

**A Report to the Conference of Chief Circuit Judges  
and Circuit Executives**

**An Analysis of Disposition Times for Capital Habeas  
Corpus Petitions**

**by**

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## **An Analysis of Disposition Times for Capital Habeas Corpus Petitions**

This report, prepared in response to a request from the Conference of Chief Circuit Judges and Circuit Executives, presents statistical information regarding the disposition times of capital habeas petitions in both federal district and appellate courts. The basic data, all cases with Nature of Suit Code (NOS) **535**--Habeas Corpus, Death Penalty, were retrieved from the Center's Integrated Civil and Appellate Databases (IDB).<sup>1</sup> All civil and appellate cases cross-referenced to those initial cases were also retrieved. Because the NOS Code **535** is a relatively recent addition to the available codes some of the related cases had been filed under broader prisoner civil rights categories (e.g., an appeal under NOS **535** was cross-referenced to an underlying district case that had originally been filed under NOS **530**--Habeas Corpus).

Furthermore, all individually docketed cases were linked together to obtain the full litigation pattern for an individual prisoner including all petitions filed in district court by the prisoner and all related appeals. Both computerized and manual matching techniques were used to accomplish this linking. The successive petition and total time analyses provided below depend on this linking process.

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<sup>1</sup> The term "case" is used throughout this report in its statistical rather than legal sense. In district court analyses, a case refers to a petition including original filings in district court, reopenings, remands, transfers from another district, and removals from state court. In the analyses no distinctions were made based on the origin of the petition. In appellate court analyses, a case refers to an appeal, including original filings, remands, reopenings, and reinstatements, filed either by the prisoner or by the respondent official or institution (i.e., the prisoner was either the appellant or the appellee). No distinctions were made in the analyses based on the origin of the appeal or relationships among appeals (i.e., consolidations or cross-appeals). The appendix provides a full description of the data base.

The cases analyzed were all terminated from July, 1988 through September, 1994. Since the inquiry to the Center focused on time to disposition, cases that were still pending in September, 1994 were not included in the descriptive analyses presented here.

I. District Court Level Analyses

**Five hundred** cases were included in the district court level analysis.<sup>2</sup> **Table 1** displays the mean or average time per case, the median (i.e., the point where half the cases fall above and half fall below), the 10% trimmed mean (i.e., the mean with the outer 10% percent at each extreme of the data distribution eliminated), the minimum time to disposition, the maximum time to disposition, and the total number of cases available for analysis.

**Table 1**  
Time to Disposition in Days<sup>3</sup>  
for Capital Habeas Cases at the District Court Level

Mean (average)	467.76
Median	281.00
10% Trimmed Mean	357.69
Minimum	0.00
Maximum	4,848
Number of Cases	500

**Figure 1** is a graphical presentation, in the form of a frequency distribution, of the information displayed in **Table 1**. **Figure 1** shows that the

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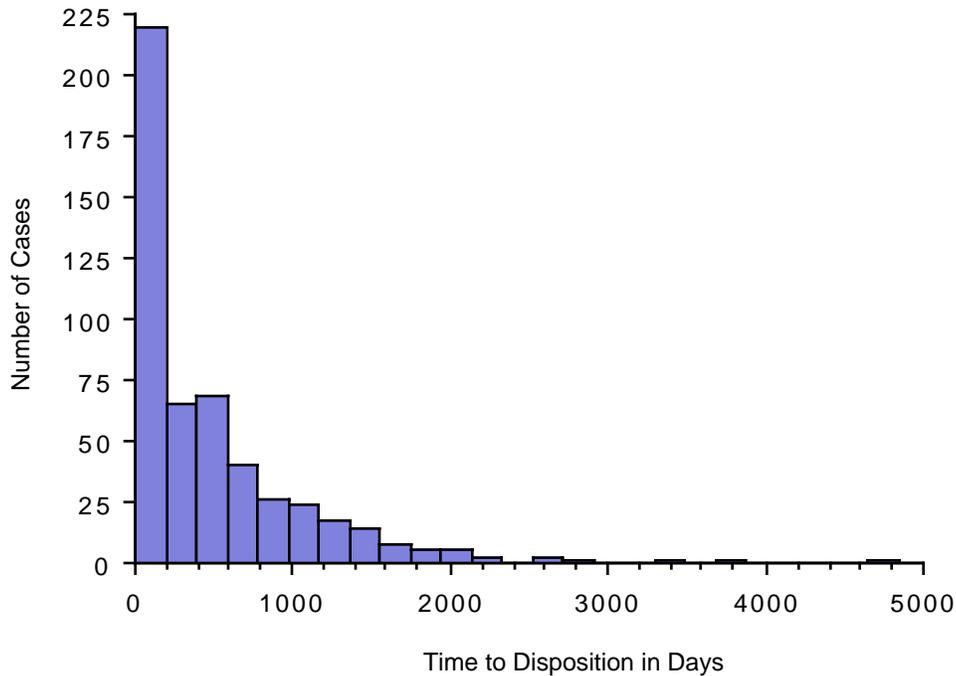
<sup>2</sup> Only terminated petitions were included in this analysis. This resulted in the exclusion of 264 cases that met the initial matching criteria.

<sup>3</sup> Time to disposition is the elapsed time from the filing date to the termination date for an individual petition.

time to disposition data are highly skewed with most habeas cases being disposed of quickly at the district court level (10 percent within 1 day and 25 percent within 12 days). Nevertheless, a small portion (i.e., 10 percent) of capital habeas cases take several years from filing to disposition in district courts and of these longer cases a smaller minority take close to a decade from filing to termination.<sup>4</sup>

**Figure 1**

Frequency Distribution for Time to Disposition in Days  
for Capital Habeas Cases at the District Court Level



**Table 2**, still using the district court level information from **Table 1**, displays time to disposition in the district courts by circuit. This table discloses a highly varying distribution of death penalty habeas petitions among the circuits

<sup>4</sup> The calculated percentile values for time to disposition were: 10th percentile 1 day, 25th percentile 11.5 days, 50th percentile 281.0 days, 75th percentile 686.5 days, and 90th percentile 1,197.0 days.

with three of nine circuits--Fifth, Ninth, and Eleventh--accounting for more than 60 percent of the 500 capital habeas cases.

**Table 2**  
Time to Disposition in Days by Circuit  
for Capital Habeas Cases at the District Court Level (n=499)<sup>5</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
3rd Circuit	399.67	392.00	328.68	0	2,087	23
4th Circuit	457.77	316.00	395.61	0	1,952	56
5th Circuit	397.76	140.50	268.74	0	2,770	110
6th Circuit	583.65	348.00	527.58	0	1,729	23
7th Circuit	580.95	418.00	524.12	4	2,124	19
8th Circuit	706.39	403.00	532.71	0	4,848	61
9th Circuit	519.62	430.50	407.45	0	3,430	80
10th Circuit	141.73	7.00	116.08	0	617	15
11th Circuit	390.02	257.00	315.69	0	1,754	112

Continuing with the same information, **Table 3** displays the disposition time for each of 13 individual district courts that had a sufficient number of cases to permit an analysis. Although unexpected, the data reveal that again three courts--Texas Southern, Missouri Eastern, and Virginia Eastern -- dominate, accounting for 24 percent of the 500 capital habeas cases. The state of Texas alone (4 districts combined) accounts for almost 20 percent of these cases.

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<sup>5</sup> The database includes only one case from the 2nd Circuit and no cases from the D.C. or 1st Circuits. Consequently, those circuits were excluded from the analysis for insufficient data.

**Table 3**

Time to Disposition in Days

for Capital Habeas Cases in Specific District Courts (n=261)<sup>6</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
Pennsylvania, Eastern	361.64	396.00	344.89	14	860	11
Virginia, Eastern	323.45	311.00	315.92	0	775	29
Alabama, Northern	916.60	1,096.00	947.38	125	1,462	10
Florida, Northern	181.10	63.50	106.63	1	947	10
Texas, Northern	609.46	460.50	537.06	1	1,906	22
Texas, Southern	280.28	36.00	134.96	0	2,770	60
Texas, Western	484.08	335.50	446.20	0	1,347	12
Arkansas, Eastern	938.13	300.00	709.15	5	4,848	15
Missouri, Eastern	546.58	286.00	442.40	0	2,586	31
Missouri, Western	848.20	895.50	843.62	4	1,729	10
Arizona	749.93	175.50	589.08	0	3,430	14
California, Eastern	479.07	496.00	430.08	0	1,595	15
Nevada	747.82	689.50	742.78	0	1,596	22

**Table 4** displays the disposition times for petitions categorized according to the timing of the filing (i.e., whether it was the first or only petition filed or whether it was a successive filing). Each of 413 prisoners filed a first petition which had an average disposition time of 521 days. Sixty-nine of those 413 prisoners also filed a second petition adding an average of 228 days to the total time required to process their petitions in district court. A third petition was filed by 16 prisoners with an average disposition time of 178 days.

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<sup>6</sup> To be included in the table a district court must have disposed of at least 10 habeas petitions.

**Table 4**

Time to Disposition in Days for Initial and Successive  
Capital Habeas Cases at the District Court Level (n=498)<sup>7</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
First Petition	520.59	349.00	412.181	0	4,848	413
Second Petition	228.36	23.00	152.74	0	1,792	69
Third Petition	177.50	4.50	122.14	0	1,130	16

II. Appellate Court Level Analyses

The next four tables display for the appellate courts information comparable to that presented above in the district court analysis. In these tables, time to disposition is measured from the docketing of the individual case in the court of appeals until its termination.

**Table 5** displays the mean or average time per case, the median (i.e., the point where half the cases fall above and half fall below), the 10% trimmed mean (i.e., the mean with the outer 10% percent at each extreme of the data distribution eliminated), the minimum time to disposition, the maximum time to disposition, and the total number of cases available for analysis.

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<sup>7</sup> The variable used to identify successive petitions in this analysis does not normally exist in the Center's IDB. The variable was created by comparing plaintiff names, the district and circuit where the case was filed, and the filing date. In this manner it was possible to ascertain if a particular prisoner had filed more than one habeas petition. Filing date was used to order multiple petitions into 1st, 2nd, etc. Considering only terminated cases, 344 prisoners filed one petition, 53 filed two petitions, 15 filed three petitions, and one filed five petitions. The 4th and 5th petitions filed by a single prisoner were excluded from the table.

**Table 5**

Time to Disposition in Days

for Capital Habeas Cases at the Appellate Level (n = 374)

Mean (average)	271.82
Median	215.50
10% Trimmed Mean	228.23
Minimum	0.00
Maximum	2,172
Number of Cases	374

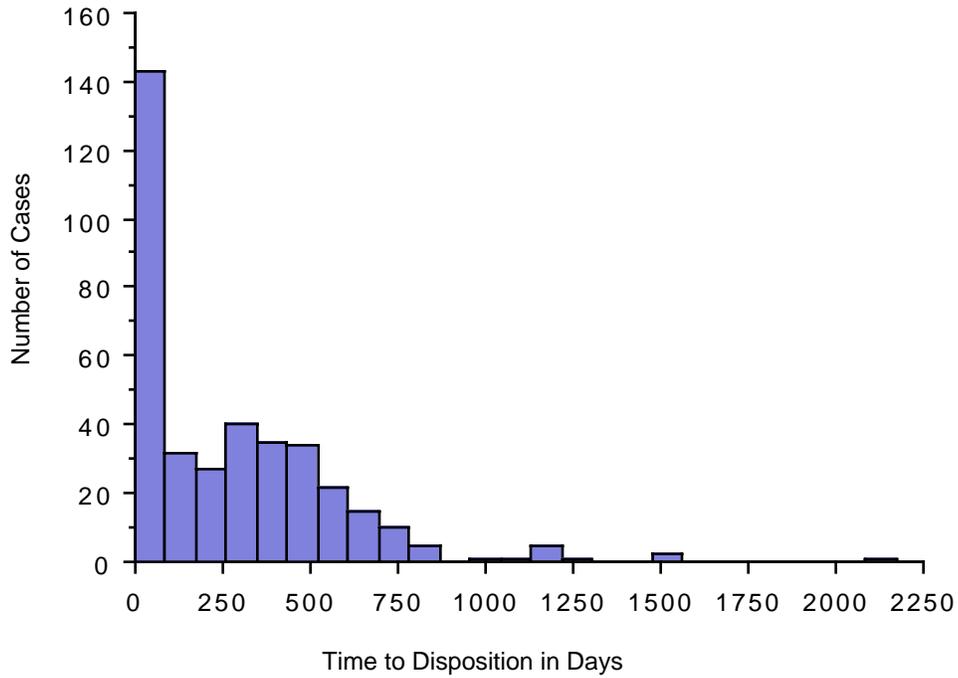
**Figure 2** is a frequency distribution, of the information displayed in **Table 5**. As with the district court habeas petitions, **Figure 2** shows that the time to disposition data are highly skewed with most habeas cases being disposed of quickly at the appellate court level (25 percent within 4 days) and only 10 percent of the cases lasting over two years.<sup>8</sup>

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<sup>8</sup> The calculated percentile values for time to disposition were: 10th percentile 0 days, 25th percentile 4.0 days, 50th percentile 215.5 days, 75th percentile 462.0 days, and 90th percentile 630.0 days.

**Figure 2**

Frequency Distribution for Time to Disposition in Days  
for Capital Habeas Cases at the Appellate Court Level



**Table 6** distributes the summary information from **Table 5** across six circuits with enough cases to permit analysis.

**Table 6**

Time to Disposition in Days by Circuit

for Capital Habeas Cases at the Appellate Court Level (n=356)<sup>9</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
4th Circuit	281.08	280.00	277.39	0	720	49
5th Circuit	227.12	112.50	161.49	0	1,273	92
7th Circuit	219.80	214.00	216.23	0	486	15
8th Circuit	224.48	155.00	185.18	0	1,154	50
9th Circuit	214.26	151.00	189.83	0	667	35
11th Circuit	374.10	351.00	329.97	0	2,172	115

**Table 7** displays time to disposition for habeas petitions at the appellate court level categorized according to the timing of the filing.<sup>10</sup> In contrast to the table above, the emphasis in this analysis is on initiatives filed by the prisoner, accordingly appeals filed by respondent officials and institutions, and those that could not be matched to an original petition in the district court were excluded from the analysis. Please note this analysis may seem qualitatively different from the analysis presented in **Table 4**; however, this is not the case. In **Table 4**, it was not possible to have a capital habeas petition (NOS=535) filed by respondent officials or institutions, and thus to remain consistent with the district level analysis respondent officials and institutions were excluded from this analysis.

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<sup>9</sup> The database does not include a sufficient number of cases from the D.C., 1st, 2nd, 3rd, 6th, or 10th Circuits for analysis.

<sup>10</sup> The matching technique used to identify successive district court petitions was also used for appeals. The identifying variable was created by comparing plaintiff names, the district and circuit where the case was filed, and the filing date. In this manner it was possible to ascertain if a particular prisoner had filed more than one appeal. Filing date was used to order multiple appeals into 1st, 2nd, etc. Considering only terminated cases, 150 prisoners filed one appeal, 51 filed two appeals, 13 filed three appeals, two filed five appeals, and one filed six appeals.

**Table 7**

Time to Disposition in Days for Initial and Successive  
Capital Habeas Cases at the Appellate Court Level (n=300)<sup>11</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
First Petition	286.48	227.00	242.47	0	2,172	217
Second Petition	177.79	61.00	140.63	0	1,189	67
Third Petition	232.38	96.00	180.64	0	1,189	16

III. Total Time to Disposition in District and Appellate Courts

The matching process used to identify successive filings by a prisoner at each of the district and appellate levels was also used to combine all district and appellate cases related to an individual prisoner. This matching was necessary in order to calculate the total time the courts had expended in disposing of habeas litigation initiated by an individual prisoner (i.e., the sum of the time from filing to termination for each of the district and appellate cases filed by a single prisoner). The emphasis in this analysis was on initiatives by the prisoner, accordingly appeals filed by respondent officials and institutions, and those that could not be matched to an original petition in the district court were excluded. The 413 prisoners who had at least one case terminated at the district level are the units of analysis.

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<sup>11</sup> The sample size for the third petition is quite small and should be interpreted with care. Further, there were instances in which a 4th, 5th, and in one case a 6th habeas petition was filed; however, the numbers of these cases were too small to provide a meaningful statistical analysis. Also note, that although 218 prisoners are represented in this analysis only 217 “First Petitions” are recorded. This is because, for a single prisoner, the second petition filed had terminated but the first petition filed was still pending.

**Table 8** displays the statistics for the total time to disposition in days for all terminated cases filed by the 413 prisoners.<sup>12</sup>

**Table 8**  
Total Time to Disposition in Days  
for Capital Habeas Cases at both the Appellate and District Court Levels  
Grouped by Prisoner

Mean (average)	757.34
Median	595.00
10% Trimmed Mean	642.74
Minimum	0.00
Maximum	4,848
Number of Cases	413

**Figure 3** is a frequency distribution of the information displayed in **Table 8**. As with the district and appellate court habeas petitions, **Figure 3** shows that the time to disposition data are skewed. For the vast majority of prisoners (73 percent) the total time required to process all district and appellate petitions is less than 1,100 days. For 25 percent of the prisoners total litigation time is less than 131 days. Only about 10 percent of the prisoners filed a pattern of initiatives that required more than 1,700 total days of court activity.<sup>13</sup>

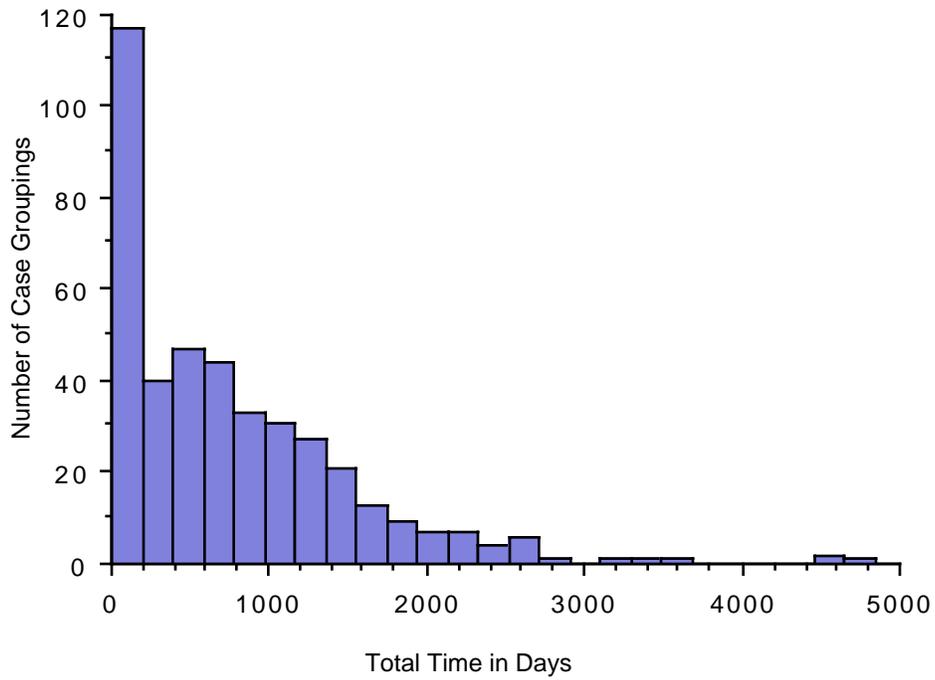
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<sup>12</sup> These 413 prisoners collectively accounted for 500 terminated district court petitions and 301 prisoner-initiated terminated appeals. Of the 413 prisoners reported on, however, 34 still had at least one related district case pending and 82 still had at least one appellate case pending. The time related to those pending cases are not reflected here and would tend to increase the overall processing time.

<sup>13</sup> The calculated percentile values for time to disposition were: 10th percentile 4.0 days, 25th percentile 130.75 days, 50th percentile 595.0 days, 75th percentile 1141.0 days, and 90th percentile 1,730.0 days.

**Figure 3**

Frequency Distribution of the Total Time to Disposition in Days for Capital Habeas Cases at both the Appellate and District Court Levels Grouped by Prisoner



**Table 9** displays the information from **Table 8** by circuit .

**Table 9**

Total Time to Disposition in Days by Circuit for Capital Habeas Cases  
at both the Appellate and District Court Levels  
Grouped by Prisoner<sup>14</sup>

	Mean	Median	10% Tr. Mean	Minimum	Maximum	N of Cases
3rd Circuit	523.89	434.50	458.06	14	2,087	18
4th Circuit	879.56	710.00	768.03	1	4,596	43
5th Circuit	708.79	447.00	573.97	0	3,679	90
6th Circuit	742.42	440.00	637.53	0	3,268	19
7th Circuit	841.94	505.00	782.14	130	2,391	16
8th Circuit	973.39	846.00	822.23	0	4,848	53
9th Circuit	639.32	496.00	546.04	0	3,430	71
10th Circuit	288.82	23.00	215.11	0	1,241	11
11th Circuit	809.16	794.00	744.51	0	2,634	91

#### IV. Summary

These analyses report the time to disposition of capital habeas petitions at both the district, appellate, and combined court levels under a variety of conditions. While this information provides a useful overview, it is limited to a description of present patterns in the data. These regularly collected data do not provide any clues as to how the lapsed time was expended nor clues to the reasons for the observed variations among district and appellate courts.

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<sup>14</sup> There were not a sufficient number of cases from either the 1st, 2nd, or D.C. Circuits for analysis.

## Appendix

### Description of the Data Base

The analyses described in this report were conducted on a database of Habeas Corpus Death Penalty (Nature of Suit (NOS) = **535**) filings extracted from the Center's Integrated Civil and Appellate Data Base (IDB). All petitions and appeals cross-referenced to those filings were also retrieved. Because the NOS Code **535** is a relatively recent addition to the available codes some of the related petitions and appeals had been filed under broader prisoner civil rights categories (e.g. an appeal under NOS **535** was cross-referenced to an underlying district petition that had originally been filed under NOS **530**--Habeas Corpus).

#### I. Petitions in the District Court

The nature of suit and cross-referencing criteria resulted in the selection of 764 petitions. A petition includes original filings in district court (670), reopenings (44), remands (18), transfers from another district (8) and removals from state court (2). In the analyses no distinctions were made based on the origin of the petition.

These petitions represented filings by 634 different prisoners, among these prisoners 528 filed a single petition, 87 filed two petitions, 17 filed three petitions, one filed five petitions, and one filed six petitions. Computerized and manual matching techniques were used to identify petitions filed by the same prisoner. Multiple petitions by the same prisoner were order by filing date to determine which was the first petition, which the second, etc.

Of the 764 petitions, 500 were terminated during the period July 1988 through September 1994, and 264 remained pending at the end of September 1994.

Four hundred and thirteen different prisoners had at least one terminated petition. These 413 prisoners accounted for 536 petitions total; 500 of these petitions had terminated, 36 were still pending at the end of September 1994. Two hundred and twenty-one prisoners accounted for the other 228 pending petitions.

The time to disposition for each petition was calculated as the number of days between the filing date and the termination date. Petitions filed and terminated on the same day (34) had a time to disposition of zero. No distinction was made in the analyses based on the type of disposition. No accommodations were made regarding petitions that were running concurrently.

The 500 terminated petitions are the basis for the analyses presented in **Tables 1** through **4** in the text.

## II. Appeals in the Courts of Appeals

The nature of suit and cross-referencing criteria resulted in the selection of 497 appeals. Appeals here include original filings (464), remands (8), reopenings (22), and reinstatements (3) either by the prisoner or by the respondent official or institution (i.e., the prisoner was either the appellant or the appellee). No distinctions were made in the analyses based on the origin of the appeal or relationships among appeals (i.e., consolidations or cross-appeals).

The time to disposition for each appeal was calculated as the number of days between the filing date in the court of appeals and the final judgment date. Appeals filed and terminated on the same day (49) had a time to disposition of zero. No distinction was made in the analyses based on the outcome of the appeal. No accommodations were made regarding related appeals that were running concurrently or that overlapped petitions in the district court.

Of the 634 prisoners identified in the district data, 348 filed no appeals, 208 filed one appeal, 60 filed two appeals, 14 filed three appeals, three filed four appeals, two filed five appeals, and two filed six appeals. The total number of appeals filed by prisoners was 404.

Sixty-one prisoners were appellees in appeals filed by respondent individuals and institutions; this includes 25 prisoners who filed no appeals themselves. Fifty prisoners were named in a single appeal, and 11 prisoners were named in two appeals each. A total of 72 appeals named prisoner appellees. Twenty-one appeals could not be matched to district petitions and the information on the computer record was not sufficient to be able to accurately identify the prisoners involved.

Of the 497 appeals filed, 374 were terminated during the period July 1988 through September 1994, and 123 appeals remained pending at the end of September 1994. Of the 374 terminated appeals, 307 were filed by prisoners, 51 were filed by respondent individuals or institutions, and 16 could not be matched to a district petition. The 307 terminated appeals filed by prisoners represent 218 different prisoners.

The 374 terminated appeals are the basis for the analyses presented in **Tables 5** and **6** in the text. **Table 7** is based on the 307 terminated appeals that were filed by prisoners.