

Appendix N

National Consensus Meeting: Participant Information Packet

Included items:

1. Sample Cover Letter
2. Meeting Logistics Memorandum
3. Information Packet
 - a) Briefing Paper
 - b) Meeting Agenda (Participant List Removed)
 - c) Civil and Criminal Case Worksheets Used in the Circuit-Based Meetings (For Reference)
 - d) Evaluation of Circuit-Proposed Modifications to the Case Weights Structure Memorandum

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Subcommittee Members

Honorable Wiley Y. Daniel, Chair
Honorable Harry F. Barnes
Honorable Susan Yvonne Illston
Honorable James R. Melinson
Honorable Ursula M. Ungaro-Benages
Honorable Karen J. Williams

Staff

Ellyn L. Vail

SUBCOMMITTEE ON JUDICIAL STATISTICS
OF THE
COMMITTEE ON JUDICIAL RESOURCES

December 3, 2003

Honorable Nathaniel M. Gorton
United States District Court
411 Harold D. Donohue Federal Building
and United States Courthouse
595 Main Street
Worcester, MA 01608-2076

Dear Judge Gorton,

Thank you for agreeing to represent the First Circuit in the next phase of the District Court Case Weighting Study. As you know, district judges within each circuit have by now provided consensus estimates of the average time spent in their circuits to complete specific case activities. The next phase of the project will bring you together with representatives of the other circuit meetings on January 29 and 30, 2004 to reach agreement on national estimates.

The January meeting will take place at the Hyatt Regency San Antonio, located on the Riverwalk in San Antonio, Texas. A logistics memo and a TRAVEL AUTHORIZATION are enclosed so you can begin making travel arrangements. Please plan on meeting for two full days.

Approximately two weeks before the meeting, you'll receive a packet of information that will include not only a meeting agenda, an explanation of how the meeting will be conducted, and a summary of what took place at each of the prior circuit meetings, but also information on recommended modifications to the case weights structure that arose from the circuit meetings. We will ask you to evaluate the various recommendations and decide by advance ballot which modifications will be incorporated into the final case matrices that you will work on in San Antonio. If you have questions about the upcoming meeting, please feel free to contact Pat Lombard (plombard@fjc.gov, (202) 502-4083) or Carol Krafka (ckrafka@fjc.gov, (202) 502-4068) of the Federal Judicial Center for additional information.

Honorable Nathaniel M. Gorton

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As the district court case weighting project enters this next phase, I'd like to express to you appreciation on behalf of the Statistics Subcommittee for the assistance you've provided the case weighting effort thus far and thank you again for your ongoing participation. I look forward to seeing you in San Antonio.

Sincerely,

A handwritten signature in cursive script that reads "Wiley Y. Daniel". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

Wiley Y. Daniel



memorandum

DATE: December 3, 2003
TO: Participants Attending the National Case Weights Consensus Meeting
for the District Court Case Weighting Study
FROM: Nicholle Reisdorff
SUBJECT: Meeting Logistics

Thank you for agreeing to serve as a representative from your circuit to the National Case Weights Consensus Meeting for the District Court Case Weighting Study. Information about the meeting's logistics is provided in this memorandum. In addition, you'll find a TRAVEL AUTHORIZATION enclosed.

Approximately two weeks before the meeting, you'll receive a packet of information that will include a meeting agenda, an explanation of how the national meeting will be conducted, and a summary of what took place at each of the prior circuit meetings. The packet will contain, in addition, a summary of recommended modifications to the case weights structure arising from the circuit meetings. We will ask you to evaluate the various recommendations and decide by ballot which of the modifications should be incorporated into the final structure of the case weights system. You and other circuit representatives will then establish the final time estimates for case weighting events at the national meeting.

NATIONAL MEETING DATES AND LOCATION

The meeting will be held in San Antonio on Thursday, January 29, 2004 (8:00 am - 5:00 pm) and Friday, January 30, 2004 (8:00 am - 5:00 pm) at the Hyatt Regency San Antonio-On the Riverwalk at Paseo del Alamo, 123 Losoya St., San Antonio, TX 78205, in the Live Oak room. Please plan on meeting for two full days of work.

ACCOMMODATIONS

The FJC has reserved a block of rooms at the Hyatt Regency San Antonio for the use of meeting attendees. The rooms have been reserved for check-in on January 28 through checkout on January 31. If you itemize your expenses, you will be reimbursed for lodging these nights at a daily room rate of \$91.00.

If you wish to use one of the rooms, please make a reservation for the nights you will require lodging by telephoning (210) 222-1234 on or before **Wednesday, December 31**. It is important that you indicate you are with the **Federal Judicial Center's District Court Case Weighting Study** when making the arrangements.

WORKING LUNCHEON FOR MEETING PARTICIPANTS

To ensure the group can complete its work, a deli-style working luncheon will be served in the meeting room on January 29 and 30. Lunch will include a variety of sandwiches, salads, desserts, and beverages. Please let us know if you have any dietary restrictions prior to the meeting.

REIMBURSEMENT FOR EXPENDITURES

As noted, you will be reimbursed up to \$91 per night for hotel lodging on January 28 through checkout on January 31. If you itemize expenditures, you can claim reimbursement for up to \$85 per day for meals and allowable incidental expenses on January 28 and 31, and up to \$60 on January 29 and 30. Ground transportation is reimbursed separately and does not count toward the limit on allowable incidentals.

If you prefer, you may submit a per diem claim in lieu of actual expenses, not to exceed \$141 (\$50 on the last day of travel).

Upon completion of travel, please submit your voucher for reimbursement of expenses to your Clerk of Court, with a copy of the Center's TA attached. A copy of your voucher should additionally be sent to our office so that we may monitor expenditures for the meeting (send to: Jeannette Summers, Federal Judicial Center, One Columbus Circle, N.E., Washington, DC 20002).

AIR AND GROUND TRANSPORTATION

The travel authorization urges the use of government fares; booking your flight through the judiciary's travel agent, National Travel Service (1-800-445-0668) will help you obtain the proper fares.

Reimbursement is authorized for round-trip ground transportation from home or office to the point of departure, and between the San Antonio airport and your hotel. Shuttle service is available through SATrans Airport Shuttle (800) 868-7707. One-way fare is \$9 while round-trip fare costs \$16. Shuttle service between the airport and Hyatt Regency San Antonio is about 30-40 minutes. Alternatively, taxi service is available for about \$16 one-way for up to four people. Taxi service between the airport and Hyatt Regency San Antonio is about 15-20 minutes.

Rental car reimbursement is not authorized for this meeting beyond the ground transportation equivalent (\$40). First class travel reimbursement is not authorized for this meeting.

QUESTIONS

Please contact me if you have any questions about the meeting or general logistics. I can be reached at 202-502-4073 (nreisdor@fjc.gov). Another project member, Carol Krafka, can be reached by dialing 202-502-4068 (ckrafka@fjc.gov).

Meeting Information Packet

**Prepared for Judges Attending the National Consensus Meeting
of the 2003-2004 District Court Case Weighting Study
San Antonio, TX
January 29-30, 2004**

Packet Contents

- DOCUMENT 1** Information for Judges Attending the National Consensus Meeting
- DOCUMENT 2** Meeting Agenda and Participants
- DOCUMENT 3** Original Set of Civil and Criminal Case Worksheets
These worksheets are the originals used in the circuit-based meetings;
they are provided for reference only.
- DOCUMENT 4** Memorandum: EVALUATION OF CIRCUIT-PROPOSED
MODIFICATIONS TO THE CASE WEIGHTS STRUCTURE
Please review this memo and then provide feedback on structural
modifications that you believe should be incorporated into the case
weights. Provide feedback by circling one response for each of a
series of questions posed in the memo and sending a facsimile of the
document to the FJC (fax no.: 202-502-4199, Attn: Case Weights
Study).
A RESPONSE IS DUE BY JANUARY 16, 2004.

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**Information for Judges Attending the
NATIONAL CONSENSUS MEETING
of the 2003-2004 District Court Case Weighting Study**

This information sheet is addressed to the twenty-four district court judges who have agreed to represent their circuits at the National Consensus Meeting for the 2003-2004 District Court Case Weighting Study. It describes the purpose of the meeting and how it will be conducted, provides information about circuit-based suggestions for improving the case weights structure, and requests that you provide time-sensitive feedback on which circuit suggestions to adopt.

Purpose and Conduct of the National Consensus Meeting

As you know from having participated in one of the circuit-based meetings for this project, the Judicial Conference Committee on Judicial Resources asked the Federal Judicial Center to develop, with assistance from the Administrative Office, new district court case weights for use in the next judgeship survey. New case weights will be calculated by combining two types of information – the frequency of specific case activities docketed in case management databases of district courts and the average time it takes judges to complete these activities.

The FJC has already begun the processing of a large volume of docketing information being provided by the courts. The system for determining case-related demands on judges' time has also moved forward. Judges representing individual district courts have participated in regional meetings that were held to establish circuit-specific average time estimates. Because these estimates reflect variations in circuit practices and cases, a National Consensus Meeting will now be convened to reconcile differences among the circuit values and establish consensus estimates reflecting the average, *national* experience.

The National Consensus Meeting will convene in San Antonio with two representatives in attendance from each of the circuit-based meetings. The meeting agenda, which includes a list of participating judges, is included in your Meeting Information Packet (DOCUMENT 2). The consensus estimates that you and your colleagues establish at the national meeting will be the final ones used in case weight computations.

The process for making final decisions will be structured. You will first review charts that summarize circuit-based estimates and receive information about recurring data patterns across circuits. You will then have an opportunity to discuss factors influencing those estimates before using an electronic voting device to register your judgment about a value that best reflects a national average. The voting device, which is intended to aid the process of arriving at consensus, provides immediate feedback on judges' decisions and should permit the process to move forward efficiently, while still ensuring judges a full discussion of important, case-related issues.

Analyses of the circuit-based time estimates are consistent from circuit to circuit for some case types and activities, but divergent for others. If, after reviewing circuit estimates and

discussing the suitability of different values, there is significant support for estimates that are far apart in magnitude, one or more rounds of additional discussion and voting may be necessary to bridge the gap. These iterations are an expected feature of the process that will be used at the national meeting to make group decisions; we anticipate a need for iterative voting in a limited number of case types and events where circuit estimates proved to be highly variable. Discussion and voting rounds will end when the conditions of a predetermined consensus rule are satisfied.¹ A unanimous vote will not be required to reach consensus.

Circuit-Based Recommendations for Modifying the Case Weights Structure

A standardized set of civil and criminal case worksheets was presented to judges for group completion at circuit-based meetings. This set is included in the Meeting Information Packet for reference (DOCUMENT 3).

Participants in many of the meetings discussed changes to the worksheets that they believed would improve the precision of the resulting case weights. A number of these discussions led to a formal recommendation from the circuit to modify the case weights structure. Suggested modifications took the form of added events or case types, adjustments to the case weight design, or proposals to restructure existing events. A number of circuit groups additionally offered advice on whether more than one case adjustment should apply to a given case. The individual recommendations that arose from the circuits are described in meeting reports that can be requested through e-mail (ckrafka@fjc.gov).

Project staff attending the circuit meetings were obliged to caution in many instances that the viability of a particular recommendation was subject to the limitations of data found in the courts' docketing systems. At the time of the meetings, these cautions were offered on the basis of what staff expected could be obtained from court databases. All district courts have by now provided details about docketing practices and database structures, so staff have had an opportunity to evaluate the feasibility and merit of the recommendations.

The results of this assessment are described in a memorandum with the subject line EVALUATION OF CIRCUIT-PROPOSED MODIFICATIONS TO THE CASE WEIGHTS STRUCTURE (DOCUMENT 4).

ACTION ITEM: Provide Feedback on Circuit-Proposed Modifications

DOCUMENT 4, the evaluation memorandum, focuses on suggested modifications to the case weights structure that appear to be both executable and likely to result in improved case weight accuracy. The selection of specific modifications to implement is a decision best made by you and your fellow circuit representatives. Consequently, we ask you to review and respond to the information summarized in DOCUMENT 4.

¹ Consensus is defined as having occurred when 18 or more participants endorse estimate values that lie within a restricted range. If judges fail to achieve consensus after three rounds of discussion and voting, the voting stops, and the median estimate from the third round is accepted for the case weight computation.

Please read DOCUMENT 4 from start to finish before returning to the numbered questions that we have inserted into the memo to help structure your decisions. Answer the questions directly on the memo by circling one of the response options listed after each item. Then, **on or before JANUARY 16, 2004**, send a facsimile of the document to fax no.: 202-502-4199 (Attn: Case Weights Study).

This task should take less than 30 minutes of your time.

Questions

If you have questions about the modifications, the meeting, or the District Court Case Weighting Study in general, please feel free to contact either Pat Lombard (202-502-4083; plombard@fjc.gov) or Carol Krafka (202-502-4068; ckrafka@fjc.gov).

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Federal Judicial Center District Court Case Weighting Study

**National Consensus Meeting
of the 2003-2004 District Court Case Weighting Study**

San Antonio, TX
January 29-30, 2004

Agenda

January 29, 2004

8:30 *Light refreshments available*

9:00 Participant Welcome

Honorable Barbara Rothstein, Director, Federal Judicial Center

9:05 Explanation of the Process for Requesting New Judgeships

Honorable Dennis Jacobs, Chair, Judicial Resources Committee

9:15 Case Weighting Project Update

Honorable Wiley Y. Daniel, Chair, Statistics Subcommittee

9:30 Overview of Adopted Structure Modifications Arising from Circuit Recommendations

9:45 Review of Event-Based Case Weighting

- Docketed Frequency of Case Events and Activities
- Estimated vs. Objective Time Measures
- The National Meeting as the Forum for Reconciling Circuit Variability in Estimated Time Measures

10:00 Explanation of the Decision-Making Process and Questions

- Graphs, Case Clusters, and Data Patterns
- Discussion of Estimate Variability
- Voting to Narrow the Estimate Range
- Application of the Consensus Rule
- The Role of Participants as Circuit Representatives

Agenda (continued)

- 10:30 *Break*
- 10:45 Begin Work on Consensus Estimates in Criminal Cases
- 12:45 *Break for a working deli-style lunch that is provided in the meeting room*
- 1:30 Resume Work on Criminal Case Estimates
- 3:00 *Break*
- 3:15 Resume Work on Criminal Case Estimates
- 5:00 *Adjourn with work on criminal case estimates completed*

January 30, 2004

- 8:30 *Light refreshments available*
- 9:00 Begin Work on Civil Case Estimates
- 11:00 *Break*
- 11:15 Resume Work on Civil Case Estimates
- 1:00 *Break for a working deli-style lunch that is provided in the meeting room*
- 1:45 Resume Work on the Civil Case Estimates
- 3:00 *Break*
- 3:15 Resume Work on the Civil Case Estimates
- 4:30 Complete the Civil Case Estimates and Initiate Wrap-up Discussion
- 5:00 *Adjourn*

Original Set of Civil and Criminal Case Worksheets

Used in the Circuit-Based Consensus Meetings

The civil and criminal worksheets which follow will be modified for use at the National Consensus Meeting. The modifications will reflect recommendations on the structure of the case weight calculations that arose from circuit-based meetings. The choice of which structural changes to incorporate will depend upon feedback received by January 16 from judges who are attending the National Consensus Meeting as circuit representatives.

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District Court Case Weighting Study Event Weight Estimates by Type of Case

Civil Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences			In-Chambers Case-Related Activities					Case Adjustments		
	Jury Trial	Non-Jury Trial	Hearing on Preliminary Injunction/TRO	Other Evidentiary Hearing	Conference	Motion Hearing	Other Non-Evidentiary Hearing	Order on Motion for Summary Judgment	Order on a Discovery Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep	Multiple Parties (5 or more)	Class Action	Motions (more than 50)
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	23.0 hrs	12.6 hrs	3.7 hrs	3.2 hrs	31 mins	28 mins	28 mins	72 mins	26 mins	45 mins	30 mins	30 mins	0 mins	0 mins	0 mins
Admiralty															
Admiralty	21.5	11.7	2.5	2.7											
Bankruptcy															
Bankruptcy Appeals and Withdrawals	32.5	12.4	2.1	3.2											
Banking and Finance															
Banking and Finance	23.2	10.8	3.2	2.2											
Commercial Litigation															
SEC, CFTC, and Similar Enforcement Actions (US Plaintiff)	-- ¹	20.8	3.4	1.6											
SEC, Commodities, and Stockholder Suits (non-US Plaintiff)	39.2	17.5	3.1	2.3											
Civil RICO	48.6	22.0	4.7	2.8											
Antitrust	66.6	53.1	9.8	3.4											
Other Fraud	30.1	13.4	4.0	2.6											
Interstate Commerce	-- ¹	15.0	-- ¹	-- ¹											

¹ An estimate of trial time was not presented if there were less than 20 trials in the category.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Civil Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences			In-Chambers Case-Related Activities					Case Adjustments		
	Jury Trial	Non-Jury Trial	Hearing on Preliminary Injunction/TRO	Other Evidentiary Hearing	Conference	Motion Hearing	Other Non-Evidentiary Hearing	Order on Motion for Summary Judgment	Order on a Discovery Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep	Multiple Parties (5 or more)	Class Action	Motions (more than 50)
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	23.0 hrs	12.6 hrs	3.7 hrs	3.2 hrs	31 mins	28 mins	28 mins	72 mins	26 mins	45 mins	30 mins	30 mins	0 mins	0 mins	0 mins
Contracts															
Insurance Contracts	21.7	10.3	2.3	2.0											
Overpayment and Recovery	-- ¹	5.6	-- ¹	1.5											
Other Contract Actions	28.1	13.3	3.5	3.1											
Torts															
Personal Injury (excluding admiralty)	16.9	10.7	4.2	2.2											
Medical Malpractice	26.8	16.1	-- ¹	2.2											
Federal Employer's Liability	19.9	-- ¹	-- ¹	-- ¹											
Assault, Libel, and Slander	24.0	5.4	-- ¹	1.5											
Product Liability (excluding admiralty)	28.5	17.4	5.3	3.3											
Asbestos	26.3	-- ¹	-- ¹	-- ¹											
Civil Rights															
Civil Rights (non-prisoner)	23.0	13.9	3.8	2.7											

¹ An estimate of trial time was not presented if there were less than 20 trials in the category.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Civil Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences			In-Chambers Case-Related Activities					Case Adjustments		
	Jury Trial	Non-Jury Trial	Hearing on Preliminary Injunction/TRO	Other Evidentiary Hearing	Conference	Motion Hearing	Other Non-Evidentiary Hearing	Order on Motion for Summary Judgment	Order on a Discovery Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep	Multiple Parties (5 or more)	Class Action	Motions (more than 50)
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	23.0 hrs	12.6 hrs	3.7 hrs	3.2 hrs	31 mins	28 mins	28 mins	72 mins	26 mins	45 mins	30 mins	30 mins	0 mins	0 mins	0 mins
Prisoner Litigation															
Prisoner Civil Rights / Prison Conditions (Federal)	12.7	-- ¹	-- ¹	-- ¹											
Prisoner Civil Rights / Prison Conditions (State)	12.4	6.6	4.0	2.5											
Death Penalty Habeas Corpus	-- ¹	-- ¹	-- ¹	6.4											
§2254 Habeas Corpus	17.3	5.4	1.9	4.2											
§2255 Vacate Sentence	-- ¹	6.0	-- ¹	2.2											
Mandamus	-- ¹	-- ¹	-- ¹	-- ¹											
Deportation / Immigration	-- ¹	-- ¹	-- ¹	-- ¹											
Social Security															
Social Security	-- ¹	-- ¹	-- ¹	-- ¹											
Intellectual Property															
Copyright and Trademark	31.6	12.8	3.8	3.3											
Patent	47.1	26.7	5.6	7.2											

¹ An estimate of trial time was not presented if there were less than 20 trials in the category.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Civil Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences			In-Chambers Case-Related Activities					Case Adjustments		
	Jury Trial	Non-Jury Trial	Hearing on Preliminary Injunction/TRO	Other Evidentiary Hearing	Conference	Motion Hearing	Other Non-Evidentiary Hearing	Order on Motion for Summary Judgment	Order on a Discovery Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep	Multiple Parties (5 or more)	Class Action	Motions (more than 50)
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	23.0 hrs	12.6 hrs	3.7 hrs	3.2 hrs	31 mins	28 mins	28 mins	72 mins	26 mins	45 mins	30 mins	30 mins	0 mins	0 mins	0 mins
Real and Personal Property															
Land Condemnation	17.4	4.4	-- ¹	-- ¹											
Foreclosure	-- ¹	7.2	-- ¹	-- ¹											
Other Property Actions (Real or Personal)	26.0	15.9	3.8	2.1											
Labor															
ERISA	22.4	8.3	2.5	2.2											
All Other Labor	23.5	12.1	3.6	2.5											
Forfeiture and Penalty															
Forfeiture and Penalty	13.6	5.2	3.4	3.0											
Other Actions															
Freedom of Information Act	-- ¹	-- ¹	-- ¹	-- ¹											
Federal Tax Suits	14.7	9.5	-- ¹	2.9											
Environmental Matters	45.3	22.8	3.9	7.5											
All Other Actions (incl Local Jurisdiction)	26.4	11.4	3.5	4.2											

¹ An estimate of trial time was not presented if there were less than 20 trials in the category.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Criminal Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences					In-Chambers Case-Related Activities			
	Jury Trial	Non-Jury Trial	Sentencing Hearing (evidentiary)	Other Evidentiary Hearing	Conference	Motion Hearing	Arraignment or Plea Hearing	Sentencing Hearing (non-evidentiary)	Other Non-Evidentiary Hearing	Order on Suppression Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	17.6 ¹ hrs	4.3 hrs	1.3 hrs	2.2 hrs	31 mins	28 mins	24 mins	28 mins	28 mins	71 mins	38 mins	30 mins	30 mins
Homicide, Assault, Kidnapping													
Murder, Manslaughter, Homicide	25.3	8.4	2.8	7.4									
Aggravated or Felonious Assault, Kidnapping	17.5	7.0	1.5	2.3									
Sexual Offenses													
Sexual Offenses and Pornography	17.1	5.2	2.0	2.6									
Robbery, Burglary, Larceny and Theft													
Robbery and Burglary	15.6	2.7	1.4	2.0									
Larceny and Theft	21.4	6.2	1.7	2.5									
Financial Crimes													
Embezzlement, Forgery and Counterfeiting	19.7	5.1	1.5	1.8									
All Fraud	25.9	10.0	1.9	2.9									

¹ Default values for trials are based on the average time required to conduct a **one-defendant** trial based on JS-10 reports.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Criminal Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences					In-Chambers Case-Related Activities			
	Jury Trial	Non-Jury Trial	Sentencing Hearing (evidentiary)	Other Evidentiary Hearing	Conference	Motion Hearing	Arraignment or Plea Hearing	Sentencing Hearing (non-evidentiary)	Other Non-Evidentiary Hearing	Order on Suppression Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	17.6 ¹ hrs	4.3 hrs	1.3 hrs	2.2 hrs	31 mins	28 mins	24 mins	28 mins	28 mins	71 mins	38 mins	30 mins	30 mins
Immigration Offenses													
Alien Smuggling	12.1	2.8	0.6	1.4									
Other Immigration	8.0	1.7	0.6	1.4									
Drug Offenses													
Sell or Distribute	15.4	3.8	1.2	2.1									
Import / Export	14.4	4.1	1.3	1.5									
Manufacture	17.5	-- ²	1.6	2.1									
Possession	16.6	5.5	1.6	2.2									
Continuing Criminal Enterprise	40.1	-- ²	2.1	3.7									
Firearms													
Firearms	13.4	3.1	1.5	2.3									
Extortion, Threats, and RICO													
All Extortion, Threats, and RICO	33.5	4.7	1.7	2.2									

¹ Default values for trials are based on the average time required to conduct a **one-defendant** trial based on JS-10 reports.

² An estimate of trial time was not presented if there were less than 20 trials in the category.

District Court Case Weighting Study Event Weight Estimates by Type of Case

Criminal Cases

Case Type Description	Trials and Other Evidentiary Hearings				Non-Evidentiary Hearings and Conferences					In-Chambers Case-Related Activities			
	Jury Trial	Non-Jury Trial	Sentencing Hearing (evidentiary)	Other Evidentiary Hearing	Conference	Motion Hearing	Arraignment or Plea Hearing	Sentencing Hearing (non-evidentiary)	Other Non-Evidentiary Hearing	Order on Suppression Motion	Order on Any Other Enumerated Motion	Trial Prep	Hearing Prep
Default Time Estimate <i>(trials in hours, other events in minutes)</i>	17.6 ¹ hrs	4.3 hrs	1.3 hrs	2.2 hrs	31 mins	28 mins	24 mins	28 mins	28 mins	71 mins	38 mins	30 mins	30 mins
Espionage and Terrorism													
Espionage and Terrorism	-- ²	-- ²	-- ²	-- ²									
All Other Felony Offenses													
All Other Felonies	24.4	6.6	2.0	2.7									
Misdemeanor and Petty Offenses													
All Misdemeanor and Petty Offenses	13.1	3.1	1.5	2.0									
Supervised Release and Probation Revocation Hearings													
Supervised Release and Probation – Evidentiary Revocation Hearing				1.1									
Supervised Release and Probation – Non-Evidentiary Revocation Hearing								30					

¹ Default values for trials are based on the average time required to conduct a **one-defendant** trial based on JS-10 reports.

² An estimate of trial time was not presented if there were less than 20 trials in the category.

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memorandum

DATE: January 6, 2004
TO: Judges Attending the National Consensus Meeting of the
2003-2004 District Court Case Weighting Study
FROM: Project Staff
SUBJECT: EVALUATION OF CIRCUIT-PROPOSED MODIFICATIONS TO THE CASE
WEIGHTS STRUCTURE

Discussions that took place in circuit meetings during the Fall of 2003 led participants to recommend a number of changes to the case weights worksheets. We have evaluated the feasibility of the various recommendations and provide here a summary that focuses on those recommendations that meet two criteria. First, they are executable, and second, they are more likely than not to result in improved case weight precision if they are implemented.

We ask you to read this memo from start to finish and then provide feedback on the modifications you believe should be incorporated into the worksheets. Modifications that receive a majority of the votes and that are returned by January 16 will determine the format of worksheets used in San Antonio to arrive at national time estimates. Decisions about the format of the worksheets ultimately affect the way the case weights are calculated.

Please record your views directly on this memo by circling one response to each question posed here. Then fax your responses by JANUARY 16, 2004 to the following number: 202-502-4199 (Attention: Case Weights Study).

HOW INFORMATION IN THIS MEMORANDUM IS ORGANIZED

This memo has four parts. Part I lists modifications to the civil and criminal worksheets that staff believe you should presumptively accept. Part II outlines proposed changes to the *civil* case weights structure; Part III outlines proposed changes to the *criminal* case weights structure. Part IV lists recommendations from the circuit meetings where at least one shortcoming limits the applicability of the suggestion to the present case weighting effort. Most of the recommendations listed in Part IV are ones that cannot be implemented because of data limitations. We do not recommend or expect to implement any of the changes listed in Part IV. They are provided for completeness only.

Consistent with the format of the original worksheets used in circuit meetings, we have taken care to indicate whether a recommended change would affect an event, a case ad-

justment, or a case type. To refresh your memory of the worksheets, you may wish to refer to the copies contained in DOCUMENT 3 of your Information Packet. You will recall that events and case adjustments for the case weighting system are listed across the top of the worksheet page while case types are listed in a column down the left side.

PART I. PRESUMPTIVELY ACCEPTED MODIFICATIONS

A limited number of recommendations will be integrated into the case weights structure unless judges indicate disagreement. These changes were recommended by two or more circuit groups and their adoption appear to staff to raise no controversy.¹ The changes are listed below.

Modifications applicable to both the civil and criminal case worksheets:

- restructure the event *Order on Any Other Enumerated Motion*;
- expand the definition of the tasks included in the event *Trial Prep*; and
- combine the two events *Motion Hearing* and *Other Non-Evidentiary Hearing* into a single event category.

Modifications specific to the civil case worksheet:

- apply the case adjustment *Multiple Parties (5 or more)*;
- apply the case adjustment *Class Action*;
- establish Bankruptcy Appeals and Bankruptcy Withdrawals as two separate case types; and
- account for differing district court practices for docketing “record review” activity in §2254 Habeas Corpus, §2255 Vacate Sentence, Death Penalty Habeas Corpus, Bankruptcy Appeals, Deportation & Immigration, and Social Security cases.²

Modifications specific to the criminal case worksheet:

- establish *Arraignment Hearing* and *Plea Hearing* as separate events; and
- apply a case adjustment to cases prosecuted under federal death penalty statutes.³

¹ Recommendations were classified together for the purpose of evaluation if their adoption would result in a similar effect on the case weight structure. Recommendations from several circuits to expand the definition of time included under Trial Prep, for example, were assessed together even though the circuits differed on what time should be included, because their common effect would be to increase the assignment of time under Trial Prep.

² Judges reported wide variations in their expectations for how final decisions were docketed in these case types. A review of electronic docket sheets for cases terminated in 44 district courts in calendar year 2002 reveals that significant numbers of summary judgment motions are recorded for these case types, as are orders affirming, reversing, or remanding the appeal; granting or denying the petition, etc. The mechanism developed for accounting for Record Review time will be to broaden the *Order on Motion for Summary Judgment* event in §2254 Habeas Corpus, §2255 Vacate Sentence, Death Penalty Habeas Corpus, Bankruptcy Appeals, Deportation & Immigration, and Social Security cases to include these affirming, reversing, granting, denying, etc. orders. The summary judgment estimate will then be applied to these orders.

³ Some circuits recommended that federal death penalty cases be established as a separate case type. While we can determine a case weight for this proposed case type, the result is not readily applied to district court

Although these changes will already be incorporated into the worksheets prepared for use at the national meeting, participants will need to agree on operational definitions for several of them. Judges will be asked to:

- separate the motions currently included in *Order on Any Other Enumerated Motion* into two or more categories that represent a better classification scheme **OR**
 determine that a single event can be preserved if it is limited to a smaller number of activities that place substantial demands on judges (and then indicate which of the original motions included in the category should be removed);
- specify with exactitude the categories of judge time included in *Trial Prep* estimates **OR**
 conclude that a relationship exists between the (known) time required to conduct a trial and the time it takes to prepare for a trial, and then specify the relationship; **AND**
- determine whether the *Class Action* adjustment in civil cases applies only to certified class actions or also to allegations of a class action.

Question 1.

Do you agree with the staff recommendation to implement the changes listed above under the heading PRESUMPTIVELY ACCEPTED MODIFICATIONS? (Choose one response.)

- a) Yes
- b) No

Please explain or cite specific areas of disagreement: _____

PART II. FEASIBLE CIVIL CASE WORKSHEET MODIFICATIONS

This section outlines changes that might be made to the civil case weight structure. We present the alternatives as a series of questions and response options with annotation. Where we believe it is appropriate, we have marked with an **X** responses that we believe

case filings, and for this reason is not appropriate, leading us to focus on the choice of a case adjustment instead. The adjustment will have the effect of increasing the weight of preexisting case type categories that include death penalty cases (Murder, Manslaughter, Homicide cases and Espionage and Terrorism cases). Staff determined that precision dictates the adjustment be applied only to cases where the prosecution has indicated an intent to seek the death penalty (not merely to cases where the offense makes the defendant eligible for the death penalty).

offer the greatest impact on case weight precision or otherwise serve the interests of the case weighting study. Please circle one response to each question.

Question 2.

Should the *Conference* event continue to include judge-conducted settlement conferences?

- a) Yes – retain settlement conferences in the broad category
- b) No – create a separate category for settlement conferences

The *Conference* category currently includes pretrial, status, scheduling, early neutral evaluation, in-chambers, telephone, and video conferences, in addition to judge-conducted settlement conferences. Two circuits recommended the removal of settlement conferences from the category.

Among the reasons for retaining settlement conferences in the larger category is that we may be unable to distinguish them from other conferences in some courts. Among the reasons for preferring a separate category is that it may be difficult for judges to incorporate settlement conferences into a time estimate for the larger category. Judges report that the average time demands for conducting a settlement conference greatly exceed the demands of other conferences in the category. In addition, settlement conferences occur much less frequently than do other conferences, further complicating the effort to agree on an average for the larger category.

Question 3.

Should an adjustment be applied to cases where the volume of motion activity exceeds some threshold amount?

- a) Yes – and the appropriate threshold value is “in excess of 50 motions”
- b) Yes – and the appropriate threshold value is “in excess of 25 motions”
- c) No – do not apply such an adjustment

Choose one of the Yes options if you believe that the time required to manage a high volume of motion activity will be underestimated if every Order on a Motion is allocated only its respective time value. Choose the No option if you think the Order on a Motion events are adequate to account for the time demands of motion management. You might also consider choosing the No option if you believe high-volume motion activity is merely a symptom of additional time demands that judges have said are present when

cases are not counseled. You will be asked to determine in the next question whether you believe a case adjustment should apply when a pro se litigant is involved.

Five circuits recommended against adoption of an adjustment for high-volume motion activity, with two offering the pro se adjustment as the alternative. Because we believe that proper credit for motion activity is realized through the Order on a Motion events, we recommend against adoption of the motion volume adjustment. We take no position as to whether the presence of a pro se litigant represents a special burden and is a case adjustment that ought to be implemented.

Question 4.

Should an adjustment be applied to cases where the plaintiff or defendant is acting pro se?

- a) Yes – apply an adjustment
- b) No – do not apply such an adjustment

Please consider the impact of pro se law clerks when deciding whether this adjustment should apply. Choose the Yes option if you believe uncounseled cases place special demands on judges' time that cannot be accounted for by examining docketed case activity. Choose the No option if you believe that time will be properly allocated by assigning docketed events their appropriate time values.

Question 5.

Some cases will have characteristics that qualify them for more than one case adjustment. How should these cases be handled?⁴

- a) Apply all relevant adjustments.
- b) Apply only the single highest adjustment.

One circuit recommended that all relevant adjustments be applied if a case has characteristics that make it eligible for multiple adjustments. Four circuits recommended that only the single highest adjustment apply to such cases. Staff favor the latter recommendation because of uncertainty about the magnitude of the shift away from known reference points (the consensus time values) if multiple adjustments are applied.

⁴ If circuit representatives adopt two or more criminal case adjustments, the decision on how to handle similarly positioned criminal cases will be the same.

Question 6.

Should the case category *Civil Rights (non-prisoner)* continue to group voting rights, jobs, accommodations, welfare, and other civil rights cases into a single category?

- a) Yes – retain the broad category
- b) No – divide the category

Choose the Yes option if you believe the time demands are similar enough among the civil rights cases that they can remain a single case type category. Choose the No option if you believe the time demands are disproportionate enough to warrant dividing the category.

Question 7.

Assume that the majority has decided that the broad case type category *Civil Rights (non-prisoner)* should be divided. How should the division be made?

- a) Create two categories corresponding to: 1) employment cases and 2) all other cases.
- b) Create three categories corresponding to 1) employment cases, 2) voting rights cases, and 3) all other cases.
- c) Create categories that are different from either of the two options listed above.

Please specify: _____

Question 8.

Project staff are able to construct a case type composed of cases where the district court is reviewing agency decisions and lower court rulings (this case type would include those cases not already organized into an established case type such as social security or bankruptcy appeal). Currently, as well as in past case weighting studies, such cases have been distributed across several case type categories. The new case type would be crude, but would permit assignment of a case weight to Review of Agency Decisions. Should this case type be established so a case weight can be determined?

- a) Yes – construct a case type for Review of Agency Decisions now even though the case type has limitations
- b) No – now is not the time to establish this case type

Participants in several circuit meetings asked us to investigate the prospects for identifying cases that involve the review of an agency or lower court decision but which do not have a dedicated nature of suit code (e.g., IDEA cases, Telecommunications Act cases, and Administrative Procedures Act cases). We have developed a procedure that will identify some such cases using reported data on title and section codes; we know, however, that it will fail to draw many cases into the category that properly belong there, which will mean that the Review of Agency Decisions category is underinclusive.⁵ The approach that has been developed, while crude, is conservative and defensible, which leaves us with the question posed above. Should this case type be established now, with the expectation that improvements in data collection procedures may permit a more refined category (and case weight) in the future, or should establishment of the category be deferred until better specification is possible?

PART III. FEASIBLE CRIMINAL CASE WORKSHEET MODIFICATIONS

This section outlines changes that might be made to the criminal case weight structure. We present choice information once again as a series of questions and response options, with recommendations marked by an **X**.

The majority of recommendations discussed in this section are recommendations for case adjustments. As a general matter, we recommend limiting the number of adjustments that are adopted, since adjustments have the effect of shifting calculations from the fixed

⁵ The information on the underlying nature of the action that is routinely reported to the Administrative Office for statistical analysis is limited, and consequently, the only way to identify these agency review cases is by examining reported title and section codes. Title and section codes are not, unfortunately, reported in a consistent manner. Data problems notwithstanding, we have determined that it is possible to identify a portion the agency review cases that make up the caseloads of the courts.

Staff processed electronic docket sheets for cases terminated in 44 district courts in calendar year 2002 and identified all civil cases in which the cause of action listed the word review. (This expanded text of the cause of action appears on the electronic docket sheet but is not reported to the AO as part of the routine data). Staff then identified several specific title and section combinations that appeared to consistently refer to the review of agency action. These title and section combinations are: 05:0551, 05:0701, 05:0702, 05:0706, 05:7703, 10:1006, 18:4208, 29:151, 30:1201, 42:405, 42:1383, 42:4321.

If circuit representatives adopt a Review of Agency Decisions case type, we propose to include a case in the new case type if the case has one of the preceding title and section combinations and *is not already classified by nature of suit code into another type of record review case category (e.g., social security or bankruptcy appeal)*. This relatively crude way of categorizing agency review cases will almost certainly fail to include numerous cases that rightly belong there. We know from our evaluation, for example, that several cases involving agency review have been reported with title and section code 28:1331, but we also know that many cases with the same code are *not* agency review cases, so we are constrained from using 28:1331 for identification purposes. Courts may nevertheless be interested in this approach because it identifies agency review cases that meet conservative criteria for inclusion in the case category, and identifies them in a consistent and defensible manner.

reference point of consensus time values. If judges attending the national meeting agree with staff recommendations on changes to the *civil* case worksheet, the number of civil case adjustments will be limited to two or three. We believe that the number of *criminal* case adjustments should also be conservative, and have already determined that a criminal case adjustment should be applied to death penalty cases.

Please remember that case adjustments are intended to account for time that would be underestimated if docketed events are assigned their consensus time values. In order for adjustments to be conceptually useful, they must be based on case characteristics that identify cases as especially time-consuming.

With that in mind, please consider which of the suggestions noted below should be adopted as criminal case adjustments. Circle one response to each question.

Question 9.

Should an adjustment be applied to cases where the defendant is representing him or herself?

- a) Yes – apply an adjustment
- b) No – do not apply such an adjustment

One circuit recommended this adjustment. In theory, staff have access to data that can be used to identify the relevant cases. In practice, however, the data are missing so often that few cases with a pro se defendant can be documented.

Question 10.

Should an adjustment be applied to cases where a defendant has been charged with five or more offenses?

- a) Yes – apply an adjustment
- b) No – do not apply such an adjustment

Participants of one circuit discussed the possibility of recommending an adjustment for multiple counts but were informed that count information is not available in the statistical data. The circuit consequently recommended a proxy adjustment, applicable to cases involving multiple offenses (5 or more). Data supporting the proxy adjustment are available.

Choose the Yes option if you believe that an adjustment based on multiple *offenses* is a good surrogate for multiple *counts* and if you believe the existence of multiple counts is indicative of time expenditure not already accounted for by docketed events. Otherwise, choose the No option.

Question 11.

Should an adjustment be applied to cases where an interpreter is required?

- a) Yes – but the adjustment should apply only to on-the-record proceedings, not to chambers activities
- b) Yes – and the adjustment should apply to both on-the-record proceedings and in-chambers activities
- c) No – do not apply such an adjustment

A number of circuits proposed an adjustment for criminal cases involving an interpreter; one circuit recommended that the adjustment apply only to hearings, conferences, sentencing proceedings, etc., where an interpreter is likely to be present (most of which take place outside of chambers.) Choose one of the Yes options if you believe cases requiring the services of an interpreter place special demands on judges' time that cannot be accounted for by examining docketed case activity. Choose the No option if you believe that time will be properly allocated by assigning docketed events their appropriate time values.

Question 12.

Criminal cases with multiple defendants are treated under the case weighting system as though a separate case is proceeding with each defendant. One alien smuggling case with five defendants, for example, counts the same as five alien smuggling cases with a single defendant. Should a discount be applied to cases involving multiple defendants?

- a) Yes – apply a discount (national meeting participants will determine the size of the discount)
- b) No – do not apply a discount

One circuit expressed the view that equating every defendant with a separate case overstates the burden of multiple defendant cases and recommended that an adjustment be applied to correct for overestimation. If such an adjustment is endorsed by a majority of

circuit representatives, the criteria for implementing it will be determined at the national meeting.

PART IV. A LISTING OF OTHER CIRCUIT RECOMMENDATIONS

This section lists recommendations from the circuit meetings where at least one short-coming limits the applicability of the suggestion to the present case weighting effort. It also includes a few nonviable proposals for change that did not rise to the level of a formal recommendation. The most common barrier to implementing the changes listed here involves available data limitations. We are providing this list for your information, rather than for your consideration.

Recommended Changes to the Structure of the Civil Case Weights

- Separate final pretrial conferences from other conferences included in the Conference event.
- Limit the Conference event to status and final pretrial conferences.

Recommended Changes to the Structure of the Criminal Case Weights

- Change the name of the Order on Suppression Motion event to Ruling on Suppression Motion; change the name of the Order on Any Other Enumerated Motion event to Ruling on Any Other Enumerated Motion.
- Establish separate time estimates for Hearing Prep Related to Sentencing Hearings and Hearing Prep Related to Other Hearings.
- Apply a discount adjustment to Sentencing Hearings conducted in southern border courts.
- Apply an adjustment to cases involving:
 - multiple victims
 - national security interests
 - 300 or more docket entries
 - a defendant with a physical or mental disability
 - wiretaps
 - classified information (CIPA)
 - a juvenile
 - case-related travel by the judge
- Establish separate case type categories for state and federal Death Penalty Habeas Corpus Cases.

Recommended Changes Applicable to the Structure of Both the Civil and Criminal Case Weights

- Apply a case adjustment that assigns time to cases on the basis of how long the case has been pending.
- Restructure the case weighting system to include magistrate judge and law clerk time.

Other

- Develop a weighting system that accounts for cases on the miscellaneous docket, especially grand jury matters and pen registers.