

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

**Technical Appendix 10  
Independent Observation Report**

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**INDEPENDENT OBSERVATION OF ELEVEN  
BANKRUPTCY COURTROOM USE STUDY COURTS**

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**Federal Judicial Center**

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This report was undertaken in furtherance of the Federal Judicial Center's statutory mission to provide research and planning assistance to the Judicial Conference of the United States and its committees. The views expressed are those of the author and not necessarily those of the Federal Judicial Center.

## EXECUTIVE SUMMARY

The Federal Judicial Center conducted a separate observational study as an independent check on the court-supplied bankruptcy courtroom use data. Using a sample of 11 of the 18 districts participating in the courtroom use study, we recruited 49 graduate or law student observers from local colleges and universities to observe and record information about bankruptcy courtroom use in those sampled districts. With weekly courtroom observation schedules supplied by the Center, the observers visited bankruptcy courtrooms and recorded information about courtroom use.

The courtroom use study was conducted in two separate waves over time. The districts included in the observational study were selected independently and without input from the research team that conducted the overall bankruptcy courtroom study. Within each district, the Project Director of the independent observation study selected the main place of holding court as the site for the observational study and recruited observers from colleges and universities in that region.

### Observational Study Districts

| Wave 1                        | Wave 2                           |
|-------------------------------|----------------------------------|
| Northern District of Illinois | Central District of California   |
| District of Nevada            | Southern District of Florida     |
| District of New Hampshire     | District of Massachusetts        |
| Middle District of Tennessee  | Eastern District of New York     |
| Western District of Wisconsin | Eastern District of Pennsylvania |
|                               | Western District of Virginia     |

The observers were typically second- or third-year law or graduate students whose class schedules gave them blocks of free time during which they could visit the local bankruptcy court. Each week, the observers were given a schedule of courtrooms to visit over the span of two and one-half hours during a morning or an afternoon. Courtroom visits were usually for one-half hour per courtroom. We selected the courtrooms for visits on a random basis, except in two districts in which the local bankruptcy courthouse had only one courtroom. During each courtroom visit, observers were to record information such as whether an event was in progress upon their arrival, whether and at what time an event ended or began during their visit, and who was present for the event (e.g., a judge, attorneys, members of the public). Observers had an observation form on which to record this information and instructions on how to make their observations.

The observers entered the data from their forms into an online database that was matched, on the basis of time and courtroom, with the courtroom use data supplied by the bankruptcy courts. We used two measures to assess the degree of concordance between the observers' information and the court-supplied courtroom use data: (1) was a

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courtroom in use by a judge, and (2) was the courtroom in use, whether by a judge, court staff, or anyone else. Overall, on the first measure, the observers agreed with court-supplied data 95% of the time. In other words, there was a 95% degree of concordance between the two data sources about whether observed courtrooms were in use by a judge. On the second measure, the degree of concordance was 87%. We examined the data, over time and by district, to assess the stability of these results, and found a great deal of consistency. In other words, the results are not skewed over time or by district. We conclude from our findings that the court-supplied data reliably represent what actually occurred in the observed courtrooms.

## INTRODUCTION<sup>1</sup>

The purpose of this study is to provide an independent check on the data provided by the courts participating in the Federal Judicial Center’s bankruptcy courtroom use study. Independent data collection is a desirable goal for an evaluation, as it establishes a distance between the differing objectives of the evaluator and the organization under study. The scope of the bankruptcy courtroom use study precluded such an approach and required a dedicated data collection effort by the participating bankruptcy courts. To assuage any concerns about the validity or reliability of the court-provided data, we conducted a smaller, separate study that relied on independent data collectors to visit randomly selected federal bankruptcy courthouses and to observe and record information in randomly selected courtrooms, distinct and apart from the overall court data collection effort.

This observation study was not designed to replicate the level of detail in the court-supplied data. Rather, it was intended to check the courtroom use data by recording basic information in the selected courtrooms. The independent observers visited courtrooms randomly selected from among those with scheduled proceedings and recorded whether the courtroom was in use at any time during their visits. The independent observers’ data were compared against the study courts’ reported use data for the same courtrooms at the same times on the same dates.

### Observation in the Bankruptcy Courts

These 11 districts were selected for observation from among the 18 districts participating in the two waves of the courtroom use study:

| <b>Wave 1</b>                 | <b>Wave 2</b>                    |
|-------------------------------|----------------------------------|
| Northern District of Illinois | Central District of California   |
| District of Nevada            | Southern District of Florida     |
| District of New Hampshire     | District of Massachusetts        |
| Middle District of Tennessee  | Eastern District of New York     |
| Western District of Wisconsin | Eastern District of Pennsylvania |
|                               | Western District of Virginia     |

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<sup>1</sup> Vashty Gobinpersad provided invaluable assistance in the preparation of the data for this project. James B. Eaglin gave detailed and insightful comments on earlier drafts of this report. And 49 student observers worked diligently to observe and record information in 11 federal bankruptcy courts.

Ten of these districts were selected at random for inclusion in the study. The Eastern District of New York was added to the sample from among the courts participating in Wave 2 of the study. The random sample of five courts for Wave 2 included neither of the large New York bankruptcy courts participating in the study—the Eastern and Southern Districts of New York—and therefore we decided to include the Eastern District of New York as an add-on to the random sample.

The Wave 1 districts collected courtroom use data for the period September 14, 2009, to December 11, 2009. The observation study in the Wave 1 districts began on September 21, 2009, and concluded on December 4, 2009. The Wave 2 districts collected courtroom use data for the period January 18, 2010, to April 16, 2010; the observation study began on January 25, 2010, and ended on April 9, 2010.

In each of these 11 districts, we chose for observation the bankruptcy courthouse in the city that is the primary place of holding court. To do the actual observations, we contracted with law school and graduate students in the selected cities to serve as independent observers. Using information that the bankruptcy courts had provided to the Center about scheduled courtroom events, we sent the observers to randomly selected courtrooms at predetermined times, for one-half-hour intervals, to record whether the courtrooms were in use. No one in the 11 selected districts was given any advance notice that the observers would be in their courtrooms. We later matched the information collected by the observers to the courts' reported use data for the same courtrooms, on the same dates and at the same times. These jointly reported half-hour periods are the unit of analysis for this study.

### **Summary of Findings**

The major findings of this study are the following:

- When courtroom use is defined as use by a judge, the overall degree of concordance between the independent observers' reports and the court-reported data in the 11 selected districts is 95%.
- When courtroom use is defined as use by anyone, including court staff, attorneys, and judges, the overall degree of concordance is 87%.
- In the Wave 1 study courts, the degree of concordance between the two data sources is 95% for courtroom use by a judge and 87% for courtroom use by anyone. In the Wave 2 study courts, these figures are 95% and 86%, respectively.
- Several districts have somewhat higher or somewhat lower degrees of concordance, compared with the overall averages, but the majority of districts differ little from the overall averages.

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- Over time, the results are relatively stable. Week by week, from the first week of observation to the last week of observation in each study wave, the degree of concordance on each measure of courtroom use typically falls within 3 to 4 percentage points of the overall average.
- The individual independent observers were varied in their degrees of concordance with the court-supplied data, but, overall, the observers' performance was exemplary. The performance of 2 among the 49 observers could be considered below average. However, these observers' performance does not appear to have had an impact on the results of the data analysis.

Based upon our findings, we conclude that the courtroom use data provided by the study courts to the Center reliably represents what actually occurred in the courtrooms under observation. The next sections contain detailed discussions of the methodology and the findings of the data analysis that lead us to this conclusion.



## METHODOLOGY

### Selection of Districts and Courthouses

We randomly selected 5 districts from each of the 2 study waves for the independent observation study. The random sample of 5 districts for Wave 2 included neither of the large New York bankruptcy courts participating in the study—the Eastern and Southern Districts—and therefore we decided to include the Eastern District of New York in the random sample. The random selection of the first 10 districts was a neutral mechanism that did not favor any districts on the basis of size or other characteristics. Our addition of the Eastern District of New York was to ensure that large bankruptcy courts are adequately represented in the sample. We will not generalize any specific findings from the selected districts to all study districts. However, because the majority of study courts were selected randomly and none of the study courts were aware of which courts were in the independent observation study, we feel confident that our conclusions about the concordance between the independent observers’ data and the court-reported data apply to those 7 districts that were not selected for independent observation.

In each of the 11 selected districts, we designated for observation the courthouse in the city that is the principal place of holding court. Tables 1 and 2 list the districts, cities, and bankruptcy courthouses selected for Waves 1 and 2, respectively. In the majority of these districts, the bankruptcy court is located in a building separate from the district court. The exceptions are the Central District of California, the Northern District of Illinois, and the Western District of Wisconsin.

**Table 1**  
**Selected Courthouses, Wave 1**

| <b>District</b>               | <b>City</b> | <b>Courthouse</b>                        |
|-------------------------------|-------------|--|
| Northern District of Illinois | Chicago     | Everett McKinley Dirksen U.S. Courthouse |
| District of Nevada            | Las Vegas   | Foley Federal Building                   |
| District of New Hampshire     | Manchester  | U.S. Bankruptcy Courthouse               |
| Middle District of Tennessee  | Nashville   | U.S. Customs House                       |
| Western District of Wisconsin | Madison     | Robert W. Kastenmeier U.S. Courthouse    |

**Table 2**  
**Selected Courthouses, Wave 2**

| <b>District</b>                  | <b>City</b>  | <b>Courthouse</b>  |
|----------------------------------|--------------|--|
| Central District of California   | Los Angeles  | Edward R. Roybal Federal Building and Courthouse         |
| Southern District of Florida     | Miami        | Claude Pepper Federal Building                           |
| District of Massachusetts        | Boston       | John W. McCormack Post Office and Court House            |
| Eastern District of New York     | Brooklyn     | Conrad B. Duberstein U.S. Bankruptcy Courthouse          |
| Eastern District of Pennsylvania | Philadelphia | Robert N.C. Nix, Sr. Federal Courthouse                  |
| Western District of Virginia     | Roanoke      | U.S. Bankruptcy Court, Commonwealth of Virginia Building |

### **Independent Observers**

To observe courtrooms in the selected districts, we used local, independent observers who are not current or former employees of the Federal Judicial Center or the federal courts.<sup>2</sup> Apart from their independence, a primary advantage of using local observers is that they could be readily available to observe in the courts over the course of several months, and be available at a much lower cost than, for example, Center staff who would have to be sent to these locations. Another advantage is that the observers would not be known to court staff, nor to judges, and could make their observations anonymously. Judges and staff in the study courts were advised at the beginning of Wave 1 and Wave 2 that the Center would use outside independent observers. The disadvantage is that these independent observers were not expected to have the knowledge and experience to make detailed observations in a federal bankruptcy courtroom. This limited the amount and type of data that could be collected in the courtrooms by the observers. However, because the primary goal of the observation study was to record whether courtrooms were in use at particular times, and by whom, we did not expect that lack of experience would prevent observers from recording this basic information.

We contracted with second- and third-year law students and advanced graduate students to serve as independent observers. Advanced students, whether in law school or graduate school, would have the level of maturity needed for such a task and could have

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<sup>2</sup> The observers were hired as independent contractors. One observer in the Central District of California had worked as an observer for the earlier study of courtroom use in the district courts.

flexible schedules that would allow for court observation during the normal hours of court operation. Where possible, we chose law students because of their additional knowledge of legal matters. We recruited these students by contacting faculty and administrators at universities in the selected cities. The goal was to hire 5 observers in each city. Table 3 shows that we met this goal in 7 of the 11 selected cities, that there were at least 4 observers in 10 of the 11 cities, and that there were a total of 49 observers.

**Table 3**  
**Court Observers, Waves 1 and 2**

|                                  | <b>Number of<br/>Observers</b> |
|----------------------------------|--------------------------------|
| Wave 1                           |                                |
| Northern District of Illinois    | 5                              |
| District of Nevada               | 5                              |
| District of New Hampshire        | 4                              |
| Middle District of Tennessee     | 5                              |
| Western District of Wisconsin    | 5                              |
| Wave 2                           |                                |
| Central District of California   | 4                              |
| Southern District of Florida     | 4                              |
| District of Massachusetts        | 5                              |
| Eastern District of New York     | 5                              |
| Eastern District of Pennsylvania | 5                              |
| Western District of Virginia     | 2                              |

### **Selection of Courtrooms for Observation**

We randomly scheduled observations in all courtrooms in each courthouse, with a few exceptions. We did not schedule observations in:

- courtrooms identified by the court as unavailable (e.g., under renovation) or unused (e.g., vacant or unassigned);
- ceremonial courtrooms that were not also assigned to a judge; and
- courtrooms that did not have conventional room numbers or other identifying information.

Courtrooms without identifying information were excluded for one reason. Without such information, we could not readily direct observers to a particular room or floor of the courthouse. The observers were to make their observations without drawing attention to themselves, and we did not want them asking questions that might, in turn, cause questions to be asked of the observers. As we will describe below, one of the instructions to the observers was, if asked, to be forthcoming and describe why they were in the courthouse or in a particular courtroom. No more than one courtroom was excluded from any given courthouse.

### **Scheduling of Observations**

Court observers received a schedule for each week of observation that listed specific, randomly selected courtrooms and the times at which they were to make their observations in these courtrooms. The schedules were made during the week before the observations were to take place and were based on the court scheduling information supplied to the Center by the courts.<sup>3</sup>

The courtrooms were scheduled for observation in contiguous sets of half-hour blocks, either in the morning or afternoon, during regular courthouse hours. An observer would be scheduled each week for a two and one-half hour block of time and would visit as many as 5 different courtrooms for one-half hour each. In courthouses with fewer than 5 courtrooms, this scheduling procedure meant that observers would visit some courtrooms more than once during their observation times. In the Western District of Virginia and the Western District of Wisconsin, each of which has a single courtroom, the observers were at that courtroom for the entire observation time.

The scheduling process was designed to use random selection as a neutral selection process whenever choices had to be made. Thus, the selection of time of day (i.e., morning or afternoon), courtrooms, and the order in which the courtrooms were to be visited was randomly determined. Observers were each scheduled for a different day of the week

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<sup>3</sup> The scheduling data were available in DISCUS-B, a software package that the study courts used exclusively for this project, to record courtroom schedules and courtroom usage. DISCUS-B and the scheduling and use data are described in detail in Technical Appendix 7 of the courtroom use study report.

during each week of observation. Thus, if there were 5 observers available, Monday through Friday would each have a block of time scheduled for observation. Ordinarily, we scheduled observations for courtrooms that, according to court-supplied scheduling information, were to be in use during the half-hour observation period. However, on one randomly selected day each week, the courtrooms were randomly chosen without regard for the court schedule. We wanted to have a portion of the observations independent of the court schedule, to possibly capture courtroom use that was scheduled after the observers' weekly observation schedules were completed, or perhaps scheduled at the last minute. Once the observation schedules were complete, we assigned the independent observers to a daily schedule based on their availability.

Under certain circumstances, the random selection of courtrooms and/or the time of day would have to be changed for a given courthouse on a given day. Here are some examples:

- In districts with a single courtroom—the Western District of Virginia and the Western District of Wisconsin—observers were scheduled to observe the one courtroom for their assigned period regardless of the courtroom schedule.
- If there were too few courtrooms scheduled for use to fill a daily block of time, observers would either return to a courtroom they had visited earlier or stay in a courtroom for an hour. Observers could also be scheduled to visit randomly selected courtrooms that did not have events scheduled at the time of the visit.
- If there were too few courtrooms scheduled for use during the selected observation period and the scheduled events were of short duration, the courtroom observations would be scheduled to match the available courtroom schedules rather than on a random basis.
- If an observer's schedule of available times did not fit with the randomly selected morning and afternoon blocks of time, the observation period would be shifted to match the observer's schedule. The courtroom visits during this period would be rescheduled using the random selection process.

For example, if there were five or six short events scheduled in a courthouse for a selected morning, and those events were spread out over the morning, completely random selection might not fill the observer's schedule. Instead, we would schedule the observations in the order in which the events were scheduled to take place.

Changes to the randomly selected schedules were more common in the smaller courthouses, and these changes occurred in at least one district every week. It is important to keep in mind that this study is not designed to analyze courtroom use, and that random selection of courtrooms and times is not the same as random sampling. This study is about the degree to which two data sources are reporting the same information. Random selection in constructing the observers' schedules is merely a neutral selection device. One benefit of random selection is that scheduling will not favor, for example, lower-numbered courtrooms, lengthy proceedings over shorter proceedings, or any other court-

house, courtroom, or event-specific features that might exist. In other words, random selection will distribute evenly the scheduling of observers' visits over the available courtrooms. When purely random selection would not work, for reasons listed above, we took care to schedule courtrooms without regard to anything except whether an event was scheduled.

Tables 4 and 5 show the number of courtrooms observed and the total number of observations in each courthouse for Waves 1 and 2, respectively.

**Table 4**  
**Independent Observations in Wave 1 Districts**

| <b>District</b>               | <b>City</b> | <b>Number of Courtrooms Observed</b> | <b>Number of Observations</b> |
|-------------------------------|-------------|--------------------------------------|-------------------------------|
| Northern District of Illinois | Chicago     | 9                                    | 246                           |
| District of Nevada            | Las Vegas   | 3                                    | 247                           |
| District of New Hampshire     | Manchester  | 2                                    | 144                           |
| Middle District of Tennessee  | Nashville   | 3                                    | 240                           |
| Western District of Wisconsin | Madison     | 1                                    | 245                           |

**Table 5**  
**Independent Observations in Wave 2 Districts**

| <b>District</b>                  | <b>City</b>  | <b>Number of Courtrooms Observed</b> | <b>Number of Observations</b> |
|----------------------------------|--------------|--------------------------------------|-------------------------------|
| Central District of California   | Los Angeles  | 9                                    | 188                           |
| Southern District of Florida     | Miami        | 3                                    | 182                           |
| District of Massachusetts        | Boston       | 3                                    | 250                           |
| Eastern District of New York     | Brooklyn     | 4                                    | 237                           |
| Eastern District of Pennsylvania | Philadelphia | 4                                    | 233                           |
| Western District of Virginia     | Roanoke      | 1                                    | 100                           |

### **Court Observation Protocol**

Each independent observer received a package of instructions for conducting the courtroom observations. Included in the package was a one-page form that observers were to use to record their observations for each half-hour observation period. The form captured this information about the courtroom visit:

- information identifying the observer, city, courtroom, and date of visit;
- the observer's time of arrival at the courtroom;
- whether or not the observer could enter the courtroom and, if not, why (e.g., courtroom locked, proceeding closed to the public);
- if the observer could enter the courtroom, whether the courtroom was in use;
- if the observer could not enter the courtroom, was it possible to determine that the courtroom was in use;

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- if use of the courtroom began during the observer's visit, the time at which it began, and whether it began without a judge present;
- if the courtroom was in use, whether a judge was present at any time;
- if the courtroom was in use, whether a trustee was present;
- if the courtroom was in use, whether attorneys or members of the public were present and how many;
- if the courtroom was in use, whether that use ended during the observation period and, if it ended, the time it ended;
- if available, the posted description of the event scheduled for the courtroom;
- the observer's time of departure from the courtroom; and
- the observer's notes describing situations that could not be accurately described within the available categories of information or anything unusual that occurred.

Observers were instructed to use their best judgment to determine whether a courtroom was in use. As for what constituted use, their only guideline was that, if a judge was present and presiding over a proceeding, the courtroom was in use; other situations were to be assessed on a case-by-case basis and were to be described on the observation form. In contrast to district court proceedings, some bankruptcy proceedings can begin before the judge is present. For example, a courtroom deputy may begin a calendar call before the judge enters the courtroom. We included this scenario on the form—the proceeding began before the judge was present—to make observers aware of this possibility and ready to distinguish it from proceedings that began with a judge present. If a judge entered the proceeding after it began, that would be recorded on the form. Similarly, bankruptcy courtrooms may be used by trustees, such as for meetings with debtors. Although we were not interested in use of courtrooms by trustees as a category separate from other uses not involving a judge, we asked observers to note the presence of a trustee to make them aware of this possibility and avoid confusing trustees with judicial officers. Observers were not asked to distinguish between Chapter 7, Chapter 13, and United States trustees.

We kept the data collection basic for several reasons. First, a basic data collection reduced the training and background knowledge necessary to complete the task. Second, a basic data collection effort could minimize interobserver variation in the data collection, and, in turn, reduce or eliminate discrepancies between the observers' recounting of courtroom use and the courts' description of courtroom use. As noted above, it was sufficient for purposes of this study to know whether a courtroom was in use during a given observation period and to distinguish use by judges from use by others. Anything more



could have introduced a source of error into the comparison of observers' reports and court-reported data.

The observers were instructed to draw no attention to themselves, either in dress or demeanor. But if they were asked their purpose for being in the courthouse or in a particular courtroom, they were instructed to be forthcoming and respond that they were there to observe courtroom usage as part of the Federal Judicial Center's courtroom use study. The observers were also to report any such incidents as soon as possible after their observations were concluded for the day. Approximately half of the observers reported inquiries by court staff or by judges, with the majority of inquiries coming from court security staff.

### **Data Entry and Data Matching**

Observers were required, within 8 hours of completing a set of observations, to enter the information into an Internet database created specifically for this portion of the Center's study. This process of remote data entry served two purposes. It served as a check on the observers' work, but more importantly it created a permanent record of the independent court observations that could not be altered.<sup>4</sup> The observers sent to the Center copies of their observation forms, which were used to check the observers' data entry and resolve any errors or discrepancies in the data.

After the observers' data were checked, these data were matched with the courtroom use data collected by the study courts. The matching was done on the basis of date, time, and courtroom. The courtroom use data supplied by the courts are described in detail in the courtroom use study report.

### **Measuring Concordance Between the Data Sources**

We will focus on two measures of concordance between the observers' descriptions of courtroom use and the courts' reports of courtroom use.

1. To what extent do the two data sources agree whether a given courtroom was being used by a judge during a randomly selected half-hour period?
2. To what extent do the two data sources agree whether a given courtroom was in use for any purpose, either by a judge, staff, attorneys, or others during a randomly selected half-hour period?

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<sup>4</sup> We used survey software from Vovici for the remote data entry. Vovici's survey software is designed for Internet-based opinion surveys, but works well for data entry. According to the technical staff at Vovici, the original responses to an online survey cannot be altered by the customer, only copied.

There are several reasons for this choice of measures. First, the goal of the observation study was to determine whether courtrooms were in use and by whom, and not to collect detailed information about the nature of that use. The independent observers did not collect the detailed information contained in the court-reported data. Thus, measures of comparison between the data sources are limited by design to whether a courtroom was in use.

Second, determining who was using a given courtroom can be difficult under some circumstances. While use of a courtroom by a judge for a proceeding should be evident to an observer, there can be a variety of other courtroom uses by staff, attorneys, or trustees that may not be easy to categorize or perhaps recognize by courtroom observers without an inquiry. Consequently, we will use these two general categories of use: (1) by judges and (2) by anyone, including judges.

For purposes of this analysis, courtroom use during a randomly selected half-hour period is defined broadly as use, whether by a judge or someone else, for any amount of time during that half-hour period. Nonuse is exactly that—the courtroom was not in use by a judge or not at all during a given half-hour period. In some instances, observers could not enter the courtrooms. If a courtroom was locked or inaccessible for some other reason, the observers were instructed to note that lack of access. Unless the observer could determine by some other means that the courtroom was in use, the courtroom was assumed not to be in use in these situations. As a result, there may have been cases in which some nonpublic use occurred that could not be detected by the observers.

The calculation of the degree of concordance between the data sources is straightforward—the percentage of jointly reported half-hour periods in which the observers and the courts agree that a courtroom was or was not in use, for each measure of use. Consider the use of a courtroom by a judge. If both data sources report that a courtroom was in use by a judge during a selected half-hour period, they are counted as in agreement for that half-hour period. If both data sources show that a courtroom was not in use by a judge during a selected half-hour period, they are also counted as in agreement. The data sources disagree when one source reports use by a judge and the other does not. Note that if one source reports courtroom use by a judge and the other reports use but not by a judge, the data sources are counted as disagreeing. The other measure of concordance expands the definition of use to any use, including by judges, but otherwise utilizes the same conditions for agreement and disagreement. If both data sources report that a courtroom was in use, whether by a judge or others, or that a courtroom was not in use, they are in agreement about courtroom use by anyone.

The degree of concordance between these data sources has to be interpreted as exactly that and nothing more. This determination of use is for the purpose of assessing the accuracy of the court-reported data, not for assessing courtroom use generally. While we used a random selection process for scheduling observers, the scheduling process had to fit within certain parameters, such as the observers' class schedules and the courts' hours of public operation. Thus, our measure of use cannot be used to describe the full extent of possible courtroom use by judges and court staff. Similarly, it is not a measure of performance by the courts, nor by the independent observers. It is a measure of the degree to which the two data sources are reporting the same thing. The task of the observers was to

provide an independent check on the courtroom use data that was supplied by the courts to the Center, and this study was designed for that purpose alone.

## DESCRIPTION OF FINDINGS

Table 6 contains the degree of concordance between the observers' reports and the bankruptcy court's data overall and separately for the two waves of the study. The overall concordance between the data sources is 95% for courtroom use by a judge and 87% for use by anyone. For the first wave of study courts, the figures are 95% for judge use and 87% for any use. These figures for the second wave are 95% and 86%, respectively.<sup>5</sup>

**Table 6**  
**Degree of Concordance Between**  
**Observers' Reports and Court-Reported Data**

|                             | Degree of Concordance                |  |  |
|-----------------------------|--------------------------------------|--|--|
|                             | All Districts<br>( <i>n</i> = 2,312) | Wave 1<br>Districts<br>( <i>n</i> = 1,122) | Wave 2<br>Districts<br>( <i>n</i> = 1,190) |
| Courtroom In Use by a Judge | 95%                                  | 95%  | 95%  |
| Any Courtroom Use           | 87%                                  | 87%  | 86%  |

The overall percentage for courtroom use by a judge means that the observers' reports and the matching court-reported data agreed 95% of the time whether a judge was using a particular courtroom during a randomly selected half-hour period. In other words, 95% of the time the two data sources reported the same thing. The same interpretation applies to the 87% figure for court use by anyone, as well for the separate figures for the first and second waves.

Tables 7 and 8 show the distribution of agreement and disagreement between the observers' reports and the court-supplied data overall, for each wave, and for each measure of concordance. Consistently, for each wave and for each measure of use, where these data sources agree about courtroom use, two-thirds or more of these cases are in

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<sup>5</sup> Our sample of observations qualifies as a stratified sample. In studies such as this, where the strata (bankruptcy courts) are of unequal size (i.e., number of courtrooms), it is common to weight the data before performing any analysis. The weighting compensates for the fact that sampled observations from strata of different sizes represent different numbers of observations in the population. We experimented with weights that took into account the numbers of courthouses, courtrooms, and observers, but the weighted results were virtually identical to the unweighted results. For the sake of parsimony, we report the unweighted results throughout.

agreement that the courtroom was not in use. As with the overall measures reported in Table 6, the figures in Tables 7 and 8 cannot be taken as measures of courtroom use *per se*.

Consider the overall result for judge use. In 68% of the jointly reported half-hour periods, the observers and the courts agree that the courtroom was not in use by a judge. This compares to 27% of the half-hour periods in which the two sources agree that the courtroom was in use by a judge. This result is consistent for both measures of concordance across Waves 1 and 2. When the two data sources disagree, the more frequent basis for that disagreement is that courts report courtroom use and the observers do not. Table 8 shows a similar pattern for any courtroom use, for both the sources of agreement and disagreement.

A comparison of Tables 7 and 8 also shows the source of the difference between the rates of concordance for judge use and for any use of a courtroom. The disagreement between the two sources, in which the court reports courtroom use and the observers do not, is 9 percentage points higher in Table 8 compared to Table 7. In about 20 percent of the half-hour periods represented by this category in Table 8, the observers recorded that the courtroom was locked or otherwise inaccessible. In these instances, court staff may have been using the courtrooms for events or other meetings not open to the public. In the remaining 80 percent, observers had access to the courtroom, but the courtroom use may not have been obvious to them. In all but one of these half-hour periods, observers recorded that the courtroom was empty of attorneys and members of the public, suggesting that court staff may have been using the courtroom for purposes not readily apparent to the outside observer.

**Table 7**  
**Comparison of Independent Observers' Reports and Court-Reported Data:**  
**Courtroom Use by Judges**

|  | <b>All Districts</b><br><i>(n = 2,312)</i> | <b>Wave 1</b><br><b>Districts</b><br><i>(n = 1,122)</i> | <b>Wave 2</b><br><b>Districts</b><br><i>(n = 1,190)</i> |
|--|--|---|---|
| Sources Agree: Courtroom In Use by a Judge                     | 27%  | 25%   | 29%   |
| Sources Agree: Courtroom Not in Use by a Judge                 | 68%  | 71%   | 66%   |
| Sources Disagree: Court Reports Courtroom In Use by a Judge    | 3%   | 3%  | 3%  |
| Sources Disagree: Observer Reports Courtroom in Use by a Judge | 2%   | 2%  | 2%  |

**Table 8**  
**Comparison of Independent Observers' Reports and Court-Reported Data:**  
**Courtroom Use by Anyone**

|   | <b>All Districts</b><br><i>(n = 2,312)</i> | <b>Wave 1</b><br><b>Districts</b><br><i>(n = 1,122)</i> | <b>Wave 2</b><br><b>Districts</b><br><i>(n = 1,190)</i> |
|---|--|---|---|
| Sources Agree: Courtroom In Use                     | 30%  | 26%   | 32%   |
| Sources Agree: Courtroom Not in Use                 | 57%  | 61%   | 53%   |
| Sources Disagree: Court Reports Courtroom In Use    | 12%  | 11%   | 13%   |
| Sources Disagree: Observer Reports Courtroom in Use | 1%   | 1%  | 1%  |

In the next sections, we will examine these measures of concordance (1) for individual districts, (2) over time, and (3) for the individual observers, to assess whether these results are stable and not the result of outliers or other data problems.

### **Concordance Within Individual Districts**

The measures of concordance for each of the 11 study courts show remarkably similar results. Tables 9 and 10 contain the results for the study courts in the first and second waves, respectively. Among these 11 courts, two courts stand out with lower degrees of concordance on both measures: the District of New Hampshire in Wave 1 and the Eastern District of New York in Wave 2. Two courts stand out with higher degrees of concor-

dance on both measures: the Western District of Wisconsin in Wave 1 and the Western District of Virginia in Wave 2. We will show later that the results for New Hampshire are skewed by the performance of one observer, whose individual degree of concordance is well below average. If this observer is eliminated, the average for the other observers in the District of New Hampshire reflects the overall average for both waves. We have no explanation for the differences in the other districts, but note that in each of the second two districts, with higher degrees of concordance, our study location had a single bankruptcy courtroom. The remainder of the study courts cluster together around the overall figures on each measure of concordance, typically differing from that overall figure by 1 to 4 percentage points. Otherwise, these data, accumulated over 10 to 11 weeks by different observers in different courts, show results that differ by only a few percentage points in the majority of the courts.

**Table 9**  
**Degree of Concordance Between**  
**Independent Observers' Reports and Court-Reported Data,**  
**Wave 1 Districts**

|   | <b>Degree of<br/>Concordance</b> | <b>Difference<br/>from Wave 1<br/>Average</b> |
|---|----------------------------------|---|
| Northern District of Illinois ( <i>n</i> = 246) |                                  |   |
| Courtroom In Use by a Judge                     | 93%                              | -3  |
| Any Courtroom Use                               | 88%                              | +3  |
| District of Nevada ( <i>n</i> = 247)            |                                  |   |
| Courtroom In Use by a Judge                     | 96%                              | 0   |
| Any Courtroom Use                               | 83%                              | -2  |
| District of New Hampshire ( <i>n</i> = 144)     |                                  |   |
| Courtroom In Use by a Judge                     | 90%                              | -6  |
| Any Courtroom Use                               | 76%                              | -9  |
| Middle District of Tennessee ( <i>n</i> = 240)  |                                  |   |
| Courtroom In Use by a Judge                     | 96%                              | 0   |
| Any Courtroom Use                               | 89%                              | +4  |
| Western District of Wisconsin ( <i>n</i> = 245) |                                  |   |
| Courtroom In Use by a Judge                     | 98%                              | +2  |
| Any Courtroom Use                               | 96%                              | +11   |

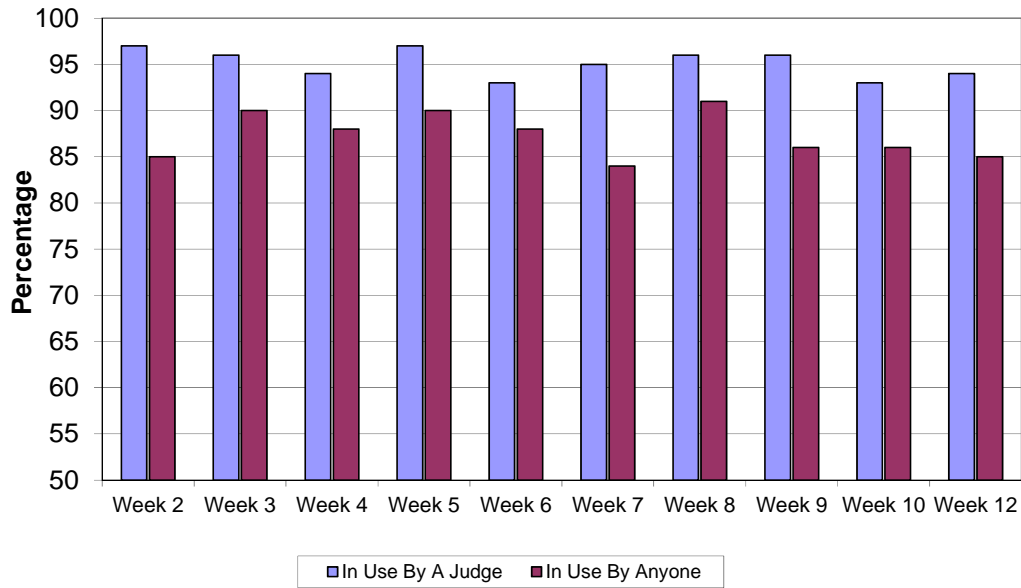
**Table 10**  
**Degree of Concordance Between**  
**Independent Observers' Reports and Court-Reported Data,**  
**Wave 2 Districts**

|  | <b>Degree of<br/>Concordance</b> | <b>Difference<br/>from Wave 2<br/>Average</b> |
|--|----------------------------------|---|
| Central District of California ( <i>n</i> = 188)   |                                  |   |
| Courtroom In Use by a Judge                        | 96%                              | 0   |
| Any Courtroom Use                                  | 85%                              | 0   |
| Southern District of Florida ( <i>n</i> = 182)     |                                  |   |
| Courtroom In Use by a Judge                        | 93%                              | -3  |
| Any Courtroom Use                                  | 85%                              | 0   |
| District of Massachusetts ( <i>n</i> = 250)        |                                  |   |
| Courtroom In Use by a Judge                        | 92%                              | -4  |
| Any Courtroom Use                                  | 89%                              | +4  |
| Eastern District of New York ( <i>n</i> = 237)     |                                  |   |
| Courtroom In Use by a Judge                        | 93%                              | -3  |
| Any Courtroom Use                                  | 79%                              | -6  |
| Eastern District of Pennsylvania ( <i>n</i> = 233) |                                  |   |
| Courtroom In Use by a Judge                        | 97%                              | +1  |
| Any Courtroom Use                                  | 87%                              | +2  |
| Western District of Virginia ( <i>n</i> = 100)     |                                  |   |
| Courtroom In Use by a Judge                        | 100%                             | +4  |
| Any Courtroom Use                                  | 96%                              | +11   |

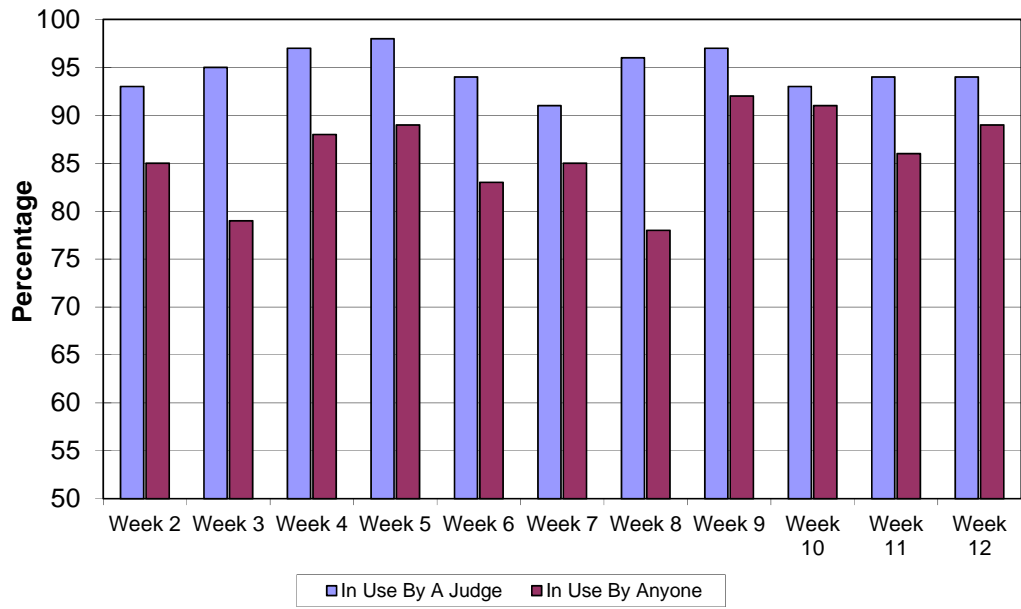
**Concordance Over Time**

Figures 1 and 2 show the degree of concordance by week for Waves 1 and 2, respectively. The numbered weeks on the horizontal axis correspond to the weeks in which the bankruptcy study courts were reporting courtroom use data. Note that there are no observations during Week 11 of Wave 1. This was the week of Thanksgiving, during which students often return home for the holiday, and we made the decision at the outset of the study not to schedule observations that week. Wave 2 comprises 11 weeks of observation, to account for students' spring breaks. This school break was scheduled for different weeks in different cities, and thus, we stretched the overall observation period so that each observer would work a total of 10 weeks.

**Figure 1**  
**Degree of Concordance Between Observers' Reports**  
**and Court-Reported Data, Wave 1 by Week**



**Figure 2**  
**Degree of Concordance Between Observers' Reports**  
**and Court-Reported Data, Wave 2 by Week**

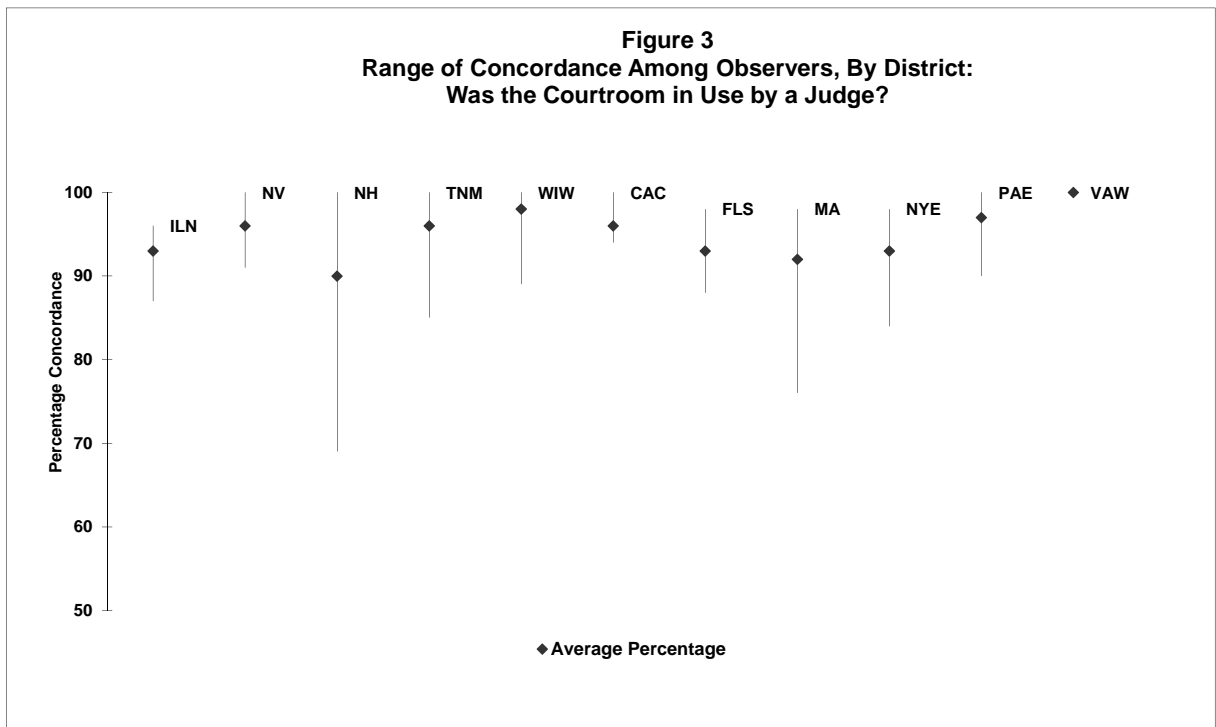


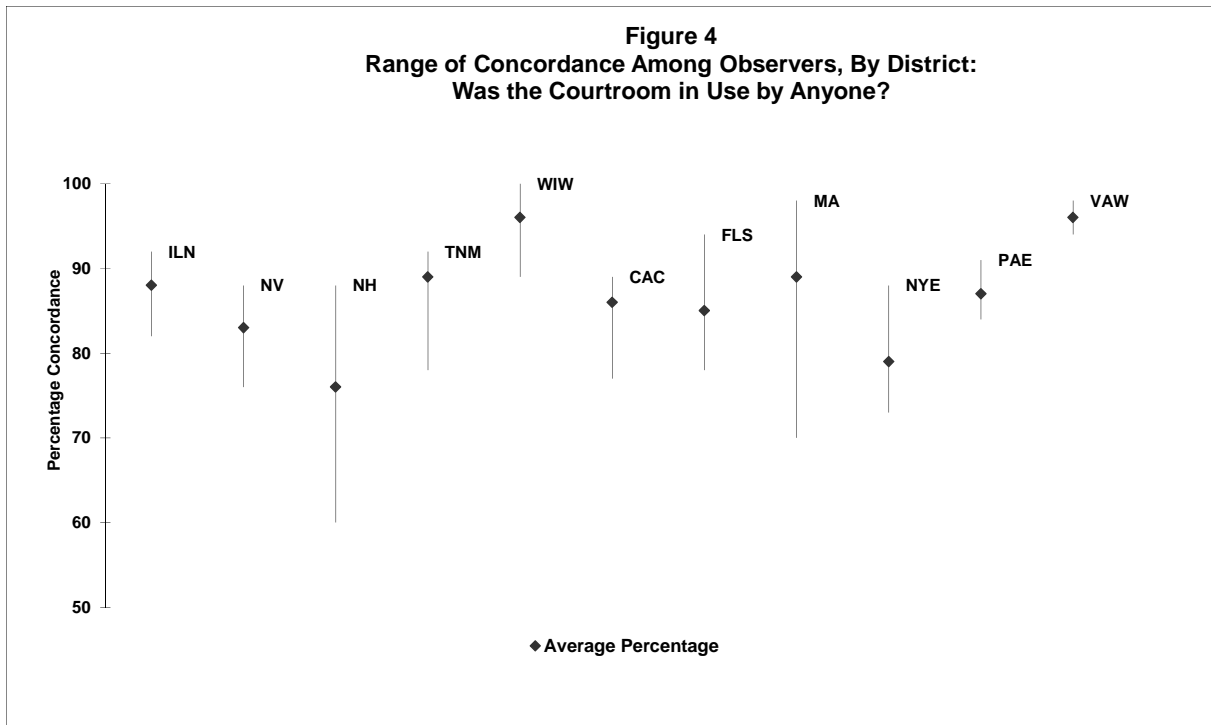


Similar to the comparisons across districts, there is consistency on the measures of concordance, albeit over time rather than across districts. Several features of Figure 1 and 2 stand out. First, the pattern of higher concordance for judge use compared to any use of courtrooms is repeated in every week in both waves. Second, there is a somewhat greater week-to-week consistency in Wave 1 among the measures of concordance for any courtroom use compared to those same measures for Wave 2. Apart from this one pattern, the measures of concordance are very stable over time for both types of courtroom use.

### **Concordance Among the Independent Observers**

Measuring inter-observer reliability—the degree to which observers agree in their reports of courtroom use—is impossible, for one reason. The observers were not viewing the same events, which would allow their reports to be compared to one another for accuracy. In other words, there is no standard against which to judge the observers’ performance. In lieu of such a measure of reliability, we have plotted for each district the observers’ range of concordance for each measure. The results are in Figures 3 and 4. These plots can give insight into how different, or not, the observers were compared to each other within each district.





In Figure 3 the length of each vertical line represents the difference between the highest and lowest rates of concordance for individual observers in a given district for the measure whether a courtroom was in use by a judge. The district average, taken from Tables 8 and 9, is also displayed as a reference point on each vertical line. The districts are clustered by wave. Figure 4 shows the same information for the measure whether a courtroom was in use by anyone.

As an example, consider the first district on the left-hand side of Figure 3. There were 5 observers in the Northern District of Illinois, with an average degree of concordance of 93% for courtroom use by a judge. The highest degree of concordance among these 5 observers was 96%; the lowest was 87%. These two percentages are the endpoints of the vertical line. The district average, 93%, is represented by the diamond-shaped point on the vertical line.

One finding to be drawn from Figure 3 is that, exclusive of the District of Massachusetts and the District of New Hampshire, the ranges from highest to lowest degrees of concordance are typically in the mid-teens or lower. In the Western District of Virginia, there is no range—both observers’ reports were in 100% agreement with the court-reported data about judge use of the single courtroom.<sup>6</sup> The District of Massachusetts and

<sup>6</sup> On this measure of courtroom use, 12 of the 49 observers achieved 100% agreement with the court-reported data. On the other measure of courtroom use—any use—only one observer achieved 100% agreement, perhaps reflecting the relative difficulty of determining courtroom use that does not involve a judge.

the District of New Hampshire each had one observer whose degree of concordance was well below average. If these two observers are eliminated from the graph, the graphs for these two districts would each have a much smaller range and an average degree of concordance at or above the overall average.

Figure 4 shows similar patterns for any courtroom use. The ranges in the District of Massachusetts and the District of New Hampshire are each affected by the performance of one observer, the same observers who affected the results shown in Figure 3. Elimination of these observers would have the same impact of making these districts' ranges much smaller and the average degree of concordance similar to the overall average. The observers in the Western District of Virginia performed well on this measure, and the ranges among observers in the other eight districts are in the low teens or less.

### **SUMMARY**

Using independent observers in a randomly selected subset of the courtroom use study courts, we collected information on courtroom use for randomly selected half-hour periods. These data provided a basis for comparison with data reported by the study courts for these same half-hour periods. Overall, the observers' reports agreed with data from the study courts 95% of the time when courtroom use was measured as use by a judge. These two data sources agreed 87% of the time when the courtroom use was measured as use by anyone, including judges. These results are consistent when the data from these sources are compared according to study wave, district, and over time. While we have no exact measures of their performance, the observers did not seem to be a factor, or at least an important factor, that could skew the results. We therefore can conclude that the bankruptcy courtroom use data provided by the study courts to the Center reliably represent what actually occurred in the courtrooms in the observational study.