

**FJC Bankruptcy Courtroom Use Study
Report to the CACM Committee**

**Technical Appendix 1
The Proposed Study Design**

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**Preliminary Design for a Study of Courtroom Use
in the United States Bankruptcy Courts**

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

**Federal Judicial Center
November 6, 2008**

I. Introduction: Purpose of this Preliminary Design

This document provides a preliminary design for a study of courtroom use in U.S. bankruptcy courts. The Federal Judicial Center offers this design for consideration by the Courtroom Use Subcommittee of the Court Administration and Case Management Committee and for review and approval by the full committee. If revisions are necessary after consultation with either the subcommittee or the full committee, the Center will make those revisions and submit a final study design.

The Center offers this preliminary design, and will undertake the subsequent study, at the request of the Court Administration and Case Management Committee (CACM), which was directed by the Judicial Conference “to study the usage of bankruptcy courtrooms and, if usage levels so indicate, develop—in consultation with the Committee on Space and Facilities and the Committee on the Administration of the Bankruptcy System—an appropriate sharing policy for bankruptcy courtrooms” (JCUS, September 2008).

In designing the study, the Center has been mindful of CACM’s desire that the bankruptcy study design be as similar as possible to the design of the Center’s recently completed study of courtroom use in the district courts. To meet this goal, the study design described below includes the same three components as the district court study: (1) collection of data in a random sample of courts, (2) surveys of bankruptcy judges, trustees, and lawyers, and (3) verification of the study data through comparison with independently collected courtroom use data. The bankruptcy system and bankruptcy cases are, of course, different from the district courts in several significant ways; we discuss in Section II below those differences that have implications for the study.

II. The Components of the Study

A. Component One: Courtroom Use

The first task of the district court study was to “document how often courtrooms are actually in use (meaning that there are people in the courtroom for official functions) . . . ”

(quoting from Congressman Shuster’s letter requesting the study). The directive for the bankruptcy court study similarly asks CACM to “study the usage of bankruptcy courtrooms”

To answer this question, we plan to collect original data on courtroom use in a randomly selected sample of bankruptcy courts. As in the district court study, we plan to record both “actual use” and “scheduling” data.

The actual use data will report the amount of time persons are in the courtroom, who is in the courtroom, and the type of proceeding or event taking place. We plan to be as comprehensive in our definition of use in this study as in the previous study. Thus, we will record the time that bankruptcy trustees, ALJs, and others use the courtroom, the time court staff spend preparing for and wrapping up after proceedings, the time taken up by educational events, the time when courtrooms cannot be used because materials are in the room, and so on.

The scheduling data will report the amount of time scheduled for the courtroom. As in the district court study, we will record not only the amount of time scheduled, but also the type of events or matters scheduled, which of these events or matters actually occurred, and what happened to events that did not occur. The scheduling data will also permit us to report the amount of notice judges and parties have that an event must be rescheduled and the amount of time they must wait before a rescheduled matter can be heard.

To permit a more complete understanding of the use of space, we will also record certain other events when they are conducted in non-courtroom locations (for example, conference rooms and chambers), as we did in the district court study.¹

Unfortunately, comprehensive data on courtroom use are not currently reported, and therefore we will have to collect original data.² Thus, as in the district court study, we plan to collect courtroom data during a defined study period. We will develop a software application for recording courtroom use and will rely on court staff to record the data.

Before we begin data collection, we will travel to each study court to discuss the project with the court’s judges, to review data collection procedures, and to confirm the number of courtrooms. We will also provide training for court staff in how to record the study da-

¹ Under some circumstances, judges may conduct certain types of events in chambers that they would otherwise conduct in the courtroom. To obtain a true accounting of the demand for space that a court must accommodate, it is important that the study capture the events that might otherwise be held in the courtroom. 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 The bankruptcy judges submit a form (the B102) that captures some, but not all, of their time in the courtroom. The form does not include time spent in the courtroom by other individuals, such as court staff preparing for proceedings or trustees conducting auctions and other matters.

ta, using specially prepared materials and relying on several court training specialists to deliver the instruction, an approach we found to be effective in the district court study.

The actual collection of data depends on two important decisions:

1. Selection of the study courts

As in the district court study, our goal in the bankruptcy study is to produce results that are generalizable across the bankruptcy courts. Thus, we expect to include a substantial number of courts in the study and to select them randomly. We expect the sampling frame, which we are currently developing, to account for the size of the bankruptcy courts and to ensure variability in the caseload demand in the bankruptcy courts. After establishing the sampling frame, we will randomly select the study courts from each of the size/demand cells in the frame.

We are aware of two types of bankruptcy courts with unique characteristics that might provide useful insights on the question of courtroom use—the six courts that use bankruptcy administrators and the several courts with unusually high Chapter 13 filings. If our random sample does not include at least one of each of these types of courts, we will randomly select one of each to add to the sample. These courts will not be separate case study courts but will be treated in all respects as if they were part of the random sample. We are also aware that there may be bankruptcy courts that should be excluded from the study—for example, courts with abnormally high judicial vacancy rates—and we will identify and exclude any such courts from the population before the random sample is drawn. We expect that the final random sample will include approximately twenty bankruptcy courts.

2. The time frame for the study

The time frame is determined by several features of the study. The first is the amount of time needed to prepare for data collection. This preparation includes compiling an inventory of bankruptcy courthouses and courtrooms, identifying the particular data elements that must be recorded, developing the data recording software and training materials, pilot testing the data collection tools and procedures, visiting the study districts, and training court staff. Altogether these activities take up the first nine months of the project.

The time frame is further determined by the amount of time required for data collection. We are planning a six-month data collection period, as in the district courts. Collecting six months' worth of data ensures that we will have sufficient data for reliable and generalizable findings. We plan to assign the sample courts to two three-month data collection waves—again, as in the district court study. We expect the first wave to extend from mid-September to mid-December 2009 and the second wave to extend from mid-January to mid-April 2010. Although the bankruptcy courts appear to have less seasonal variation in courtroom use than the district courts, we are avoiding data collection during summer va-

cations and holidays so as not to burden the smaller numbers of court staff present during those times.³

We plan to submit a final report to CACM in November 2010. Appendix 1 provides a time line for the study.

B. Component Two: Views of Use

We would be missing an important part of the picture if we did not examine the less tangible role courtrooms play beyond the hours scheduled and used. To understand the broader significance of courtrooms, we plan to solicit the views of judges, lawyers, and bankruptcy administrators and trustees. A questionnaire provides the best method for capturing the views of these users. It is methodologically acceptable to limit this component of the study to a sample of judges, but unless the committee directs otherwise, we anticipate sending the questionnaire to all bankruptcy judges so every judge has an opportunity to provide input to the study. We recommend this approach to address judges' concerns and to provide a fuller understanding of the role of federal courtrooms.

C. Component Three: Verification with Independently Collected Data

As in the district court study, we will verify our data with independently collected data on courtroom use. We anticipate analyzing the B102 data for comparison with our data. The Center will also field independent data recorders who will observe and record courtroom use in a sample of the study courts. These data recorders will be directed by a research team that is completely independent of the courtroom use study team. The data they collect will provide a second source of independent information for comparison with our data.

III. Data Analysis

A. Descriptive Data Analysis

Upon completion of the data collection described above, we will provide a detailed descriptive analysis of courtroom use in the study courts. This analysis will include:

- examination of the amount of time, averaged across all study courts, that the courtrooms are in use and are scheduled for use;
- examination of the amount of time, averaged across all study courts, that is accounted for by actual and scheduled use combined;
- analysis of the variations in courtroom use and examination of possible explanations for these variations;

³ Examination of B102 data for the past five years suggests there is little seasonal variation in judges' courtroom time.

- description of the types of proceedings that take place in the courtrooms and the users of the courtrooms; and
- information on the concurrent use of all courtrooms in a courthouse.

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

B. Possible Additional Analyses

If the descriptions of courtroom use outlined above do not fully resolve the committee's questions, the committee may want to investigate the issue further. As we offered at the conclusion of the district court study, we can conduct additional analyses for the committee, including, but not limited to, examining the use of computer modeling to assess the effects of reducing the number of courtrooms.

IV. Considerations Specific to the Bankruptcy Courts

Among the ways in which the bankruptcy courts differ from the district courts, four are important for this study.

First, a much smaller number of bankruptcy courtrooms are located in stand-alone bankruptcy courthouses. Many of the bankruptcy courts are co-located with district courts, are located in leased space, or use courtrooms assigned to other types of judges. We have found that the AO's inventory of bankruptcy courthouses and courtrooms is outdated, and therefore we are preparing our own inventory of bankruptcy court locations and courtrooms. A correct inventory is essential for selecting the random sample of study districts and for correctly configuring the software application.

Second, the bankruptcy system is composed of many small courts and a handful of medium and large courts. This fact raises a question about the purpose of the study. If the only purpose is to determine an appropriate ratio for sharing courtrooms, and if courtroom sharing is envisioned only among judges of one type (i.e., bankruptcy and district judges would not share courtrooms), then all bankruptcy courts whose largest location has only a single courtroom could be exempt from the study. If, however, the purpose of the study is to determine how courtrooms are used, with sharing being a secondary question, then even courthouses with a single courtroom would be included in the study. We ask the subcommittee and committee to clarify the purpose of the study. Note that the broader study—i.e., a study of use—would have only a small effect on the size of the study, adding at most three or four courts.

Third, the bankruptcy courts have almost exclusively one type of judge—the bankruptcy judge. There are about thirty recalled bankruptcy judges in the bankruptcy courts, many of whom do not have their own courtroom. The appointment of recalled bankruptcy judges appears not to be concentrated in particular districts but to be spread across the bankruptcy courts. Consequently, we propose that we make no special provisions for taking recalled bankruptcy judges into account when selecting the study districts.

Fourth, the nature of bankruptcy proceedings is different in a sufficient number of ways that we will have to substantially revise the software application used in the district court study. We have established two advisory groups, one of ten bankruptcy judges and one of ten bankruptcy staff, to advise us on the nature of bankruptcy events and how to design a software application that makes sense to bankruptcy data recorders. We have already met with both advisory groups in Washington, D.C., and found their guidance very important for development of the project.

V. Administrative Matters and Next Steps

The proposed study has significant resource demands that go beyond the Center's regular appropriations. We have prepared a budget for the study, and the Center's director has discussed the study's costs with the director of the Administrative Office.

The Center expects to work closely with CACM's Courtroom Use Subcommittee and with staff of the Administrative Office on all aspects of the project. As in the district court study, the Center will maintain its independence in conducting the study and will provide to the committee only analyses and no policy recommendations.

We look forward to discussing the study design with the subcommittee and full committee.

Appendix 1

Major Milestones Federal Judicial Center Study of Bankruptcy Courtroom Use November 6, 2008

Event	Time Frame
Judicial Conference directs CACM to study bankruptcy courtroom use	September, 2008
CACM asks FJC to conduct bankruptcy courtroom use study	September, 2008
Meetings with Judge and Staff Advisory Groups	October, 2008
Survey all bankruptcy courts to obtain inventory of courtrooms	November, 2008
Present study design to CACM	December, 2008
Draw sample; notify Wave 1 and Wave 2 study courts	January, 2009
Inform other courts and judges about the study	January, 2009
Test data collection software, forms, and procedures in pilot districts	April-May, 2009
Survey (by questionnaire) all judges in bankruptcy courts	Summer/Fall, 2009
Collect district-specific information from Wave 1 study courts	April-June, 2009
Visit Wave 1 courts	July-Aug, 2009
Conduct training of Wave 1 court staff	July-Aug, 2009
Collect 3 months of courtroom data in Wave 1 courts (mid-month start)	Sept-Dec, 2009
Survey (by questionnaire) sample of bankruptcy trustees and lawyers	Fall/Winter, 2009
Collect district-specific information from Wave 2 study courts	Aug-Oct, 2009
Visit Wave 2 courts	Nov-Dec, 2009
Conduct training of Wave 2 court staff	Nov-Dec, 2009
Collect 3 months of courtroom data in Wave 2 courts (mid-month start)	Jan-April, 2010
Data analysis and report writing	May-Oct, 2010
Deliver report to CACM	November, 2010