

AD HOC COMMITTEE TO RECOMMENCE JURY TRIALS

- I. Committee Members: Chief District Judge John Gerrard, District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Federal Practice Committee Chair Dan Klaus, Assistant United States Attorney Michael Norris, Assistant United States Attorney Susan Lehr, CJA Representative Peder Bartling, Federal Public Defender David Stickman, Clerk of Court Denise Lucks, and Chief Deputy Clerk Gabriela Acosta.

- II. Committee Charge: The Ad Hoc Committee to Recommence Jury Trials (the “Committee”) was appointed by Chief Judge John Gerrard and met on May 5, May 11 and May 18, 2020. General Orders 2020-03 through 2020-09 postponed live hearings and all jury trials, due to the COVID-19 outbreak (the “pandemic”). Because the Court plans to begin a phased reopening of the courthouse and both live hearings and trials, the Committee was to study and make recommendations, consistent with the best medical evidence and other external and internal advice, as to how to begin holding jury trials in a safe and secure manner during the pandemic.
 - A. Three general issues were to be explored:
 1. Summoning and screening jurors;
 2. Jury Selection; and
 3. Trials.

 - B. Two subcommittees were formed to review and make recommendations on these general issues:
 1. One subcommittee was assigned to study and make recommendations on issues #1 and #3. This subcommittee was chaired by District Judge Brian Buescher and was comprised of Assistant United States Attorney Susan Lehr, Assistant Federal Public Defender Jeffrey Thomas (advisor), Chief Deputy Gabriela Acosta, and Telecommunications Specialist Craig Arent. This group met on May 7 and May 14, 2020 at 4:00 p.m.

 2. A second subcommittee was assigned to study and make recommendations on issue #2. This subcommittee was chaired by District Judge Robert Rossiter, Jr. and was comprised of Federal

Practice Committee Chair Dan Klaus, Assistant United States Attorney Michael Norris, CJA Representative Peder Bartling, Federal Public Defender David Stickman, Clerk of Court Denise Lucks and Telecommunications Specialist Craig Arent. This group met on May 7 and May 14, 2020 at 9:30 a.m.

The Committee relied extensively on information provided by the District of Nebraska's Jury Team (Beth Hillman and Connie Schultz), as well as Ray Janiak, Facilities and Procurement Specialist. Substantial input was also received from other Clerk's Office staff, including Denise Lucks, Gabriela Acosta and Jennifer Stone. The information provided included scale drawings of the check-in areas for Omaha and Lincoln, Article III Courtrooms in Omaha and Lincoln and the Court of Appeals Courtroom in Omaha (the index and individual drawings for each courthouse are attached).

The Committee monitored and will continue to monitor recommendations on a national and local level, including the input from the Administrative Office of the Courts, other districts, and the Court's Safety and Security Committee, to name a few.

The Committee relied extensively on the Court's Information Technology staff for information regarding any technology necessary to support and undertake any recommendations of the Committee.

The Committee also relied on medical input and recommendations, specifically that of UNMC Epidemiologist Ted Cieslak, M.D., for information on the pandemic as well as suggestions regarding best medical practices.

III. Summons and Courthouse Entrance for Prospective Jurors / Recommendations

A. Juror Reassurances / Information

1. Include pertinent information on juror web page / juror checklists / PowerPoints.
2. Include a letter to prospective jurors from the Chief Judge detailing the safety and distancing measures undertaken by the Court. This letter will be sent with the "begin service mailing." For the July jurors, the letter will be sent on June 22.
3. Judges should build upon Chief Judge Gerrard's letter and reassure individuals about the safety measures in place.

4. The Clerk's Office should develop appropriate signage for all areas of the courthouse. For example, include social distance "X" laminated signs for jurors and "do not enter" signs for jury deliberations (to be held in courtrooms).
- B. A juror should generally be deferred if they express COVID-19 concerns.
- C. It is recommended that a 10:00 a.m. start time is appropriate and will help alleviate building employee arrival and screening at the same time as the prospective jurors. Jurors will be requested to report prior to 10:00 a.m. so that they will be ready for the judge's orientation at 10:00 a.m.
- D. At check-in, proper spacing and check-in procedures should be utilized, consistent with Drawing 1 (Omaha) and Drawing 1 (Lincoln).
- E. In addition to COVID-19 entrance questionnaires, the Clerk's Office has procured two infrared thermometers for screening Hruska Courthouse in Omaha and two for Denney Courthouse in Lincoln. These thermometers may be utilized to check temperatures for jurors and members of the public entering the courthouse. Such devices may be used in conjunction with appropriate medical questioning upon entry to the courthouse. No decision has yet been made on whether temperature screening will be conducted in the courthouses. Note: The advice of Dr. Cieslak is that all jurors and staff be temperature checked when entering the courthouse.
- F. No more than two jury trials can/should be conducted at a time in Omaha, given the volume of cases, and only one jury at a time is possible in Lincoln. In order to assess how this process will work, for the first two weeks jury trials will be held in Omaha, only one jury will be selected. The Courts must still determine the order in which cases are called for trial based on factors such as case age and speedy trial.

IV. Voir Dire

A. Civil Cases / Recommendations

1. Seat, at most, eight-person juries for the foreseeable future (Rule 48 requires six); eight provides flexibility if jurors fall out after trial starts.
2. Initially, a minimum venire of twenty-two to twenty-four jurors should be called as fears of some jurors may require additional for-

cause dismissals. This number is subject to increase in difficult or protracted cases, at the discretion of each judge.

3. Individual judges will determine how to handle peremptory challenges.
4. In Lincoln, a venire of twenty-two to twenty-four can be accommodated in Courtroom 1. In Omaha, it appears that the venire would need to be examined in the Special Proceedings Courtroom. The jury team is still examining whether the civil venire of twenty-two to twenty-four can be properly spaced or examined in the other Article III courtrooms in Omaha. There should be no need to use multiple courtrooms or hallway placement, depending on the type of case.
5. The voir dire seating maps developed by the Jury Team are adopted as they allow for appropriate spacing. (Drawing 6 (Omaha) and Drawing 3 (Lincoln)).
6. In both Omaha and Lincoln, voir dire will be live-streamed to the group which is not in the “live” courtroom.
7. A separate space/room will be provided for public viewing via live-stream, of both voir dire and trial. The U.S. Marshals will provide oversight and any necessary security in these viewing rooms. In Omaha, the public will view in the joint conference room. In Lincoln, the public will view in the jury assembly room.

B. Criminal Cases / Recommendations

1. Initially, a minimum venire of forty-two to forty-four jurors is recommended. This may increase in appropriate cases in the discretion of the judge.
2. It is not possible to examine the venire in a single courtroom in either Omaha or Lincoln. The option recommended by the subcommittee is to utilize the two courtroom / one day scenario, consistent with the Jury Team drawings.
 - a. In Omaha, approximately half the venire would be seated and examined in the Special Proceedings Courtroom. When finished, the Judge, counsel and the defendant would proceed to the Court of Appeals Courtroom to examine the second half

of the venire. Peremptories could then be exercised, and the venire informed of the results, in each separate courtroom. (Drawings 6 and 7 (Omaha)).

- b. In Lincoln, a similar process would be utilized in Courtroom 1 and Courtroom 3, consistent with the Jury Team drawings. (Drawings 3 and 5 (Lincoln)).
- c. In both Omaha and Lincoln, voir dire will be live-streamed to the group which is not in the “live” courtroom.
- d. A separate space/room will be provided for public viewing via live-stream, of both voir dire and trial. The U.S. Marshals will provide oversight and any necessary security in these viewing rooms. In Omaha, the public will view in the joint conference room. In Lincoln, the public will view in the jury assembly room.

3. To avoid the venire being prejudiced by observing the defendant moving from courtroom to courtroom in shackles (when necessary), the following is recommended:

- a. Shackles should be used sparingly and only where significant flight or safety concerns exist. Chambers and the marshals service should discuss the need for shackles or other security measures before trial.
- b. Deputy marshals moving a defendant between courtrooms will be dressed in a suit jacket or other appropriate civilian clothing.
- c. Where shackles are deemed necessary, jurors in each courtroom should be moved out of sight of the defendant keeping in mind appropriate social distancing. Arrangements will be made by staff for safe movement of jurors into designated common areas, if necessary.

C. General Voir Dire Issues / Recommendations

- 1. A more robust case-specific questionnaire for voir dire is unnecessary, unless requested by counsel.
- 2. Microphones

- a. Microphones will not be passed between individual venire members as in the past.
- b. IT will provide an appropriate “boom” microphone to be used at a safe distance, so that venire responses can be amplified for the record. A prototype unit has been ordered and will be tested before any other units are ordered.

3. Masks

- a. Masks will be required in all public/common areas, either the person’s own mask or one provided by the Court.
- b. Masks will not be required at this time in the courtroom (as jurors will be appropriately distanced), but decisions to use a mask may be made by individual jurors, counsel or staff members, with permission of the Court.

V. Conducting Jury Trials / Recommendations

- A. Masks. When seated and socially distanced, masks are optional.
- B. Configuration of “Jury Box.” The Jury Team’s drawings (Drawings 2 and 3 (Omaha) and Drawing 2 (Lincoln)) are adopted and would be utilized for jury seating, which include a limited number of jurors in the jury box and the remainder placed in the gallery. In civil trials, because no more than eight jurors will be seated, the gallery seating of jurors could be limited to one side of the gallery.
- C. Sequestration – not recommended, at least for pandemic-only purposes.
- D. Handling of exhibits should be kept to a minimum, and counsel should make every effort to make arrangements or agreements in advance, to submit and present as much evidence as possible via electronic means.
- E. Copies of all paper exhibits or evidence to be presented to a witness or others shall be sanitized when necessary. Paper exhibits should, where necessary, be placed next to the witness box in advance to limit the attorneys approaching the bench or witness. Counsel may consider use of clear plastic sleeves for documents.
- F. Public viewing will be provided via live-stream video in a separate area within the courthouse (See IV(B)(2)(d)).

- G. The area outside of the courtrooms will be utilized for juror social distancing in Omaha in accordance with Drawings 2 and 3 (Omaha). In Lincoln, the Court will utilize the hallway and Courtroom 3 consistent with Drawings 3 and 7 (Lincoln).
- H. Jurors will utilize juror restrooms in jury deliberation rooms which should be sufficient for juror access to restrooms during trial.
- I. Jury deliberations will take place in the trial courtrooms in Omaha and in Courtroom #3 in Lincoln.

VI. Miscellaneous / Recommendations

- A. GSA cleaning protocol should continue in each building. The witness stand shall be cleaned between witnesses by the courtroom deputy or other approved staff member utilizing gloves and sanitizing wipes. The extent of cleaning duties by GSA continues to be discussed.
- B. Hand sanitizer and sanitary wipes to be liberally placed and available in the courtroom and generally in Court spaces.
- C. Breaks / Lunches / Refreshments
 - 1. Inform jurors ahead of time to bring lunch with them due to limited options near the Court and the court's desire to minimize jurors' contacts outside the courthouse;
 - 2. The Court may provide a menu from a local restaurant (ideally a menu with lunch options already limited by Court staff to provide limited packaged options) for jurors who wish to buy their lunch at their own expense and have it delivered to the courthouse;
 - 3. If necessary, provide an extended lunch break to allow jurors to locate restaurants or have lunch delivered; and/or
 - 4. The Court may provide jurors with light refreshments. (Guide, Vol. 4, sec. 365.60.20(a)).

VII. Unresolved and Ongoing Issues

- A. Symptoms during trial. What happens if a juror appears symptomatic during the course of a trial (e.g. a cough, a sore throat)? Upon what types of

symptoms shall a juror be dismissed, or a mistrial be declared (and everyone sent home)? The active judges have discussed this issue with Dr. Cieslak and will continue to seek his input.

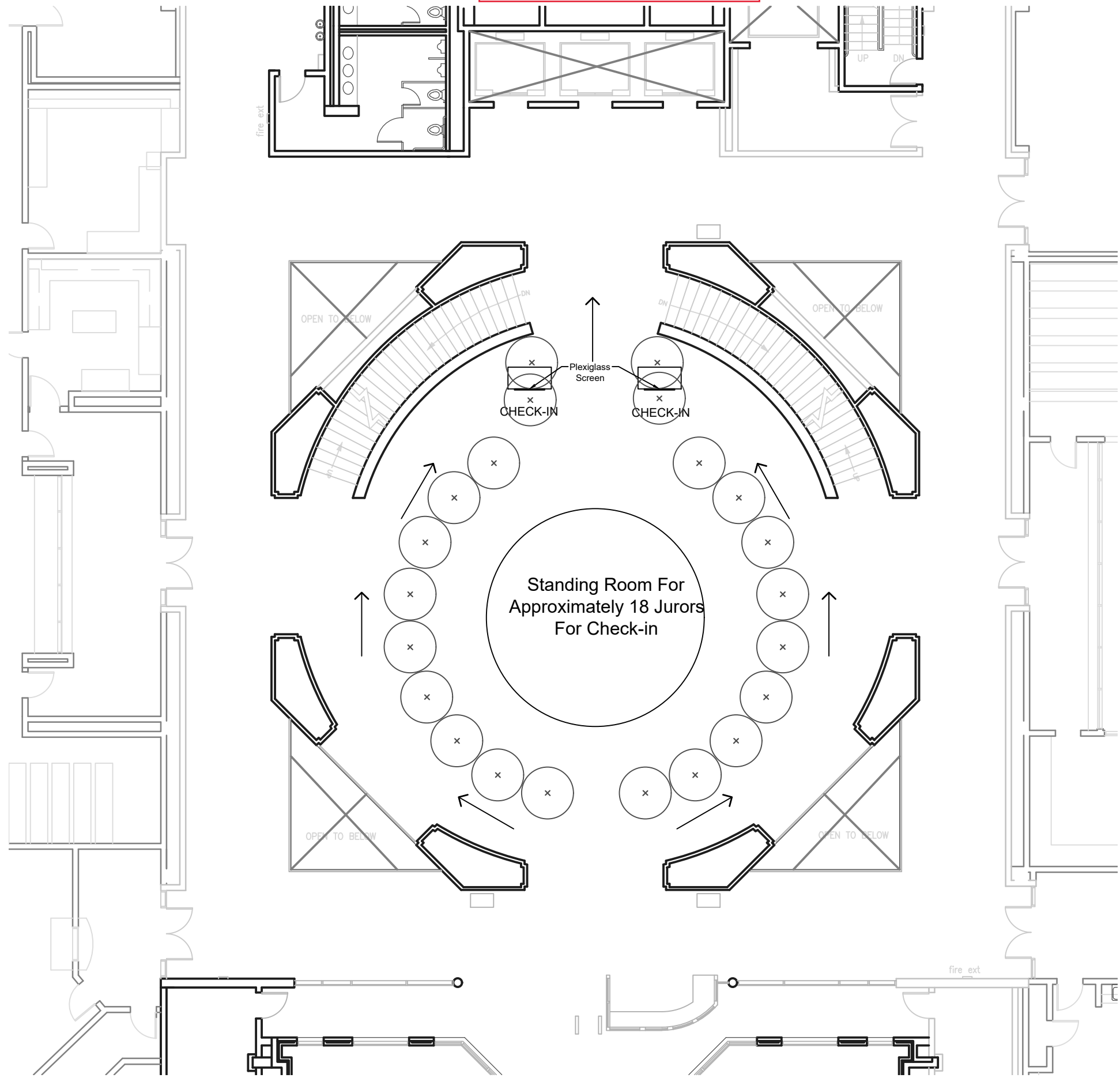
- B. Public restroom usage by potential jurors during jury selection. Ensure distancing and sanitary practices. Signage?

The Committee submits this report as its final recommendations at this time, recognizing that the pandemic situation and its effect on our courts is a moving target. These recommendations are subject to change and adjustment as necessary. The Committee shall remain in existence and will meet as deemed necessary by the Chief Judge.

Index of Omaha Jury Seating Options

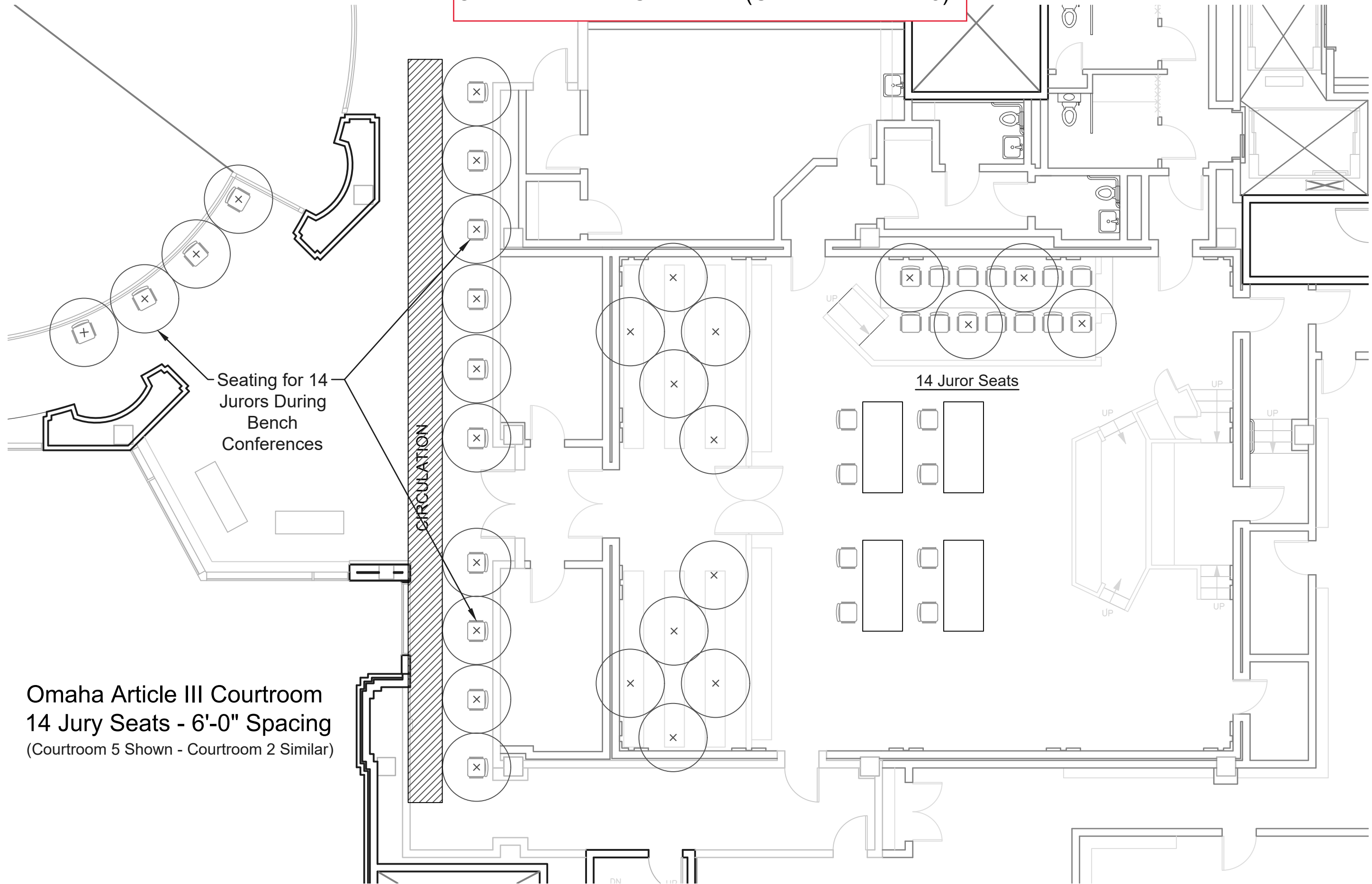
1. Omaha Jury Check-In
2. Omaha Article III (Courtrooms 2 and 5)
3. Omaha Article III (Courtrooms 3 and 4)
4. Omaha Magistrate (Courtroom 6)
5. Omaha Magistrate (Courtroom 7)
6. Special Proceedings
7. Omaha Court of Appeals
8. Omaha 4th Floor Conference Area
9. Omaha Jury Assembly Room
10. Omaha Joint Conference Room

Omaha Jury Check-In



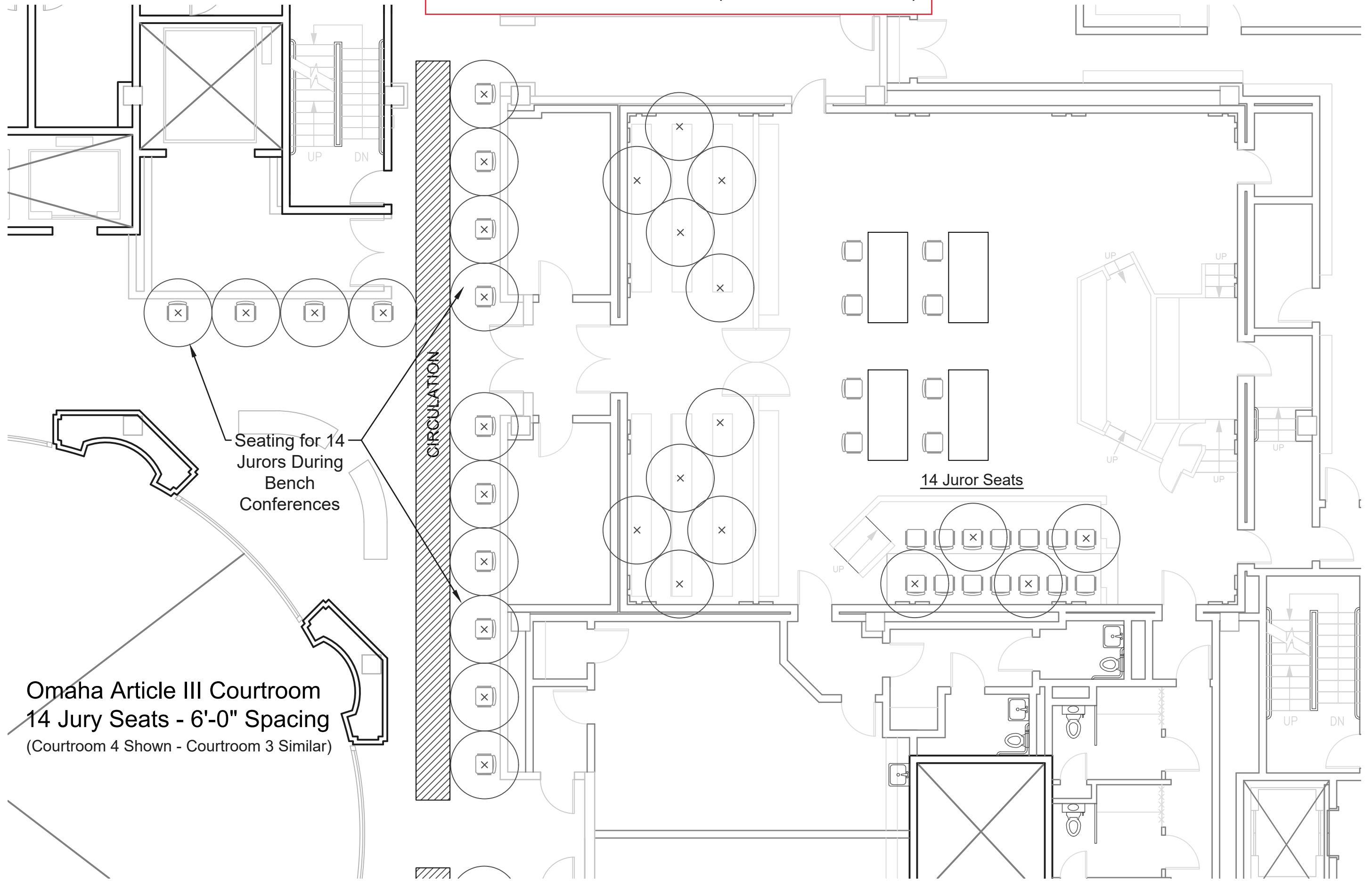
Omaha Jury Check-in

Omaha Article III Courtroom (Courtroom 2 and 5)



Omaha Article III Courtroom
14 Jury Seats - 6'-0" Spacing
(Courtroom 5 Shown - Courtroom 2 Similar)

Omaha Article III Courtroom (Courtroom 3 and 4)

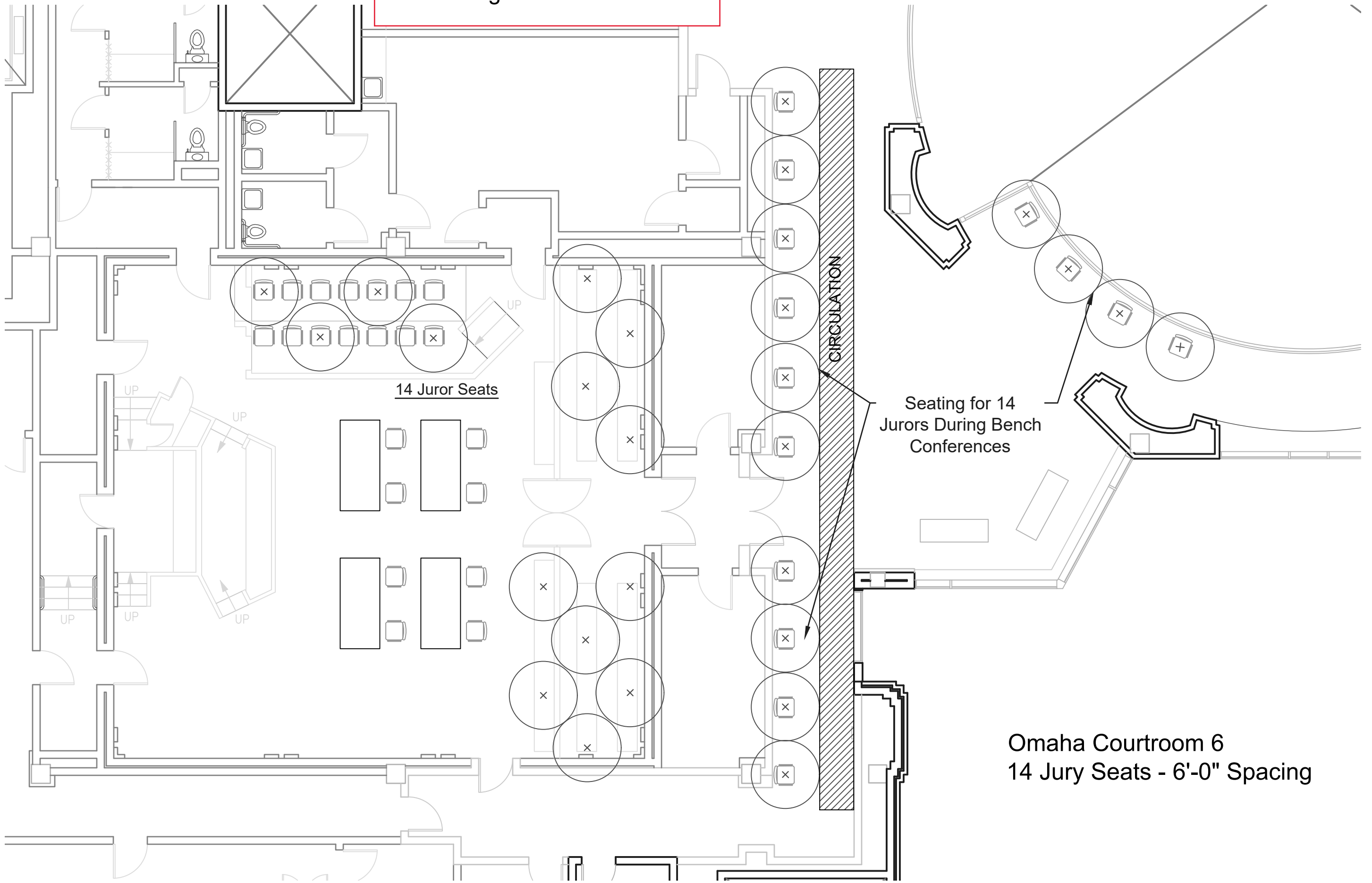


Seating for 14 Jurors During Bench Conferences

14 Juror Seats

Omaha Article III Courtroom
14 Jury Seats - 6'-0" Spacing
(Courtroom 4 Shown - Courtroom 3 Similar)

Omaha Magistrate Courtroom 6

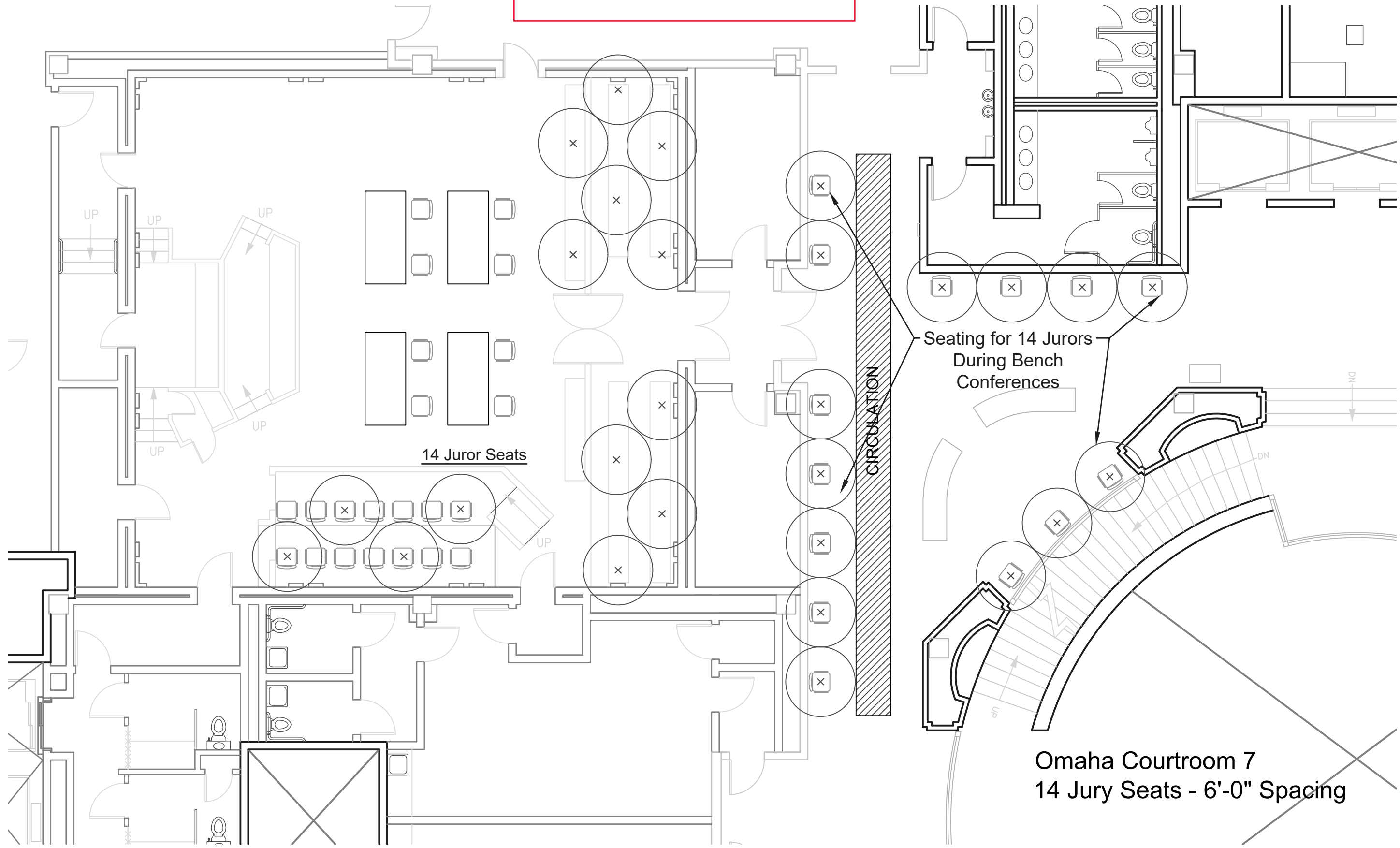


14 Juror Seats

Seating for 14 Jurors During Bench Conferences

Omaha Courtroom 6
14 Jury Seats - 6'-0" Spacing

Omaha Magistrate Courtroom 7



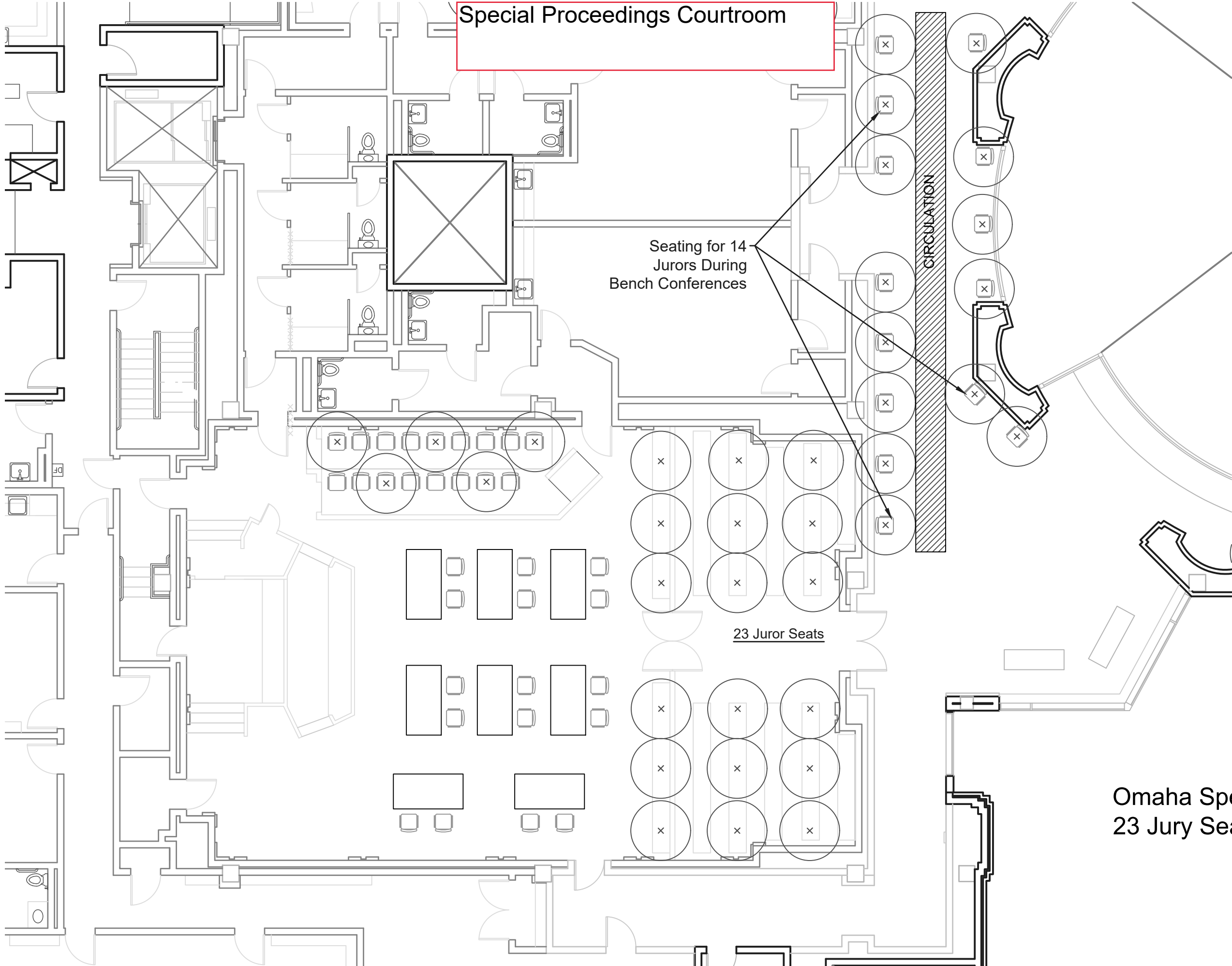
Omaha Courtroom 7
14 Jury Seats - 6'-0" Spacing

Special Proceedings Courtroom

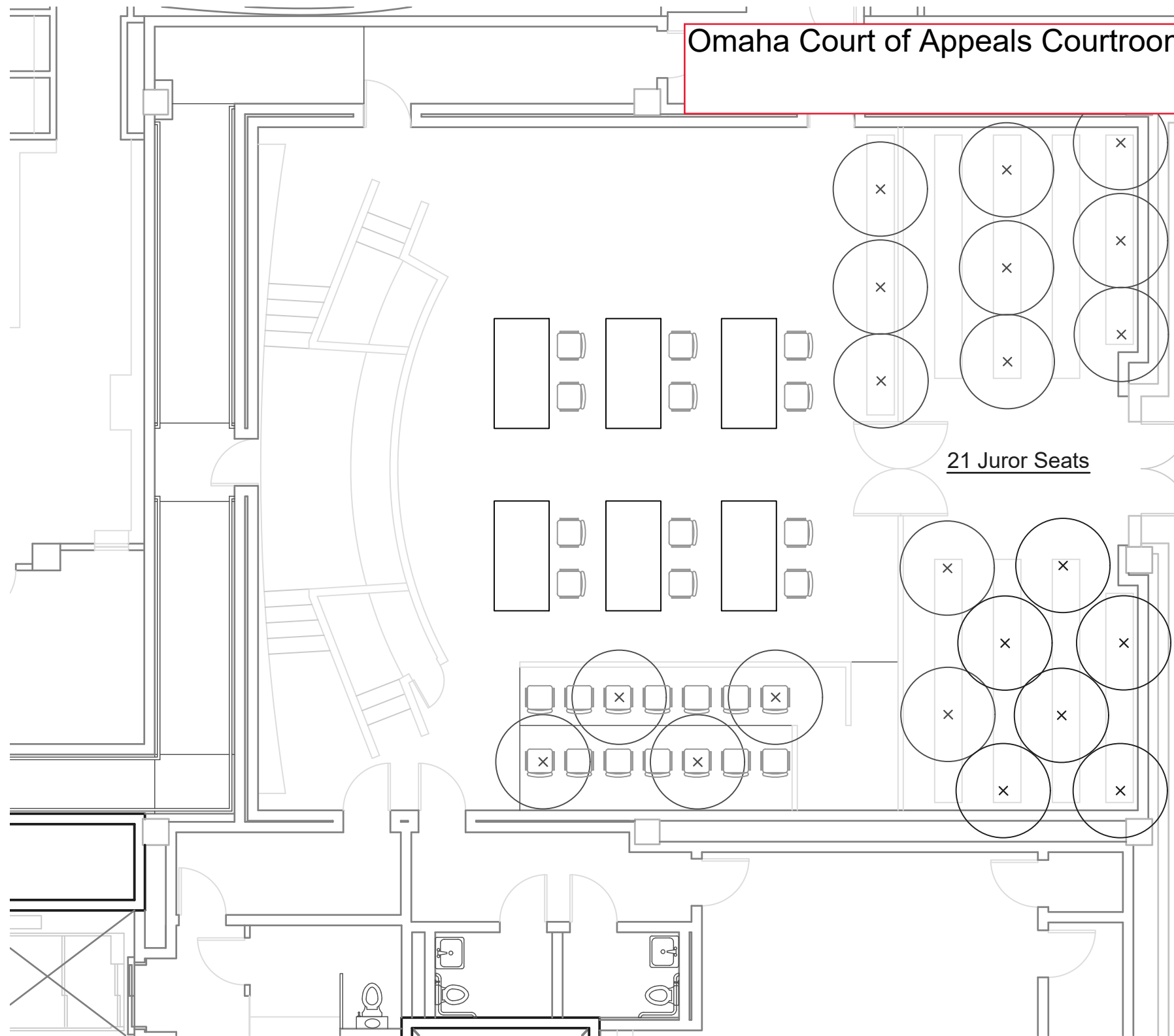
Seating for 14 Jurors During Bench Conferences

23 Juror Seats

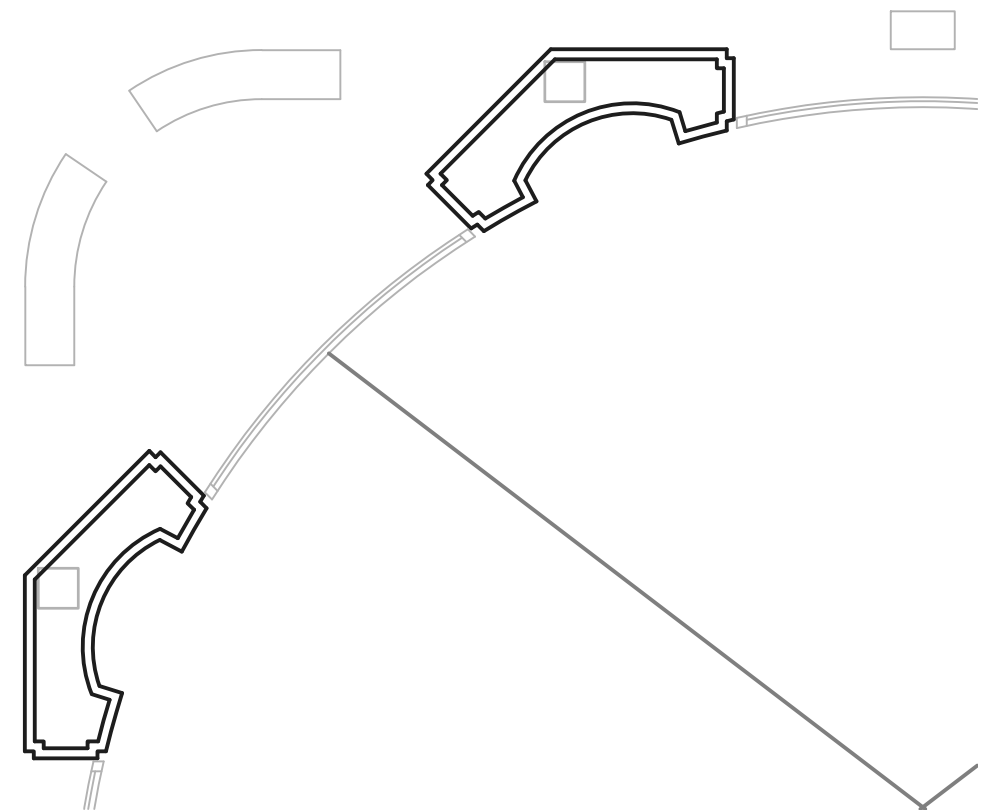
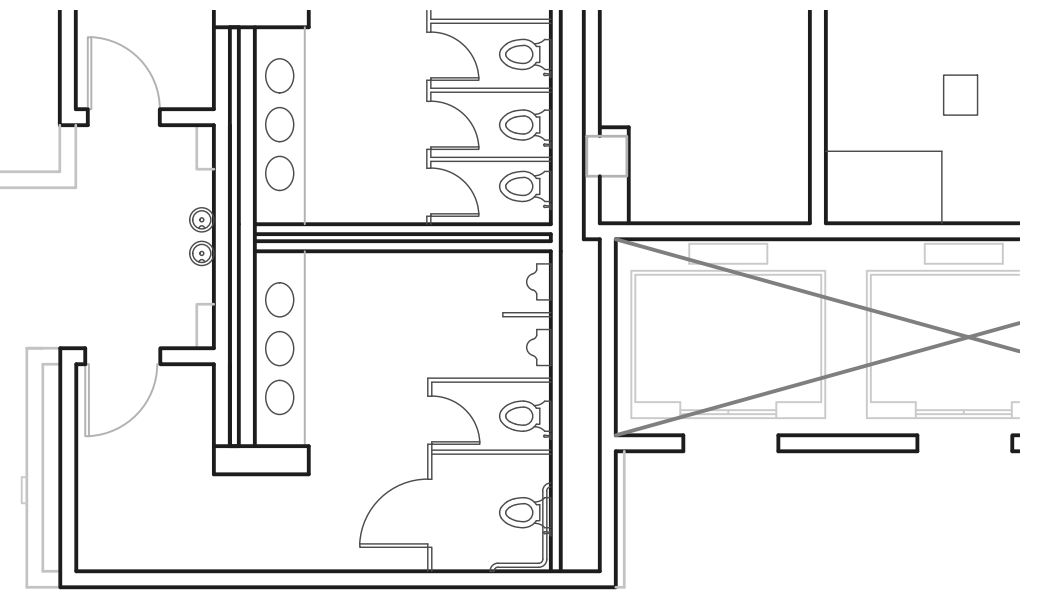
Omaha Special Proceedings
23 Jury Seats - 6'-0" Spacing



Omaha Court of Appeals Courtroom

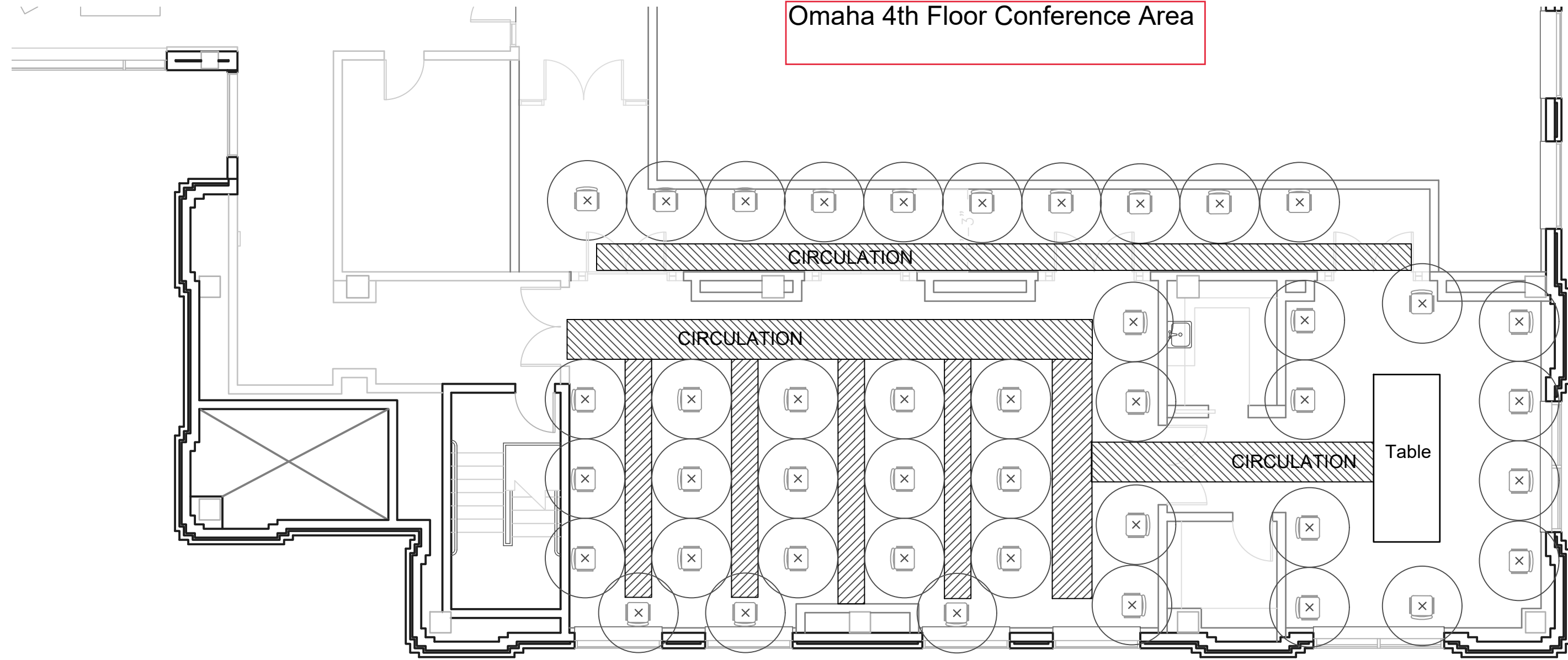


21 Juror Seats



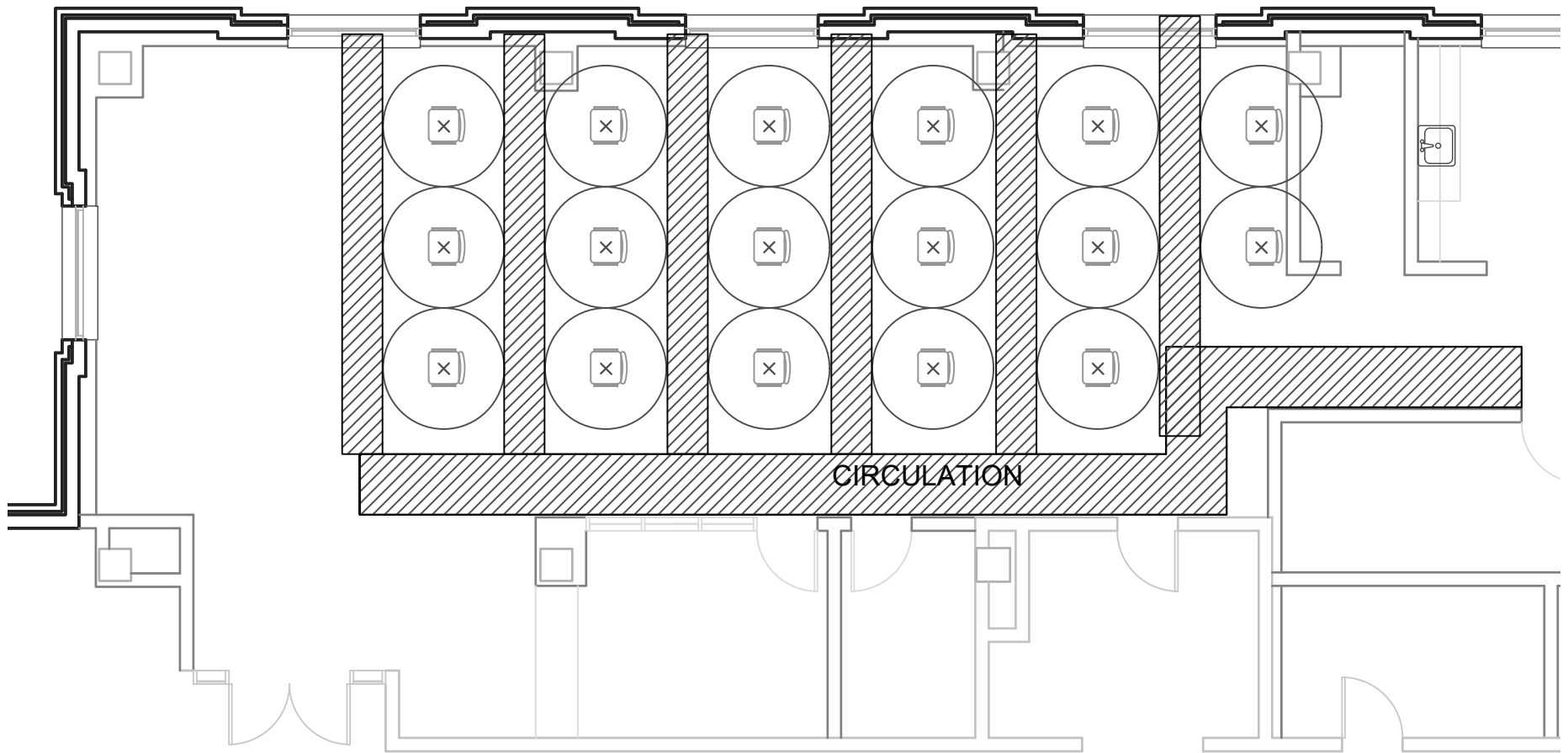
Omaha Court of Appeals
21 Jury Seats - 6'-0" Spacing

Omaha 4th Floor Conference Area



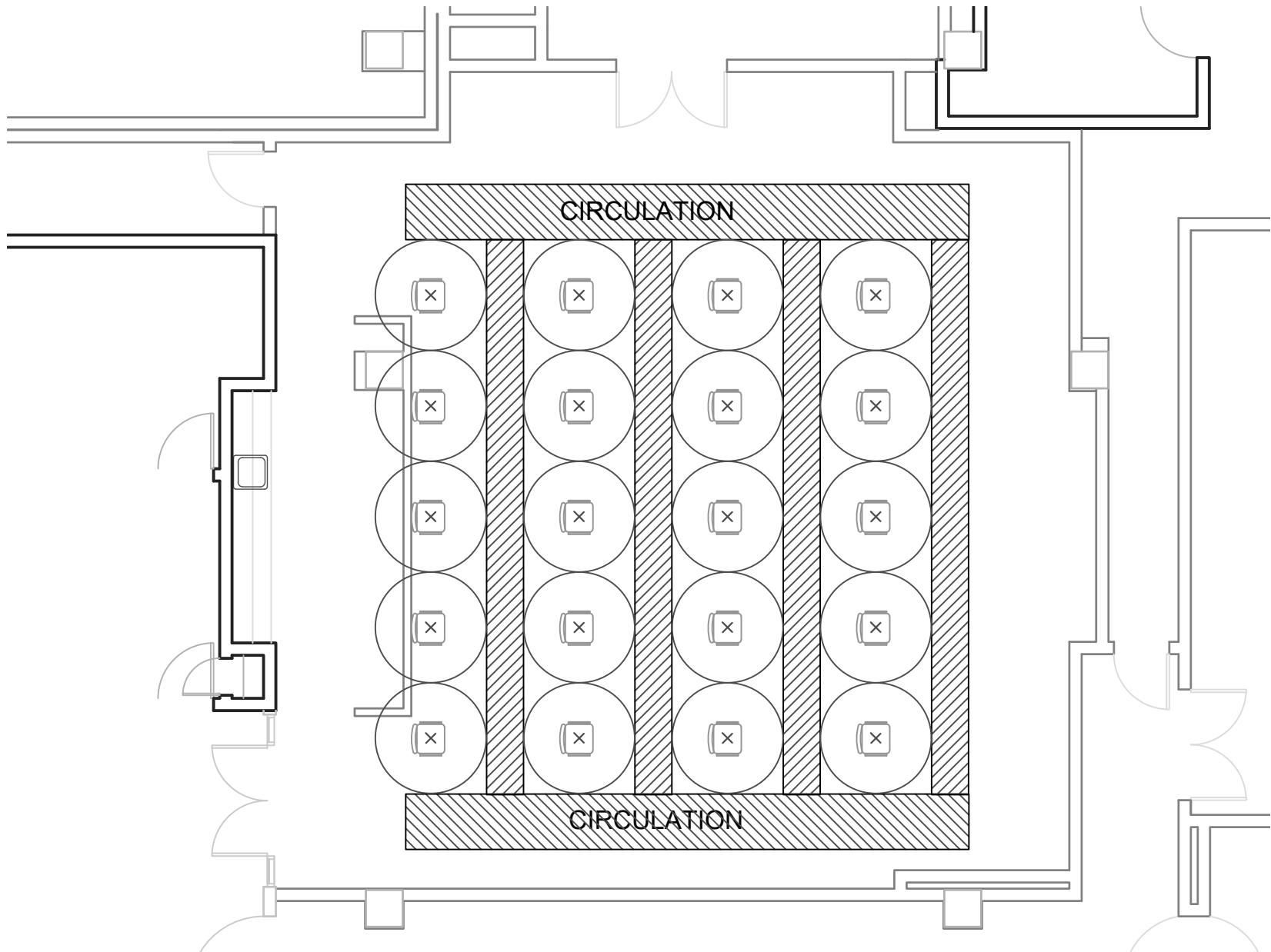
Omaha 4th Circuit Conference Space
42 Jury Seats - 6'-0" Spacing

Omaha Jury Assembly Room



Omaha Jury Assembly - 17 Seats- 6'-0" Spacing

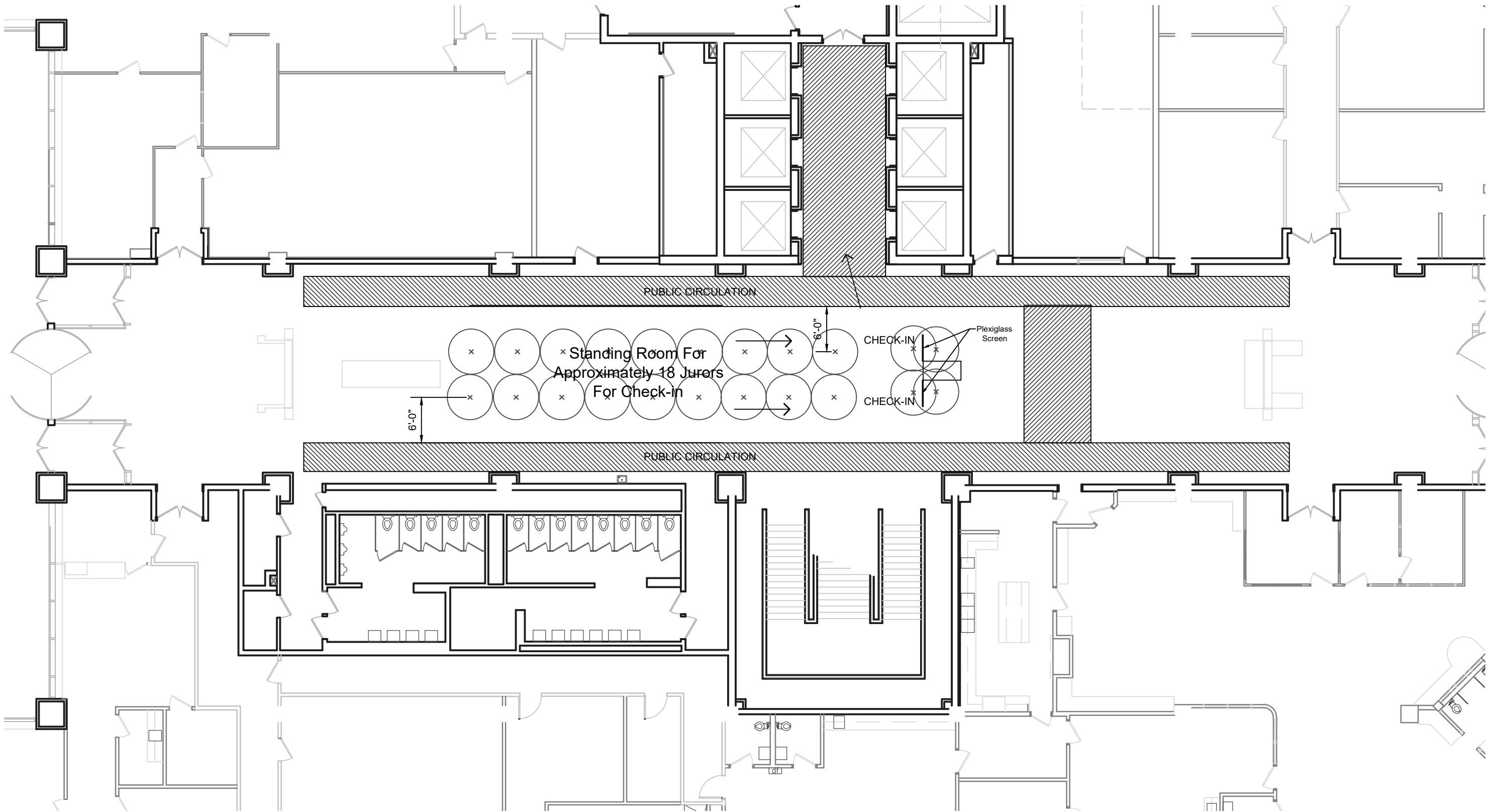
Omaha Joint Conference Room



Omaha Joint Conference Room - 20 Seats- 6'-0" Spacing

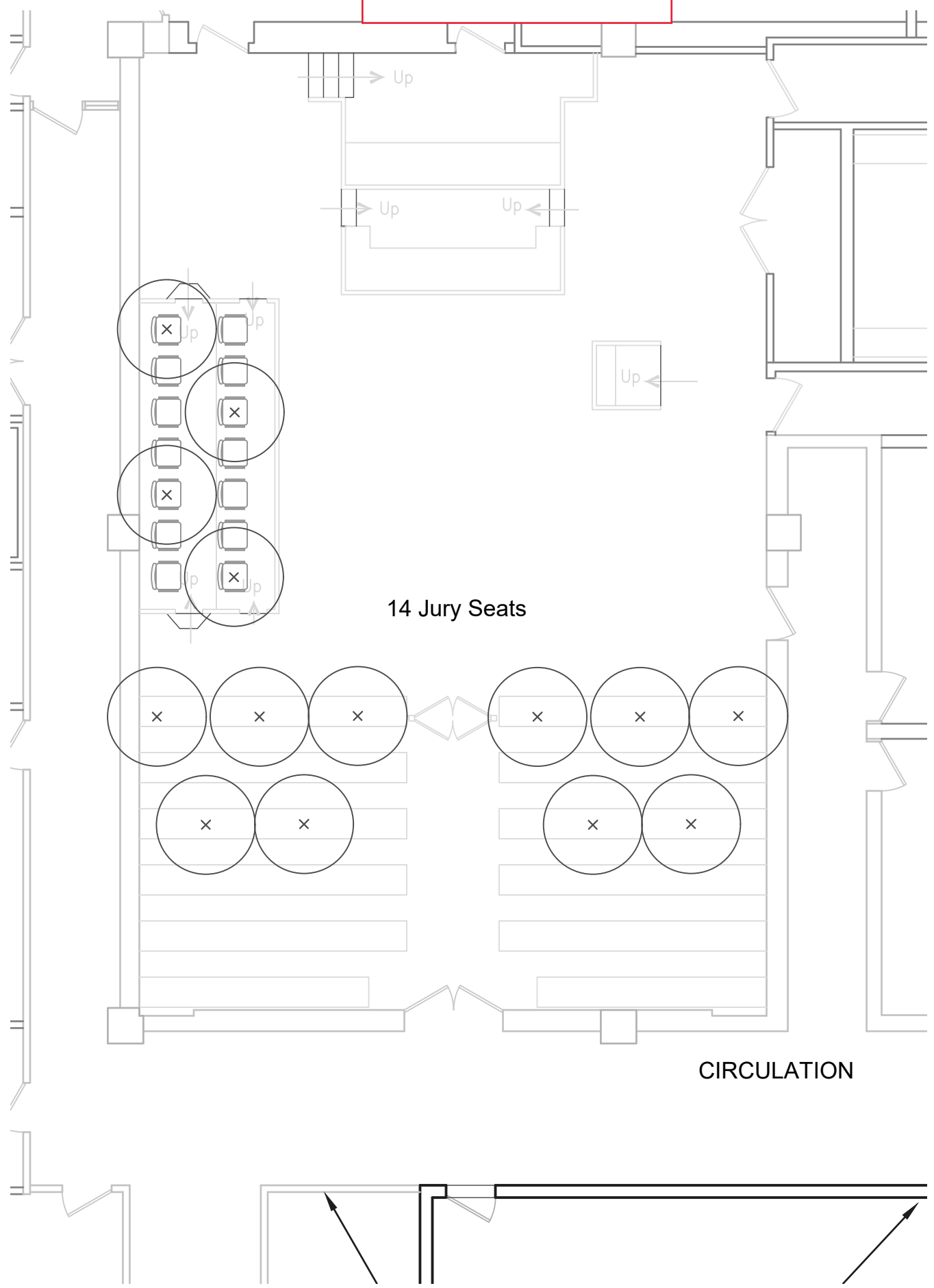
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1. Lincoln Jury Check-In
2. Lincoln Courtroom 1
3. Lincoln Courtroom 1 (Jury Selection)
4. Lincoln Courtroom 2
5. Lincoln Courtroom 3 (Jury Selection)
6. Lincoln Jury Assembly Room
7. Lincoln Juror Hallway Seating



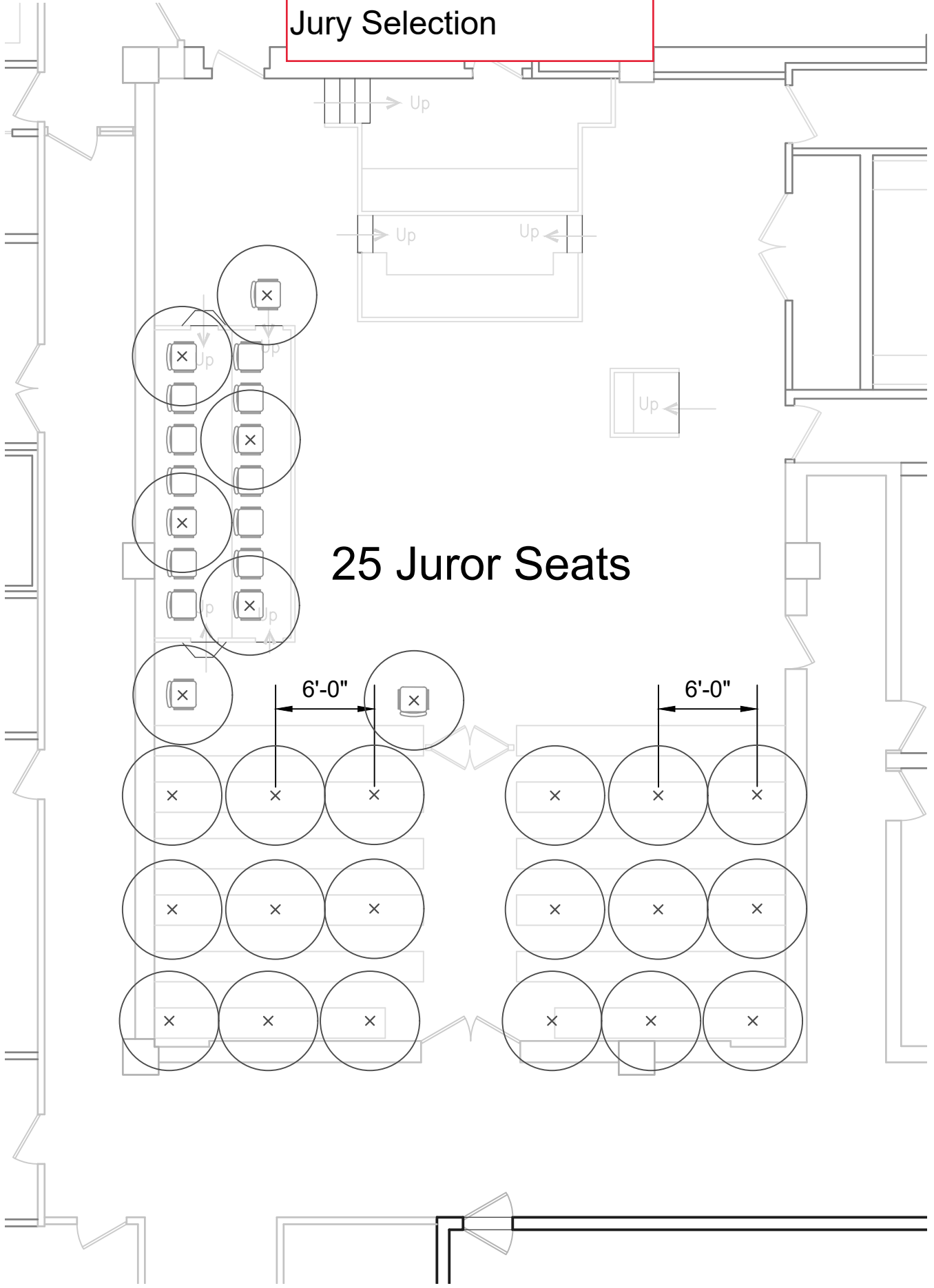
Lincoln Jury Check-in

Lincoln Courtroom 1



Lincoln Courtroom 1
14 Jury Seats - 6'-0" Spacing

Lincoln Courtroom 1
Jury Selection



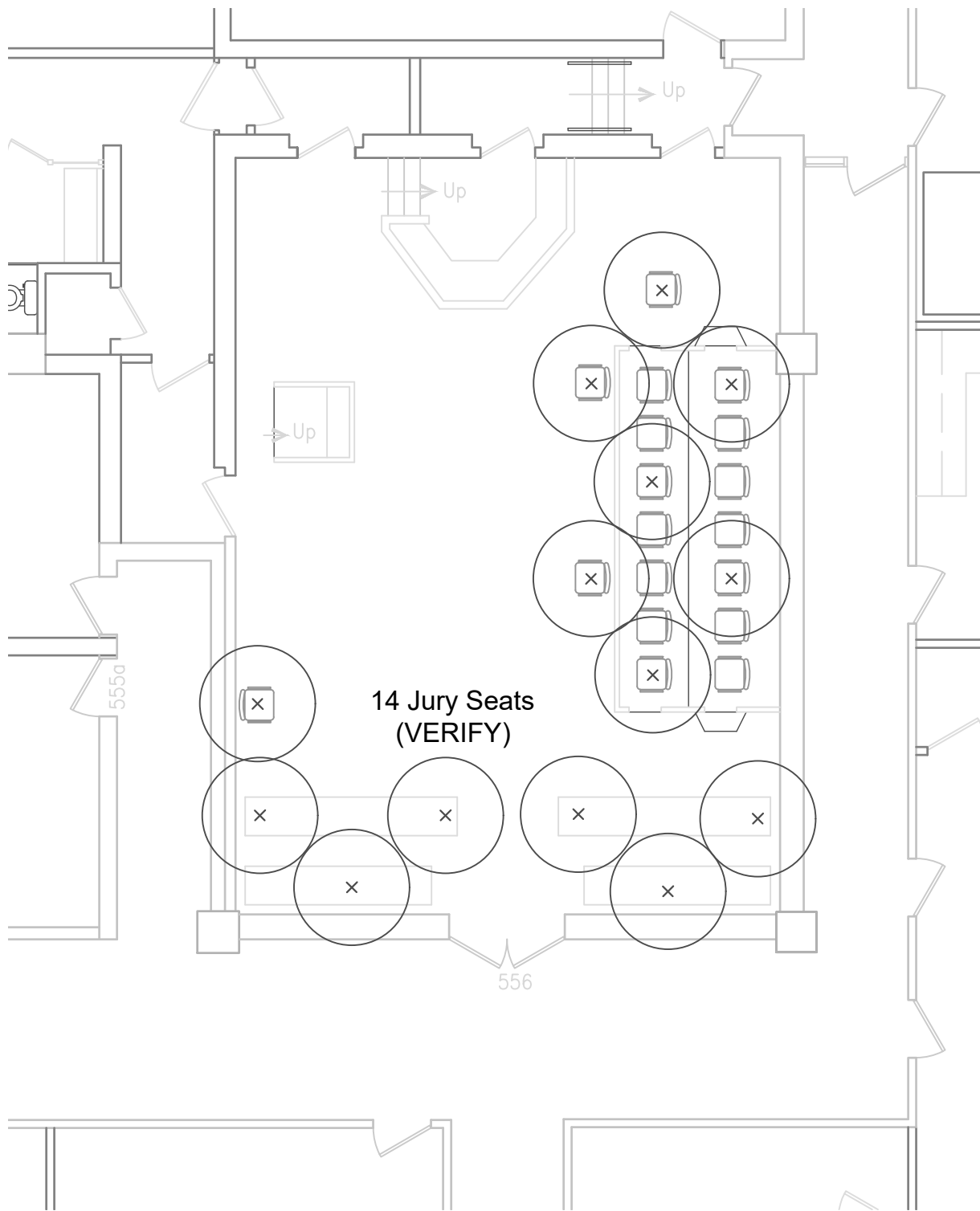
25 Juror Seats

6'-0"

6'-0"

Lincoln Courtroom 1 - Jury Orientation/Selection
25 Jury Seats - 6'-0" Spacing

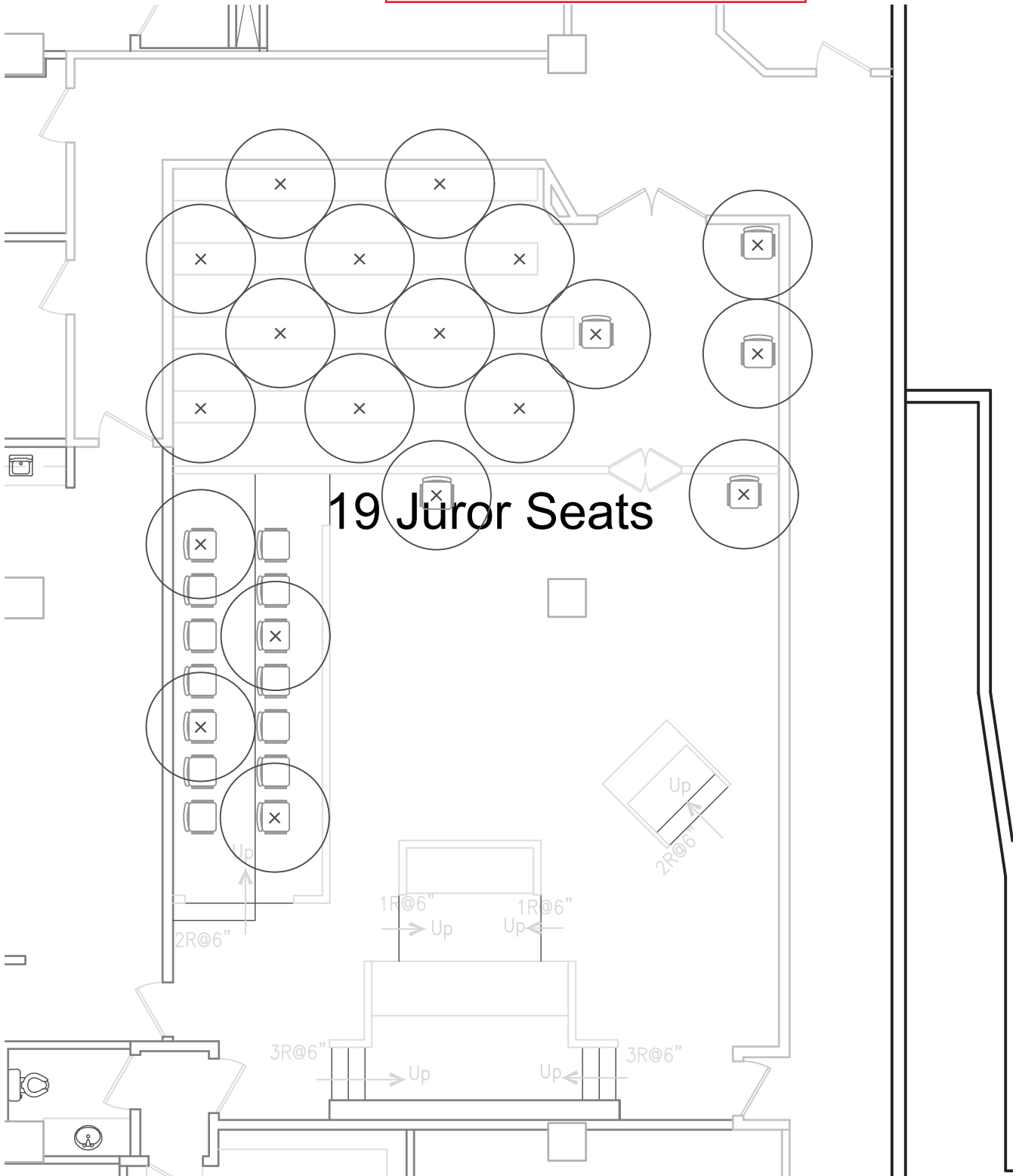
Lincoln Courtroom 2



Lincoln Courtroom 2 14 Jury Seats - 6'-0" Spacing

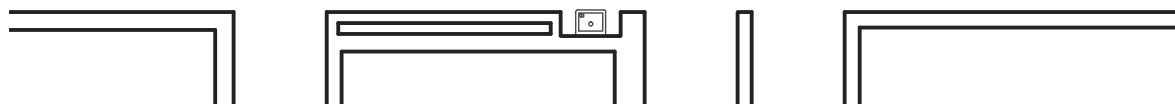
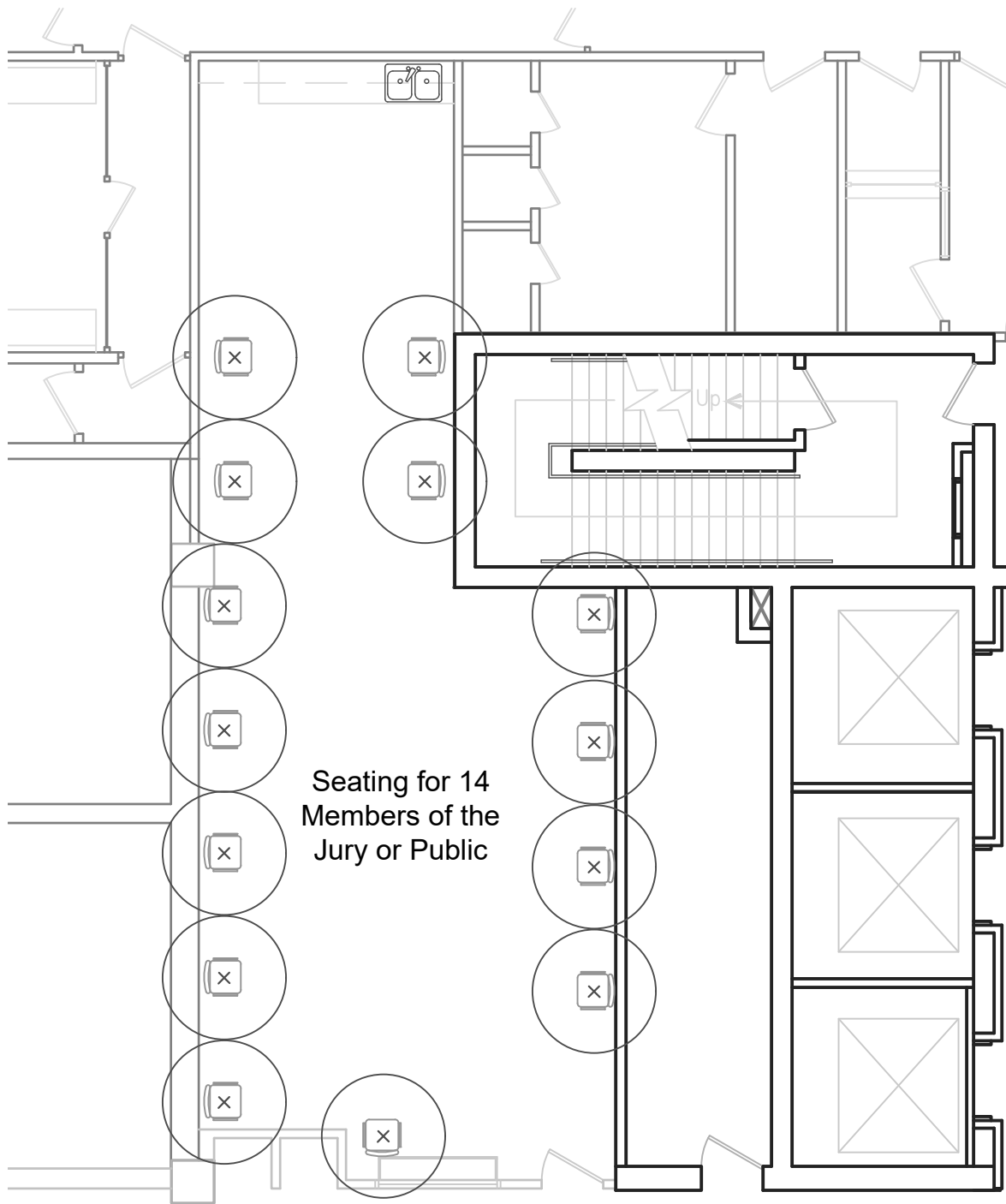
This layout requires four free standing chairs for jury members that may not fit in the actual space

Lincoln Courtroom 3
Jury Selection



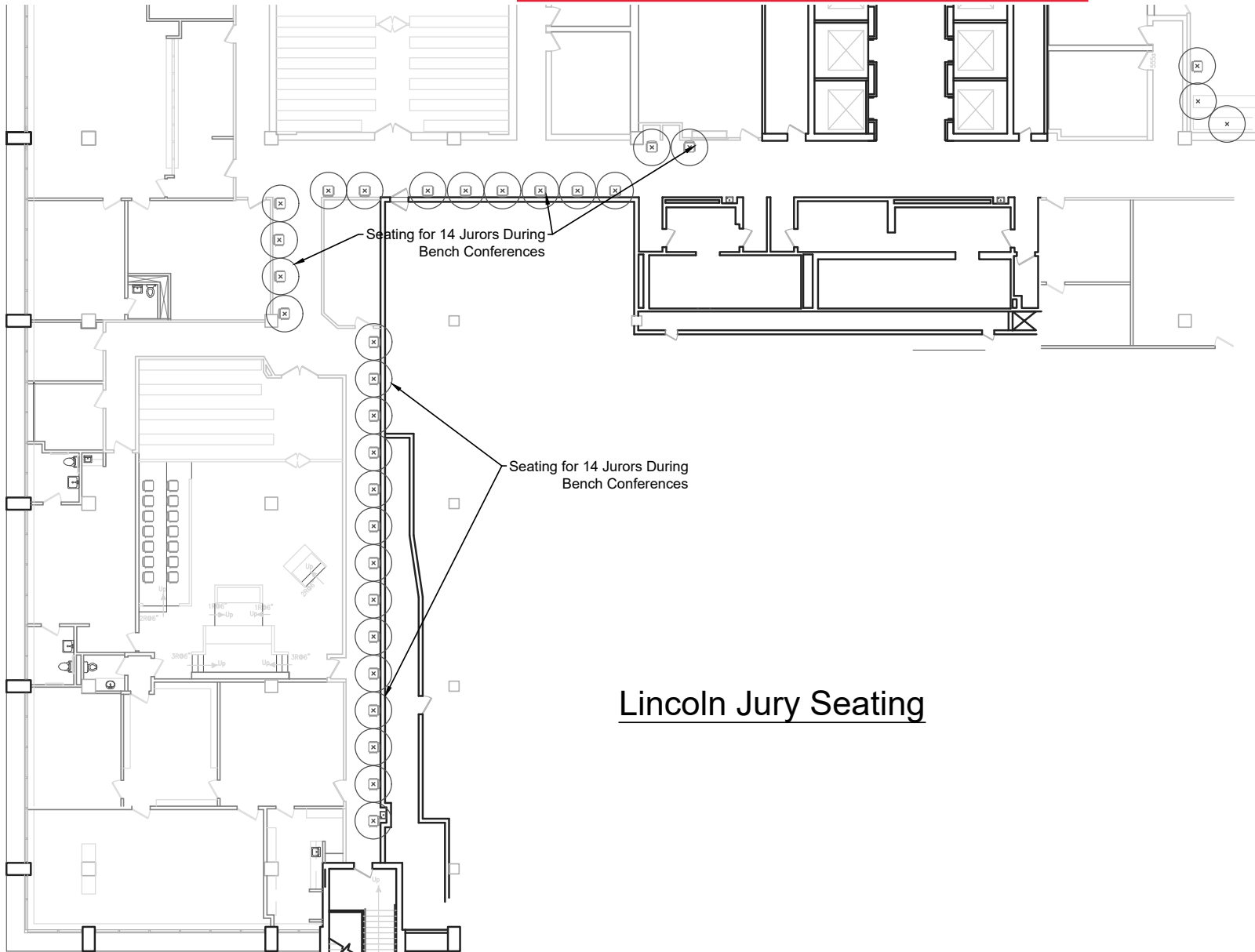
Lincoln Courtroom 3 - Jury Orientation/Selection
19 Jury Seats - 6'-0" Spacing

Lincoln Jury Assembly Room



Lincoln Jury Assembly
14 Jury Seats - 6'-0" Spacing

Lincoln Juror Hallway Seating



Lincoln Jury Seating