instructions	Aug-Sept, 2007
Data collection in Fourth Wave courts	Oct-Dec, 2007
Status report to CACM	December, 2007
Report to CACM on study of actual use, latent use, and views of use	June, 2008
Final report to CACM, including any additional analyses the Committee may have requested	December, 2008