Case Management and Court Management in United States District Courts

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CASE MANAGEMENT AND COURT MANAGEMENT IN UNITED STATES DISTRICT COURTS

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FOREWORD

By Honorable Walter E. Hoffman

It is with great pleasure that I prepare a foreword for this report on the District Court Studies Project, during the final week of my tenure as director of the Federal Judicial Center. As the first district judge to serve in this capacity, it has been my special privilege and interest to direct the work of this project, work which comes to fruition in this report and in others to follow.

I believe that the work represented here continues a long search for the best and most effective case management procedures, consistent with the highest possible standard of justice. My distinguished predecessors, Justice Tom C. Clark and Judge Alfred P. Murrah, emphasized and reemphasized the important responsibility of the federal judiciary to take positive steps to assure that each case is managed in a way that will "secure the just, speedy, and inexpensive determination of every action." Much discussion, many procedures, and many proposals have come out of their work and the discussion they encouraged, at the Federal Judicial Center and elsewhere. I believe this report adds significantly to the dialogue by adding new information on the actual results of different procedures used by judges and courts around the country.

I am sometimes asked why we at the Federal Judicial Center are so concerned about speedy disposition of cases, especially civil cases. It seems to me there are several straightforward reasons for courts to take special responsibility to assure that cases are handled speedily. First, there is a public demand for all matters—business, personal, and legal—to be handled promptly. Another reason is expense: I have a strong feeling that almost any case will be more expensive if it is handled over a two-year period than if it can be brought to trial in six or nine months. Third, for many, defendants as well as plaintiffs, justice delayed may be justice denied or justice mitigated in quality. The uncertainty of personal and business affairs attendant upon delay in resolution greatly affects all litigants. Finally, old cases are harder to try, and harder to try well. Every type of evidence deteriorates with the passage of time. Also, lawyers are less keen, witnesses are harder to locate, and every type of confusion and slipup is more likely. For all these reasons, it has seemed clear that courts must take responsibility to bring every case to completion as rapidly as possible, consistent with the imperatives of justice. The information in this report indicates to me that most courts could bring their cases to fruition much faster than they are doing now.

It is my great hope that this research will be useful to the courts. I am certain that the Federal Judicial Center, under the leadership of my distinguished successor, A. Leo Levin, will continue to provide any assistance it can.

July 12, 1977

ACKNOWLEDGEMENTS

This report is based on the work of many people who have been associated with the District Court Studies Project. Special thanks must go to the former director of the Federal Judicial Center, Judge Walter E. Hoffman. Without his guidance, counsel, and support the project could not have been brought to fruition. The project was conceived and guided by Joseph L. Ebersole, first as director of innovations and systems development and now as deputy director. Professor John T. McDermott of Loyola University School of Law (Los Angeles) has been my indispensable associate in every phase of the project, almost from the beginning. Paul Connolly and Edith Holleman managed and carried out the voluminous data collection on which most of chapter three is based.

In addition, many others made essential contributions at various stages: Larry Alexander, Thomas Burgess, David Durbin, William Eldridge, Anthony Engel, Henry Garden, Richard Green, Michael Leavitt, John Lederer, Marlene Maddalone, Carol McGinley, David Neubauer, Charles Nihan, Gary Oleson, Alan Sager, and Alan Shermer. The contributions of all these people are gratefully acknowledged.

The judges and supporting personnel of the courts we visited were extremely generous with their time. The project rests entirely on their experience, ideas, and achievements.

Finally, this report has had the benefit of extensive comments and advice from a distinguished review panel. Each member of the panel was kind enough to read and comment upon previous drafts of this report; some also provided assistance at other stages. The panel members are:

Honorable Edward R. Becker	United States District Judge *Eastern District of Pennsylvania*
Honorable Marvin E. Frankel	United States District Judge *Southern District of New York*
Honorable Alvin B. Rubin	United States District Judge *Eastern District of Louisiana*
Samuel C. Gainsburgh, Esq.	New Orleans, Louisiana
Professor Arthur B. Miller	Law School of Harvard University
Bernard W. Nussbaum, Esq.	New York, New York
Professor Maurice Rosenberg	Columbia University School of Law

Of course, none of these individuals are responsible for any errors of fact or interpretation that may remain.

Steven Flanders
Project Director
June 16, 1977

SUMMARY AND RECOMMENDATIONS

This volume reports the overall results of the District Court Studies Project, a long-range effort by the Federal Judicial Center to assist the work of the United States district courts. Other reports in this series treat civil discovery, pleadings, motions, and other topics. The goal of the project is to help the courts achieve and reconcile the purposes stated in rule 1 of the Federal Rules of Civil Procedure: "to secure the just, speedy, and inexpensive determination of every action." Specifically, the project has been designed to determine what procedures are associated with the greatest possible speed and productivity, consistent with the highest standards of justice. A secondary goal is to determine precisely what some of the statistical measures in use actually measure. This report is based on visits to ten courts. It presents extensive data from the civil dockets of six of those courts. The visits included detailed discussions with judges and most supporting personnel, and observation of the widest possible variety of proceedings.

The project is the first systematic attempt to relate procedures used in different districts to their statistical results. Like the practice of law generally, the federal court system is highly localized. Few judges or lawyers regularly work on matters of day-to-day procedure with their counterparts in other states. For that reason, it is widely assumed in courts (often incorrectly) that "what is, must be." Although individual judges frequently visit other districts, they rarely have an opportunity to look in a systematic way at the practice of law in other districts, or to examine the factors that may lead to statistical differences between their own districts and others. Indeed, in large courts there are few opportunities for judges to learn in detail the procedures used by other judges of the same bench. A central purpose here is to assist judges and courts in learning from one another's experience.

The following factors primarily distinguish the fast and/or highly productive courts from the others:

An automatic procedure assures, for every civil case, that pleadings are strictly monitored, discovery begins quickly and is completed within a reasonable time, and a prompt trial follows if needed. These procedures are automatic in that they are invoked at the start of every case, subject only to a small number of necessary exceptions. Although all the courts visited have procedures designed to achieve early and effective control, most do not attain that goal. In slow courts, much of the time during which a typical case is pending is either unused or violates the time limits in the Federal Rules of Civil Procedure.

Procedures minimize or eliminate judges' investment of time through the early stages of a case, until discovery is complete. Docket control, attorney contacts, and most conferences are delegated, generally to the courtroom deputy clerk or a magistrate. A case comes to the judge's attention only when he is

indispensable to resolve preliminary matters, handle dispositive motions, or plan the preparation of an exceptionally complex case.

The role of the court in settlement is minimized; judges are highly selective in initiating settlement negotiations, and normally do so only when a case is ready, or nearly ready, for trial. Some judges also arrange to raise the issue early in each case, or have a magistrate do so.

Relatively few written opinions are prepared for publication.

All proceedings that do not specifically require a confidential atmosphere are held in open court.

We recommend that widespread adoption of these approaches be considered. It appears that many courts could strengthen and refine their procedures in ways suggested by the data and discussion in this report. It should be noted, however, that courts with a weak internal governance system have great difficulty taking effective policy action.

During the visits, several judges expressed concern that efforts to improve the speed and efficiency of the federal courts might diminish the quality of justice rendered. Because this possibility greatly concerns the Federal Judicial Center, we attempted to determine, in the most concrete form possible, the precise dangers envisioned and the degree to which they are characteristic of the courts using approaches we recommend here.

Since it would be both presumptuous and futile to attempt a comprehensive evaluation of the quality of justice in these courts, we addressed this issue more narrowly. Lengthy return meetings were held with the judges who seemed most concerned about the conflict, implied in rule 1, in simultaneously securing "just, speedy, and inexpensive determination of every action." Much of the conflict seemed to evaporate. The concerns expressed involved primarily the last stages of a case, especially excessive pressure by judges to rush a case to trial. The factors listed above, in contrast, lead to speed and efficiency earlier, during preparation of the case for trial. They are compatible with last-minute calendar adjustments, for good cause.

The District Court Studies Project research revealed problems with some widely accepted opinions about speed and productivity, such as:

—"*It all comes down to strong case management.*" Most courts visited are characterized by "strong case management" in one form or another. The differences lie in the relative effectiveness of alternative forms of case management.

—"*It all comes down to the personalities of the individual judges.*" Two strong indications to the contrary are: (1) the finding that individual judges' rates of terminations per year accord more with their own courts' than with the average for the federal judiciary, and (2) our observation that judges who appear to be personally efficient (or inefficient) are as likely to be found on one court as on another. Although judges' personalities (and skills, and attitudes) do affect their own work greatly, it does not appear that differences in judges' personalities explain much of the difference between one court and another.

—"*Fundamental*" *differences in the bar.* Bar practices clearly differ in the ten districts, and these differences affect the efficiency of the courts. However, the differences are neither accidental nor necessarily permanent. Many courts

have changed the practices of their bars, as a matter of policy, over a period of years. Others probably could do so as well.

—"*Backlog.*" If this term is taken to include only cases in which litigants are awaiting court action of some kind (conferences, trial, ruling, etc.), few of the courts visited had a heavy backlog at the time of our visit. The major factors causing delay or inefficiency lie elsewhere.

—*Differences in case complexity.* The fastest courts process most types of cases relatively quickly, and the slowest courts process most types of cases relatively slowly. Thus, differences in case complexity cannot account for differences in overall disposition time.

—*Hard work or laziness.* Most judges in all courts visited work extremely hard, as do most of their support personnel. We saw relatively little difference among courts in this respect. Work weeks longer than forty hours were routine, especially on the part of judges. Although long hours were especially common in certain courts, the differences were not great enough to explain the wide differences in termination rates among the courts.

—"*A comprehensive pretrial order is essential.*" None of the courts enforced this requirement fully in routine cases. The ones that enforced it most vigorously were not necessarily the speediest or most efficient.

—"*Get the lawyers in early and often.*" Our observations suggest that frequent conferences are a poor use of time.

—"*Don't waste time on oral argument.*" Oral proceedings are normal in some courts with excellent records.

In sum, the project casts doubt on certain widely accepted opinions, but supports others. We hope the detailed findings that follow will assist judges and their staffs in the constant search for the best possible techniques, a search we observed in every court we visited.

CHAPTER I

METHOD AND APPROACH

This report presents the overall findings of the District Court Studies Project. Other reports will make further use of the data examined here. A companion report, *Judicial Controls and the Civil Litigative Process: Discovery*, will describe some of our research in much greater detail. Frequent reference will be made here to that and other future reports on pleadings, motions, and similar topics.

The project is a comprehensive effort to answer some basic questions about the operation of federal district courts. Simply put, our goal is to identify the differences between fast courts (those that process cases quickly) and slow courts (those that process cases slowly), and between courts with high disposition rates and courts with low disposition rates. Procedures identified as effective are recommended only if they appear consistent with high standards of justice. The project's secondary purpose is to identify any respects in which statistical measures of speed and disposition rates may be misleading.

Phase one of this project consisted of comprehensive surveys of the case management approaches used in five metropolitan courts. *District Court Studies Project Interim Report*, based on phase one, was published in June, 1976 (FJC 76–6). The original visits have been supplemented by subsequent visits to some smaller courts, most with multiple divisions. Phase two consisted of several more rigorous, narrower projects to answer precisely questions that phase one answered only in part. Most important, we have gathered extensive new data from the civil dockets. Results are summarized in chapter three.

Choice of Courts

This report is based on the extended visits to metropolitan courts discussed in the earlier interim report, on additional visits (generally less intensive) to other courts, and on phase two data. The metropolitan courts visited were the districts of Maryland, Eastern Pennsylvania, Eastern Louisiana, Central California, Southern Florida, and Massachusetts, in that order. Table 1 shows the data on which the selection was based.[1] Courts were chosen to represent each category shown in figure 1. Metropolitan courts were chosen because they are large, and therefore soften the impact of any one judge or any temporary fluctuation of the data. They were chosen also because it is reasonable to assume continued growth of the federal court system; because of that growth, an increasing number of courts will be as large as the present "metropolitan" courts (roughly defined as those with six or more judgeships).

Supplemental visits were made to four smaller districts to gather information about special problems they may face, especially the problems associated with multiple locations. The four are the Northern District of Alabama (which currently holds court in Birmingham and seven other places), the District of New Mexico (Albuquerque and three other places), the Eastern District of Kentucky (Lexington and five other places), and the Eastern District of Wisconsin (Milwaukee only). Table 2 and figure 2 display information on the selection

[1] Data used are for fiscal 1974, with fiscal 1975 data in parentheses. Fiscal 1974 is a midpoint year in the project, as planning was based on 1973 data and visits were carried out in 1974 and 1975. Fiscal 1975 is added because the civil data gathered for the project are from that year. Where possible, all subsequent tables in this report use fiscal 1975 data.

TABLE 1

Speed and "Productivity" of Metropolitan District Courts

Fiscal 1974 (1975 in parentheses)

	Civil median time (in months)	Criminal median time (in months)	Terminations per judgeship	Weighted filings per deputy clerk
24 metropolitan districts	9 (9)	4.2 (3.9)	373 (382)	96 (99)
94 districts	9 (9)	3.8 (3.6)	348 (371)	88 (98)
MA	18 (19)	8.4 (7.6)	542 (667)	137 (143)
NY/E	10 (11)	6.4 (6.2)	321 (300)	85 (69)
NY/S	18 (15)	5.7 (5.8)	325 (294)	70 (75)
NJ	12 (13)	12.7 (12.2)	276 (323)	89 (105)
PA/E	16 (12)	4.3 (4.2)	234 (230)	82 (88)
PA/W	9 (8)	5.8 (6.0)	167 (172)	63 (73)
MD	10 (9)	5.6 (4.5)	292 (332)	83 (102)
SC	6 (6)	2.3 (3.0)	422 (547)	103 (108)
VA/E	7 (7)	2.4 (2.4)	463 (527)	94 (90)
FL/M	8 (7)	4.5 (4.6)	427 (416)	99 (100)
FL/S	4 (4)	3.2 (3.1)	402 (447)	102 (118)
GA/N	6 (7)	4.1 (4.5)	467 (536)	120 (103)
LA/E	11 (10)	2.7 (2.4)	465 (453)	105 (117)
TX/N	9 (10)	3.0 (2.8)	435 (450)	108 (113)
TX/S	12 (11)	3.4 (3.6)	455 (415)	80 (87)
TX/W	7 (10)	3.0 (2.8)	471 (434)	84 (73)
MI/E	9 (9)	6.3 (6.8)	339 (393)	115 (120)
OH/N	10 (8)	3.4 (3.4)	343 (370)	95 (96)
IL/N	6 (6)	5.2 (5.1)	315 (337)	104 (110)
AZ	7 (8)	3.2 (3.0)	444 (458)	100 (103)
CA/N	12 (11)	4.4 (4.0)	320 (334)	97 (95)
CA/C	7 (7)	3.5 (3.3)	304 (363)	90 (87)
CA/S	7 (10)	2.8 (2.9)	539 (607)	136 (120)
DC	8 (7)	5.7 (3.7)	198 (193)	45 (47)

TABLE 2

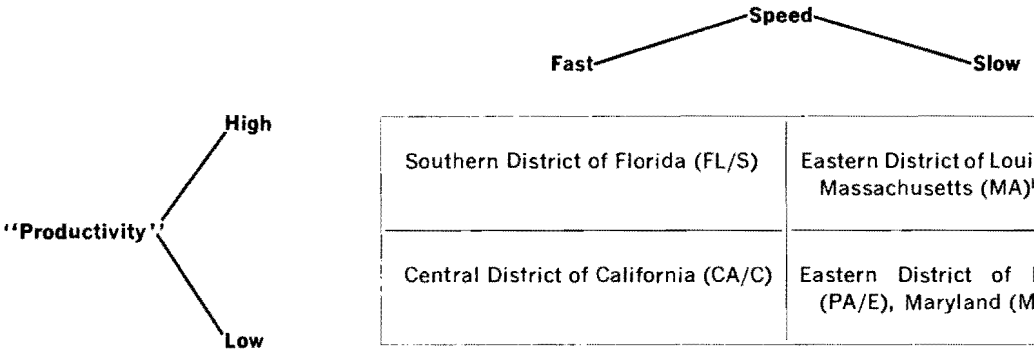
Speed and "Productivity" of Smaller District Courts

Fiscal 1974 (1975 in parentheses)

	Civil median time (in months)	Criminal median time (in months)	Terminations per judgeship	Weighted filings per deputy clerk
94 districts	9 (9)	3.8 (3.6)	348 (371)	88 (98)
AL/N	8 (7)	1.7 (1.7)	440 (474)	88 (104)
KY/E	15 (7)	4.2 (4.1)	546 (519)	97 (107)
WI/E	13 (14)	6.3 (6.9)	258 (306)	79 (104)
NM	6 (7)	2.9 (2.4)	329 (362)	88 (89)

FIGURE 1

District Court Studies Project Starting Point: Metropolitan District Courts



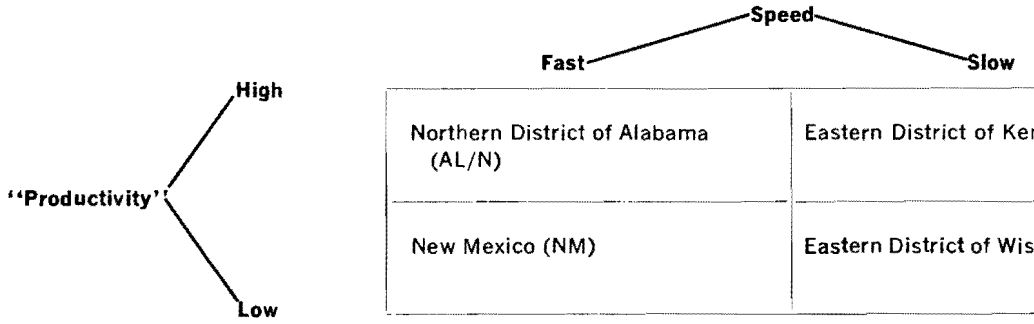
Southern District of Florida (FL/S)	Eastern District of Louisiana (LA/E)[a] Massachusetts (MA)[b]
Central District of California (CA/C)	Eastern District of Pennsylvania (PA/E), Maryland (MD)

[a] Civil only; criminal is faster than most.

[b] Includes ICC cases that require negligible judge attention. Exclusive of those cases, Massachusetts productivity figures have been near the national average.

FIGURE 2

District Court Studies Project Starting Point: Smaller Courts



Northern District of Alabama (AL/N)	Eastern District of Kentucky (KY/E)
New Mexico (NM)	Eastern District of Wisconsin (WI/E)

and categorization of these courts. Reference to these courts will be limited to supplementary information based on observation, because the civil case-flow data from these courts have not yet been analyzed.

As shown, the courts included represent the four combinations of high and low "productivity" with fast and slow disposition times.[2] The visited courts were chosen generally because their performance was close to the national extreme in some respect.[3] (See appendix A for methodological observations on this and other points. Appendix B contains a statistical profile of each court, showing many variables over a six-year period.)

The measures used in tables 1 and 2 and figures 1 and 2 require brief definition; they are discussed more fully in chapter seven (under Statistics) as well as in appendix A. The civil median time is the number of months the median civil case (as many cases were processed faster than this case as were processed slower) was on the docket until it was terminated; all cases terminated during the year in question are considered. The criminal median time is based on the number of months the median defendant was on the docket, rather than the median case. The figure for terminations per judgeship is simply the number of cases (both civil and criminal) terminated in a year, divided by the number of authorized judgeships. It contains no "weighting" factor to reflect the wide differences perceived in average burden of cases among courts (there are no published figures on weighted terminations). This category also contains nothing that accounts for senior judges, vacancies, visiting judges, visits elsewhere by authorized judges, or any similar factors. The figure for weighted filings per deputy clerk position uses the case weights (on which the published "weighted filings" figures for the courts are based) drawn from *The 1969–1970 District Court Time Study* (FJC Research Series No. 71–1). At best, these measures incompletely represent productivity; therefore, the word "productivity" usually appears in quotation marks throughout this report.

Information Gathered

The initial court visits were devoted mainly to a detailed examination of each judge's approach to handling his docket. This was the only way to develop general statements concerning the approach of a court because each court visited employs an individual calendar system.[4] Following the interviews, the staff observed a variety of proceedings before each judge and discussed with supporting personnel implementation of the judge's approach to case management. Other persons interviewed included the clerk, the chief deputy clerk, all courtroom deputy clerks, other selected deputy clerks, the full-time magistrates, the public defender, the United States attorney, selected assistant United States attorneys, and other selected private attorneys. There was at least one meeting with invited representatives of the bar in each district. Most of the invitations were based on a suggested list of lawyers with a large federal practice, obtained in discussion with judges and other court personnel.

A return trip was made to each court to obtain extensive data from a large sample of civil cases. The resulting data base—discussed in greater detail in chapter three and appendixes F to J—provides entirely new information on

[2] Massachusetts is a special case regarding "productivity." The termination figures include cargo damage cases (ICC) that are essentially unique to that district, and require almost no judge attention. Every year since 1972, more than 50 percent of all cases filed in Massachusetts (civil and criminal) have been ICC cases.

[3] Maryland is a partial exception. It was the first court visited and the chief judge requested that it be included. He was concerned about the statistics of his district, which showed a relatively low case disposition rate that seemed incomprehensible given his knowledge about the excellent work of judges and supporting personnel. Although that district's fiscal 1974 case disposition rate and median time for case disposition were below average, they were not extreme.

[4] Under the individual calendar system, every case is assigned—usually at random—to one judge at filing, and normally remains assigned to that judge until it is terminated. The master calendar system, on the other hand, involves periodic assignment of judges to specialized functions, such as motions, pretrial or settlement conferences, trial, and others. Thus, a case will come before several judges at various stages, under the master calendar system.

the components of delay in civil litigation. The present report contains only summary and selective analysis of these data from six metropolitan courts.

Court "Performance" and Performance Measures

In the past, there has been little systematic effort to trace connections—if any—between data on court "performance" and procedures. The Administrative Office of the United States Courts annually publishes a large volume of data, much of which is assumed to have a close relationship to management of the system and of individual courts. Very little has been known about the actual relationships, however. Partly for this reason, there is little agreement among federal judges on the relative merit of many procedural alternatives. Federal judges commonly find, in their discussions with other federal judges, that procedures they consider proven are thought by others to be either impossible or undesirable.

That type of problem suggested this project. Different judges have substantially different experience, largely due to the localized nature of federal practice. What is routine in one district is often considered impossible in another. Many of these differences result from the varying habits of members of the bar in different districts or parts of the country. Others result from different traditions in the federal courts. Judges themselves are usually the product of the bar in the district to which they are appointed. Many are former state judges, and their views are shaped by specific experience on different state courts. Further, in spite of a widespread impression to the contrary, they are a remarkably innovative group. Judges are constantly experimenting and gaining experience with new approaches and procedures. Their experiments often produce results that are convincing to them, but are not convincing outside their districts.

This report attempts to extend the opportunity for United States district courts to learn from one another. The Federal Judicial Center can aid this process by evaluating alternative procedures if (1) we can produce better information concerning the effects of alternative procedures, and (2) we can show how effective procedures might be implemented in other districts. The most effective procedures we have seen are in place not by accident but as a result of conscious court policy. Undoubtedly, many of them could be adopted elsewhere.

Since the concerns of this project are defined by the measures used in the preceding tables, it is important to make explicit some respects in which the measures bear novel implications. First, this project differs from most previous research on related issues in that it considers court treatment of the entire docket, not a specific subdivision of it. For example, Hans Zeisel, Harry Kalven, Jr., and Bernard Buchholz, in *Delay in the Court* (1959) focus entirely on cases that go to trial. (*See especially* chapter 4.) Even then, their interest is limited by the view that "in a real sense the parties are not delayed until they are ready to try and are prevented from doing so solely by the unavailability of the court." (page 51)

The focus of the District Court Studies Project is much broader. It most closely resembles the approach used by A. Leo Levin and Edward A. Woolley in *Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania* (1961). In their text, Levin and Woolley deal with the entire court process, though most of their data are drawn from cases that appeared on trial lists at some stage Thus, although theirs is a more restricted population of cases than is treated here, it includes many cases that were not tried (unlike Zeisel *et al*).

Cases that reached trial are a minor concern in this report. When, as in table 1, we compare courts' median times for termination of civil cases, we consider every stage of every case. Cases terminated by settlement, motion, and dismissal, as well as by trial, are included. Also included is all the time the lawyers were preparing the case, including pleadings, discovery, motions and so on. The choice of measures that

include these elements is not accidental: it reflects the federal courts' widespread assertion that the progress of the whole docket is their responsibility. Some federal judges attempt to control the pace of litigation much more than others do. There are probably few judges today, however, who refuse to assert any responsibility for any case, no matter how old, unless it is ready to be tried or ruled on in some unavoidable fashion. To focus on courts according to these measures is to focus specifically on the effects of different approaches to managing the whole civil and criminal docket.

Second, using these measures to compare past effects of alternative procedures clearly is not a controlled experiment. The outstanding example of that approach, Maurice Rosenberg's *The Pretrial Conference and Effective Justice* (1964), differs significantly from this study. The present comparison of whole jurisdictions cannot claim to separate definitively the many differences among districts; in that sense it is considerably less precise than a controlled experiment. The approach here, however, provides a corresponding opportunity. Data gathered here show great differences in the ways lawyers operate in the districts studied, especially in the amount of time they take to initiate actions or respond to them. These differences are probably a cumulative result of corresponding differences in the interaction between traditional work habits of the bar—largely learned in state court—and federal court policy. Only by examining different districts can we study these effects, which necessarily are "controlled out of" any experiment conducted within a single jurisdiction.

Format

Results are reported as follows. The "findings"—summarized in pages ix–xi—are the central findings of the project thus far. They have emerged as the prime factors distinguishing the courts that are performing well, in a statistical sense, from the other courts studied. In addition, much of the discussion below reports "observations": practices that seem particularly effective or ineffective in districts visited, but do not seem to explain differences in the performance measures. The practices identified as undesirable led to problems in the courts where they were observed; these problems were not seen elsewhere. In the courts where they were observed, the better procedures solved problems that were observed to be sources of difficulty in other courts. Finally, boldface summaries of the data or arguments are presented as needed.

The report is selective because a description of everything observed would not be productive or interesting. The report concentrates on procedures that appeared especially effective or ineffective; a purpose can be served by highlighting their effects. There is no attempt to describe procedures that are common to all or several districts, except when necessary to point out a contrast. Partly for this reason, there is much less discussion of criminal than of civil procedures, as criminal procedures differ much less among the districts.

CHAPTER II

GOVERNANCE OF THE COURTS

A weak system of governance makes effective policy action difficult or impossible. For the few courts with serious management problems, weak governance can be crippling.

The courts that have achieved substantial agreement on procedural requirements have saved all their judges a large burden of training and enforcement. The bar is relieved of a considerable burden, as well.

The courts visited differ somewhat in the way they govern themselves, although the variety in this area was less than anticipated. Most courts have achieved remarkable cohesion and effectiveness despite the judges' wide diversity of views. This observation is surprising because it contradicts the idea—often advanced by judges and others—that judges are such "prima donnas" that it is hopeless to try to get them to work together. Although the differences observed in systems of governance do not explain any great part of the statistical differences highlighted in chapter one, several important contrasting patterns were noted. This chapter reports observations but no findings because the most effective practices were found in courts with both weak and strong statistical records.

It is often asserted that certain district courts function poorly because communication among the judges is poor. Issues purportedly are left unresolved for long periods, management direction is poor, and these courts are thought to function like rudderless ships. If governance has a substantial impact on our central measures, its effect is masked by other factors. Most of the courts, including two that were chosen because their statistical performance was poor, appear to be very well governed indeed. On the other hand, one court chosen for its generally superior statistics works fairly well in most respects relevant to case processing, despite the fact that the poor relationships among some of the judges cause obvious difficulties. Our visit to the district showed that a great deal of time and emotional energy are lost. Productivity and speed in that court, however, are both satisfactory, apparently because an effective case management system has been in operation for some time. This machinery does not appear disturbed or threatened, in this instance, by the weak policy-making machinery of the court. But that court does have difficulty taking effective action or initiative in new matters of court-wide policy.

In two courts, a weak system of governance appeared to seriously impede needed effective action. For the most part, these courts have lost control over their dockets. Because the judges have no tradition of regular meetings or other systematic communication on matters of court policy, there is no machinery, occasion, or opportunity for the court to agree on and enforce policies that might improve matters. One judge remarked that "we never see each other," and that "each judge operates as a separate court." "Statistics are the last thing on my mind—I'm treading water" was another comment.

The weakness of policy-making machinery appears, in itself, to impede action, separate from the difficult questions (discussed in later chapters) of determining what action is appropriate. Commenting on problems of this type he has observed in various parts of the country, former Chief Judge Seybourn H. Lynne of the

Northern District of Alabama told us that "nothing is more unfortunate than poor communication among the judges." He and other chief judges have given a good deal of thought to this question, and, in their courts, have successfully established traditions and machinery that allow open communication leading to effective policy making. Poor communication and policy making are disastrous when decisive action is needed, though some courts seem to have "coasted" successfully for some time on policies of the past.

Meetings and Committees

Periodic meetings of the full bench are held in the five largest districts but in only one of the others. Some smaller districts achieve the same ends less formally. Conferences are held as often as two or three times a week at one extreme, and only once a month at the other. Obviously, in the interest of conserving judge time, there should be a presumption in favor of relatively infrequent meetings, though a weekly meeting of some sort seems desirable. The Eastern District of Louisiana has achieved success, in most respects relevant to this chapter, with only one long bench meeting (in the evening) each month, but there are also frequent informal lunch gatherings. Most problems that arise between meetings are handled by "liaison judges," one of whom is responsible for each area of policy, and communication with each court agency or office.

A significant difference observed in bench meeting practice was the supporting personnel's degree of access to policy making. In most courts the clerk, the magistrates, the chief probation officer, the marshal, the United States attorney, and others expressed confidence that they were able to bring to the attention of the bench any issue regarding their operation that required resolution. In Maryland this is accomplished through the coordinating role delegated to the clerk, who serves as secretary at the bench meetings and assists the chief judge in preparing the agenda. Anyone who wishes to bring matters to the attention of the bench can do so by contacting the clerk. In Eastern Louisiana the less formal but equally effective system of communication through "liaison judges" serves as the conduit for matters concerning each office. On the other hand, a good deal of confusion, misunderstanding, and wasted motion was observed in the few courts with poor communication. This was especially true in matters involving the Speedy Trial Act of 1974, which mandates joint planning among many court agencies.

Formal committee systems exist only in the five largest courts. They vary both in the number of committees and in the relation of the committees to the whole body of judges. In Maryland there are thirty-two committees (surprising in a court of seven authorized judgeships); in Central California there are sixteen committees and sixteen judgeships. (Lists of these two committee systems appear in appendix C.) It seems there is less to this difference than meets the eye. The Maryland committees are active only when an issue that requires their action arises; few meet with any regularity and the system exists primarily to prospectively assign each new issued raised. The burden of committee work does not seem greater here than elsewhere.

More important than the number of committees is their relationship to the full body. In all but one of the five courts with a committee structure, the committees are sufficiently strong that committee reports are presumed to represent the desires and needs of the full body, and normally should be accepted. In the fifth court, confidence in committee reports is more uncertain, as are other aspects of management there. A committee system is useful only if committees are actually delegated substantial authority, as in the strong committee courts. Otherwise, the full group ultimately shares both the authority and the work.

We observed great differences in the scope of court-wide policy on administrative matters and case management, and in the extent to which court-wide policy was enforced. Most of the ten courts make a determined effort to ensure

roughly comparable practices among judges in such matters as standards of preparation for pretrial orders, discovery schedules, and expectations regarding stipulations. Some courts succeed more than others. The more successful also generally insist on a uniform approach to local rules in procedural or mechanical matters, such as the form of papers filed. It is significant that some uniformity has been achieved despite the usual wide diversity of views among judges. In a minority of the courts there seems to be an unwarranted assumption that diversity on the bench necessarily must lead to diversity or conflict in practices. An extreme example is one judge's requirement that papers filed in his cases be in a form specifically prohibited by the local rules.

In both large and small courts a degree of procedural uniformity in many areas can be and has been achieved, despite diversity. The benefits of a common approach to case management are considerable. Judges in courts without a common approach spend a great deal of time training attorneys. Sometimes there is a training component to each encounter they have with attorneys in every case. A more uniform approach eliminates the need for discussion, in each contact, of the rules, practices, or procedures, or their purpose. A uniform approach eliminates many inquiries from attorneys and avoids the attendant danger of questionable *ex parte* contacts. Finally, a uniform approach eliminates a major irritant to the bar. One of the most common complaints we heard from lawyers was that they must keep in mind endless idiosyncratic requirements of numerous federal judges—requirements governing scheduling, monitoring, the form and content of pretrial orders, and so on.

The Clerk of Court

Use of the clerk in governance of the court varies considerably. United States district courts are unusual organizations in that they are governed by officials (judges) whose administrative responsibilities are a minor part of their work. To the extent that federal courts have a full-time administrative chief, it is the clerk. In addition to his diverse management and legal responsibilities and his position as chief of a modest bureaucracy, the clerk also fills, in some courts, a comprehensive role as a kind of chief executive officer. As noted, in Maryland the clerk attends the weekly bench meeting and serves as secretary. He helps prepare the agenda and often assists in determining what issues should be brought to the judges' attention. In some courts there is no one to perform this coordinating function, with obviously disastrous results. In other courts, it is carried out more informally by the judges themselves, sometimes with the assistance of liaison judges.

The clerk can also give the judges essential staff support. In Maryland, New Mexico, and elsewhere, he is frequently called upon to help with research, or with drafting a proposed rule or policy. The clerk s office in the Central District of California has a highly experienced and able management staff, capable of responding effectively to a wide variety of inquiries involving data collection and analysis, administrative problems, buildings or equipment, and so on. Examples from various courts are discussed more fully in chapter six (under Clerk's Office—General).

The best clerks of court are already functioning as "court administrators," although proposals to create such a position above the clerks in district courts have not yet been implemented. Because several courts now receive the highest quality staff work from the clerk of court or his staff, it is reasonable to ask why all courts have not insisted on a similar level of support. As often as not, the difference seems to lie in what is demanded by the judges.

Small Courts and Multi-Division Courts

Among the smaller courts visited, only the Northern District of Alabama has regular bench meetings. Some small courts handle administrative issues admirably with no regular meetings

or committees; generally, the clerk is especially important in those courts. In one, however, we observed very little policy direction of any kind, despite considerable need. That seemed to result primarily from a lack of leadership by the chief judge.

Under chapter five, title 28 of the *United States Code*, some district courts can only hold court in one location. Others, by statute, can hold court in two or more locations; sometimes the statute specifically assigns certain counties to one court location (thus creating a "division"), sometimes not. Among the courts with several statutory locations, some hold regular sessions of court in each; others have pretermitted one or more ". . . for insufficient business or other good cause." (28 U.S.C. § 140(a)) Some outlying locations are served by one or more resident judges, a staffed clerk's office, and other permanent staff. Others are served only by judges and staff stationed elsewhere.

Some courts are geographically centralized; the functions and resources of others are scattered throughout their districts, bearing little relation to apparent need.

Two courts visited have developed a model approach that minimizes the disruptive effects of wide geographical dispersion.

Table 3 shows the extent of dispersion of business to outlying court locations. As the right-hand column indicates, only one of the metropolitan courts conducts substantial business in other than its largest location: the Southern District of Florida recorded 23 percent of its trial days in locations other than Miami. The other metropolitan courts concentrate nearly all their work in a single location. By contrast, there is much more dispersion of functions and resources in the smaller courts shown, as is generally true of smaller courts in the country as a whole. Northern Alabama, Eastern Kentucky, and New Mexico all conduct tions than even Southern Florida does. Eastern Kentucky holds nearly two-thirds of its trials in locations other than Lexington, its largest city.

Dispersion of court activity, however, does not necessarily imply that judges and supporting personnel are similarly scattered. The

TABLE 3

Dispersion of Court Activity and Resources

Fiscal 1975

Court	Largest court location	Judgeships	Terminations per judgeship	Statutory locations	Active locations	Judge locations	Clerk's office locations	Dispersion of trials (percentage)
CA/C.....	Los Angeles.....	16	363	1	1	1	1	0
LA/E.....	New Orleans....	9	453	1	1	1	1	0
MA.....	Boston.....	6	667	4	2	1	1	3.0
PA/E.....	Philadelphia....	19	230	4	3	2	2	5.0
MD.....	Baltimore.....	7	332	5	2	1	1	0.1
FL/S.....	Miami.....	7	447	5	5	3	3	23.0
WI/E.....	Milwaukee.....	3	306	3	1	1	1	0
NM.....	Albuquerque....	3	362	6	4	1	1	24.0
AL/N.....	Birmingham....	4	474	8	8	1	1	24.0
KY/E.....	Lexington.....	3	519	8	6	2	5	66.0
94 courts.....		399	371	430	321	159	231	21.0

NOTE: "Dispersion of trials" shows the percentage of trial days in fiscal 1975 held in statutory locations other than the largest one. "Active locations" shows the number of statutory locations where at least one trial was held. The numbers of judge locations and clerk locations reflects primary office assignments, according to the *United States Court Directory.*

Northern District of Alabama, as shown, conducts business in eight locations, but all judges and full-time staff are located in Birmingham. The District of New Mexico supports its outlying locations from Albuquerque in similar fashion. By contrast, the Southern District of Florida has a judge and a staffed clerk's office in both West Palm Beach and Fort Lauderdale, in addition to Miami. The Eastern District of Kentucky has a judge and a clerk's office in Catlettsburg as well as in Lexington; additional clerks' offices are located in Covington, London, and Pikeville.

Obviously, in a dispersed operation, the potential for inefficiencies exists. In addition, the location of judges far from each other creates potential obstacles to maintaining an effective and harmonious working relationship among them. (These issues are discussed further in appendix D.) In principle, it would appear that any low-volume location necessitates lost time, either on the part of underutilized personnel located there, or in travel between several places. A prime reason to include nonmetropolitan courts in this project was to explore alternative solutions to these problems. Our observations, however, revealed the surprising fact that no reduction in "productivity"—however measured—has been shown to be associated with multiple locations.

Most dispersed courts have relatively many terminations per judge (see table 3 and appendix D). Nonetheless, judges and supporting personnel of dispersed districts all seem to feel their operations would be much simpler and more effective if only one location were used.[1] Difficulties often mentioned include:

—Lost time of judges and supporting personnel.
—Poor communication among judges, leading to poor policy control.
—Recurring disputes among judges over the distribution of business among judges in different locations.
—Poor administrative control over outlaying clerks' offices, probation offices, magistrates, etc.
—Nonuniform procedures, especially in matters covered by local rules.
—Delays in completing any task that involves communication among offices. For example, preparation and submission of statistical reports is unavoidably more cumbersome if several offices are involved.
—Confusion and delay in handling papers filed, and in assuring that they are correctly and timely docketed and find their way to the proper file in the proper office.
—Calendaring problems. When conflicts occur, a single-judge location has very little flexibility to respond.

Fortunately for litigants, but unfortunately for research purposes, no multi-division court visited seemed to suffer seriously in any of these respects, compared to other courts. The strategy employed in the districts of New Mexico and Northern Alabama seems especially effective, though it may not be equally useful everywhere. In those districts, by long-standing tradition, all judges appointed must move to the hub city (Albuquerque and Birmingham) if they do not already live there. All papers are filed in the hub city and nearly all supporting personnel are stationed there. On the other hand, regular sessions outside those cities are considered an important part of the court's responsibility to serve the public, and there is little interest in pretermitting them.

Concentrating judges and supporting operations in the hub city minimizes the impact of dispersion remarkably. For years, the judges of the Northern District of Alabama have met over coffee in the chambers of the chief judge every Monday morning at 8:30. This meeting is affected by the outlying locations only in that one judge or another may miss the meeting because he is holding court in Decatur, Gadsden, Tuscaloosa, or elsewhere.

The meetings serve both social and business purposes. When particular problems need resolution, there may be a short written agenda that sometimes includes prepared reports by judges or staff. Otherwise, there is general discussion of business and nonbusiness matters. One item discussed weekly is the judges' calendars. The meeting is a recognized opportunity to move

[1] Many feel, however, that the need to serve outlying locations outweighs any such considerations.

trials from one judge to another when needed and to fully familiarize each judge with the approaches, problems, and needs of the others. Discussion is sufficiently open that no issue requiring action is ignored or unobserved.

A single judge is assigned to the sessions of court in each outlying location (each judge sits twice a year in each outlying location). Table 42 contains sample schedules that illustrate the assignment method. Until the assignments are rotated, a single judge normally handles all cases filed in a given division (except Birmingham). When the scheduled time arrives for pretrials or trials, the judge assigned to a division travels to the appropriate place, with the necessary staff—usually his secretary, a law clerk, a court reporter, and a courtroom deputy clerk.

The system in New Mexico is slightly different and equally effective. All judges and nearly all supporting personnel are stationed in Albuquerque (the exceptions—nearly universal ones—are probation officers and part-time magistrates in several locations). Though the judges often see one another informally, they have no system of regular meetings. Court sessions are scheduled ad hoc by each judge, according to need rather than to a fixed schedule. All cases are filed in Albuquerque, assigned at random to a judge, and then monitored by the assigned judge, assisted by his courtroom deputy. If the lawyers, parties, and witnesses appear to be located near Las Cruces, Santa Fe, or Roswell, the deputy schedules pretrials, hearings, and trials for the appropriate location. Each judge visits each outlying city several times a year at irregular intervals, for periods that vary from one day (for hearings and conferences) to a few weeks (for an occasional long trial).

This combination of centralization and decentralization permits the court to operate almost as thought all operations were concentrated in Albuquerque. There are no geographical obstacles to communication and decision making among the judges or supporting staff. The clerk has comprehensive responsibilities as court administrator. Issues requiring resolution are brought to him by those affected. He provides staff support and arranges for a meeting, if one is needed, when a decision or policy statement by the judges is required. Many issues are resolved at a staff level, in consultation with the chief judge, as needed, without involving the full court.

The New Mexico and Northern Alabama systems centralize dispersed court functions, an approach we recommend where it can be adopted or initiated. Many districts have different geography and could not adopt this approach without modification. Birmingham and Albuquerque are the dominant sources of litigation in their districts, and those cities are centrally located in their districts.

In many districts, the largest city is neither very large nor central. Sometimes it is one but not the other. Lexington, the largest city in the Eastern District of Kentucky, accounts for only about one-third of the trials in that district, and a much smaller proportion of cases filed. Although Lexington is relatively central, the other busy locations are at the extreme periphery of the district. At the time of our visit, London and Covington had more pending criminal cases than Lexington, and London and Pikeville had more pending civil cases (nearly all of these are black lung cases). It would not seem logical to try to serve all those places from Lexington. The present arrangement, in which one judge is based in Catlettsburg (110 miles east of Lexington) and five clerk's offices serve the six currently active court locations, is less dispersed than the district's operation a few years ago, when the court held sessions in all eight statutory locations. Although further concentration would be possible, the arguments for that seem less compelling in a district whose business is so dispersed.

In many respects, this district seems to work remarkably well under difficult conditions. Supporting operations seem to handle the unavoidable inconvenience well. There is much less common policy direction from the judges than we observed elsewhere, however. This may be an unavoidable result of an exceptionally large and dispersed case load.

In summary, we suggest the following steps to minimize the disruptive effects of wide geographical dispersion:

—Adding new statutory locations or sessions of court should be considered only if extraordinary need is shown.
—Pretermitting court sessions in locations which either are near another court location or generate a very low volume of litigation should be considered. Appendix D discusses some factors involved. Most of the obvious candidates for pretermission have already been eliminated in the study courts, but some others are certainly marginal.
—The New Mexico/Northern Alabama approach should be adopted where it is feasible.
—Where it is not feasible, steps should be taken to serve outlying locations from the smallest possible number of judge and clerk locations.

Case Assignment and Reassignment

Monthly case-load reports provide valuable information. Emergency procedures to shift cases—especially trials—from one judge to another have proved useful to several courts.

The individual calendar system is used in all ten visited courts. For this reason, we have no basis for direct comment on its merits, except to observe that it was generally applauded, both in districts where it had been instituted recently and in districts where it had been employed for years. The system certainly allows judges to familiarize themselves with all aspects of a case as it moves through the system; this assures both expertise and continuity. Another benefit of the system is that it permits judges to supervise the procedural aspects of case preparation, especially timing, but also the volume, direction, and extent of discovery, motions, and so on. On the other hand, the system has introduced a degree of inflexibility in the calendaring process; some courts have responded to this more successfully than others.

At the time of our visits, all but one of the districts distributed a monthly report on the relative condition of each judge's docket; the other court does so now. Typically, these reports show the number of civil and criminal cases pending at the beginning of the month and the number filed and terminated during the month. These reports were generally considered a natural corollary of the individual calendar system.

All the long-time users of case-load reports appear to have instituted the practice at roughly the time they instituted the individual calendar system. Judges on nearly all courts were aware of the relative state of the several judges' dockets. They also knew their own relative standing and had various ideas about how all judges reached their relative standings.

Significantly, the amount of discussion about relative pending case loads did not differ between the long-time report users and the one court that did not distribute the reports. But there was a marked difference in the accuracy of the discussion. In the court that did not use case-load reports, the judges independently raised the question of their relative standing in the court, but they made several references, which we later determined were inaccurate, to the positions of the other judges.

Clearly, monthly case-load reports are useful. They provide a rough evaluation of the way each judge's procedures affect the size of his docket. Each court becomes a sort of experiment, or group of experiments. Periodic case-load reports encourage a judge to control his docket better if it is less under control than that of other judges. Reports also are useful in determining if the court should assist one or more judges.

If one purpose of the individual calendar system is to foster a spirit of competition with respect to disposition rates, it obviously has succeeded. It appears, however, that at least some judges are paying a price for this. One judge described the individual calendar system as "a highly introverting experience." (This judge was a recent appointee from a state court that used the master calendar system.) He said there is little sense that his court's docket is a shared

burden. He was able to ask a fellow judge to handle emergency matters while he was on vacation, but little more. The individual calendar system, in his view, is superb in fostering personal motivation. The night before our meeting with him, this judge stayed in his chambers until midnight, trying to settle a complex antitrust matter. He felt that in achieving a settlement, he had accomplished a great deal for the court generally, but pointed out that his immediate purpose had been to avoid trying the case a month or so later. He felt pressured by his enormous case load and he was acutely interested in any opportunity to reduce the burden. In this respect, the system served a useful purpose. On the other hand, he felt that the pressure of the individual calendar system and the case load was the main cause of some judges' occasional intemperate behavior on the bench. Even more serious, we heard attorneys express occasional fears that a judge could not provide a fair trial in a case he thought should have been settled.

The districts vary considerably in the degree to which they have instituted procedures to transfer cases from one judge to another. Under the individual calendar system, there is a wide range in the number of pending cases before each judge on any court. Judges' pending case loads varied by a ratio of nearly three to one in some courts, and in one court, the average age of cases tried varied from much less than a year for one judge to more than three years for another.

Each large court has a committee empowered to relieve a judge who bears special burdens resulting from illness or a protracted case. Often, however, there is no system for reallocating cases from overburdened judges to those who have lighter case loads, nor is there a court-wide procedure for disposing of old cases. Thus, in some courts, some litigants still face substantial backlogs, even though there may be few old cases in the court as a whole.

This anomaly is only one of the difficulties of a completely unmodified individual calendar system. Another is that a court may experience trial conflicts necessitating a continuance, even though one or more judges is actually available for trial. Unless an individual calendar court is integrated by a strong sense that the court docket is a shared burden (and by corresponding procedures), judges' calendars may develop in such a way that one judge has nothing to try on a given day or week, while another may have two cases ready for trial at once. Judges do, of course, have essential work to do even if they are not scheduled to try a case on a certain day or week. A procedure permitting last-minute exchange of trials on an emergency basis can have several benefits, however:

—It provides more certainty to "date certain" trial settings, speeding the calendar both directly and indirectly.
—It permits judges to be less cautious in their calendaring practices and thus calendar more cases, since they know every case can be tried, even if, in unusual circumstances, two cases should come to trial simultaneously.
—It assists implementation of the Speedy Trial Act.

Magistrates can be particularly useful in relieving trial conflicts. Magistrates in Eastern Louisiana and other districts have held civil trials by consent fairly regularly, with good results. Trial conflicts can sometimes be forestalled if a magistrate is available to take a trial. (See chapter six.) Reassignment to a magistrate should be handled carefully, however, to avoid undue pressure. If lawyers are asked as late as the day of trial to consent to trial before a magistrate, with no alternative except a long continuance, one may question whether the consent is voluntary. If the issue is raised five to seven days earlier, through inquiry by the courtroom deputy, there should be no difficulty in most instances.

We recommend that some courts consider the following steps to implement the principle that the docket is a responsibility shared by the whole court. Clearly, all are compatible with the individual calendar system: all are being used

by individual calendar courts to help the system work. Courts should consider:

—Some variant of the "accelerated calendar" used in the Eastern District of Louisiana and other courts. In Louisiana, all cases at least three years old are put on a master list every year or so. (Cases pending for three years or more were determined by the Judicial Conference of the United States, at its September, 1961 meeting, to constitute a judicial emergency.) All cases not removed from the list by the assigned judge are pooled for trial during a short period when most or all judges clear their calendars and are available to hear any case in the pool.

—A procedure under which any judge whose number of cases pending reaches a figure 50 percent above the average is contacted by a calendar committee, which suggests either transfer of some cases or suspension or reduction of new case assignments.

—More flexible procedures to exchange trials. In some courts, exchanges between judges at the last minute are common; the benefits have been noted. Some exchanges are accomplished through a memorandum to all judges, from judges with nothing to try on a given day, requesting a trial. Other exchanges are made by one-to-one contact among individual judges.

—Greater use of magistrates to hold civil trials by consent, both in case of conflicts and otherwise.

Each of these suggestions would be controversial in many courts. Probably none could be adopted everywhere. Nevertheless, one or another of these alternative responses to a common problem should be useful in most districts. The effectiveness of these measures is suggested by the excellent record of the Eastern District of Louisiana, shown in table 4. That district employs an accelerated calendar, shifts trials as necessary, and occasionally holds civil trials before the magistrate. Even though the district does not process civil cases especially fast in other respects, table 4 shows that the district has old cases very well under control.

TABLE 4

Incidence of Cases Three Years Old or Older

Fiscal 1975, in percentages

	Among cases terminated	Among cases pending
FL/S	0.7	1.2
LA/E	2.1	2.9
CA/C	2.8	7.0
MD	5.2	5.9
PA/E	7.8	4.8
MA	16.7	9.0
Average	5.9	5.1

Multi-division courts face two special problems in adjusting their work loads. First, it is difficult or impossible to move trials from one judge to another on short notice if the judges involved are in different cities. As already observed, this factor makes the New Mexico/Northern Alabama system especially desirable. Second, multi-division courts in general have a history of differences—sometime acrimonious—over the proper division of work among judges. Dockets in different locations vary in difficulty, or are perceived to vary. In some districts, there have been series of disputes on this point, sometimes resolved only by action of the judicial council or the Judicial Conference of the United States.

Although these disputes may seem petty to some outsiders, they seem entirely understandable—even inevitable—if one realizes the extraordinary pressures under which federal judges now labor and the extreme variance among dockets in different places. Of course, the pressures are largely self-imposed, since there is little effective authority requiring a judge to do more than his conscience demands. Still, crowded dockets, peer pressure, a strong sense of professional responsibility, and an occasional nudge from the judicial council or elsewhere together lead most federal judges to feel greatly pressed. Since there is no reliable and

objective technique to compare the dockets of two different places, inequities must be resolved by very rough rules of thumb. (See appendix E for further discussion.)

Simplest, of course, is to assign cases at random without regard to geographical origin, as in New Mexico. Failing that, it seems desirable for a court to have a fixed assignment system that can be reevaluated frequently and that includes a flexible system to shift cases among judges when temporary imbalances occur.

Observations

—Poor communication among judges, leading to weak policy-making machinery for the court, can be disastrous in courts that require decisive policy action.

—Some courts could benefit by establishing for supporting personnel more ready and routine access to administrative decisions of the court.

—Some courts could benefit by widening the scope of court-wide policy on administrative questions, particularly with respect to enforcement of uniform practices and enforcement of local rules.

—Some courts could benefit from expanded use of the clerk to coordinate court agencies and to provide staff support for the judges. (See also chapter six, under "Clerk's Office—General.")

—Some courts that are geographically dispersed could benefit from (1) closing some low-volume court locations, (2) serving all locations from a single place, or (3) serving all locations from no more than two or three places if geography compels more than one.

—Some courts could benefit from expanding their procedures for reassigning trials, using an "accelerated calendar" procedure and ad hoc shifts, shortly before the trial date, to another judge or to a magistrate.

CHAPTER III

MANAGING CIVIL CASES

The strongest findings of this project concern differences in the ways courts manage civil cases during the various pretrial phases. The courts differ widely in the controls they exercise over preparation of civil cases. The degree of control is closely associated with the time required for each stage of a case, which also varies greatly among courts.

One aspect of these findings was anticipated in a remark by the late Judge Alfred P. Murrah. At Federal Judicial Center conferences, Judge Murrah often said, "What we advocate here comes down to one thing: teach the lawyers that they've got to practice law according to the rules." Most judges and most lawyers think law is practiced according to the rules in their courts, and Judge Murrah's observation probably puzzled his audience on occasion. Our observation and data, however, both indicate that the rules regarding time limits are honored more in the breach than in the observance, except in a few courts.

A further aspect of the findings here is that effective and discretionary judicial case management now serves much of the purpose once served by mandated time limits.[1] The Federal Rules of Civil Procedure eliminated numerous time limits while also eliminating numerous procedural technicalities. Since the rules were adopted, in 1938, many remaining time limits have been eliminated. Discovery, especially, is now governed by very few time limits. Following the exhortations of Judge Murrah and others, federal judges have increasingly asserted control over the timing of the civil litigative process through pretrial conferences, discovery cutoff dates, and through insisting early in the case on rapid progress toward trial. The findings in this chapter show the dramatic results of these controls.

In matters not governed by time limits in the rules—particularly discovery—there are huge differences in preparation time between courts that vigorously control their dockets and courts that do not. We found that a court can handle its case load rapidly only if it takes the initiative to require lawyers to complete their work in a timely fashion.

Our findings supplement Judge Murrah's principle in another respect. To handle its case load efficiently, a court must minimize the time judges spend on the initial stages of their cases and require lawyers themselves to resolve the relatively petty disputes (especially discovery questions) in most instances. Under an effective system of case management, the rules speak for themselves, and lawyers are less dependent on the court to enforce those rules.

In addition to information gathered from court visits and published data (the materials used in other chapters), the discussion in this chapter draws on an extensive data collection and analysis project. Information from this project will be summarized in this chapter; more complete and detailed analyses will appear in related reports on discovery, motions, pleadings, and other topics. The discussion here is generally limited to description and evaluation of court-wide civil case flow. Much other sup-

[1] This topic is discussed more fully in a forthcoming companion report, Judicial Controls and the Civil Litigative Process: Discovery.

plemental material is included in appendixes F through J rather than in the text here.

Although the text must remain dense and laden with figures, we have attempted to select, from an enormous volume of data, the minimum that can illuminate a single central question: what is the effect of various case management procedures on the flow of civil cases at each stage?

The method and approach of the data collection project is discussed in some detail in appendix F. Each court was visited in late 1975 or in 1976 to obtain data on approximately 500 randomly selected civil cases. A group of highly skilled researchers (most of them present or past law clerks to district judges) filled out a detailed form for each case, under the direction of Paul Connolly of the Federal Judicial Center staff. Cases were selected from a list of all cases terminated in the district in fiscal 1975, listed in order of their docket numbers (therefore also the order in which they were filed). From a random starting point, every third, or fifth, or *n*th case was selected; the interval was chosen to yield approximately 500 cases from each court.

A voluminous amount of information was gathered, as the sample form shown in appendix F suggests. The central aim was to gather time data on every recorded event in the case regarding pleadings, discovery actions, substantive or procedural motions, judge action, continuances, timing control, conferences and trials, and a few other factors. The results from this data base are summarized only briefly here. The data will remain useful for various research purposes, not only in forthcoming reports but in future projects as well.

In the interests of both brevity and timely preparation, this portion treats only the six metropolitan courts, though data have been gathered on the other four courts as well. As do other chapters, however, this chapter includes observations concerning practices in "non-metropolitan" courts.

The Overall Impact of Case Management Control

Some central questions to address at the outset are:

> Do case management controls shorten disposition time? How?
> Can the amount of time spent between particular events be reduced or eliminated?
> How fast is fast enough, or too fast?

Table 5 shows overall disposition times in the six courts, according to the collected data. As in all tables through table 23, the courts are listed in order of their disposition time for all cases, from the court with the fastest overall disposition time to the court with the slowest. This permits easy scanning of each table, allowing the reader to determine to what extent a particular column falls in the same order as the overall disposition time of the courts. The first column shows that the courts' disposition times vary considerably. The Southern District of Florida is fastest, with a median disposition time of 121 days for sampled civil cases, while the District of Massachusetts is slowest, with a median of 500 days (excluding sampled ICC cases, because the impact of ICC cases is virtually unique to that district).

The differences in disposition time among the courts studied are not caused by concentrations of cases that characteristically are fast or slow.

The subsequent columns of table 5 show that differences in speed of disposition cut across case types to a remarkable degree. (Table 43 supplements these data with additional case types, for which the same relationship generally holds.) The courts disposed of sampled cases in the categories listed with approximately the same relative speed as they did with all cases sampled. The fast courts dispose of the characteristically fast case types especially fast; these case types are disposed of fastest in the slow courts as well. The slower courts dispose of each case type shown relatively slowly. This leads to a significant observation: differences in

TABLE 5

Overall Disposition Times

Fiscal 1975

	All cases sampled		Routine personal tort		Routine contract		Complex contract		Constitutional law		Prisoner petitions	
	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S.....	121	595	202	53	139	119	142	111	96	28	70	63
CA/C.....	166	541	323	41	176	48	294	84	334	38	77	133
MD.....	223	502	291	98	205	57	239	49	235	38	112	127
LA/E.....	313	494	341	200	305	19	335	44	212	23	72	24
PA/E.....	352	497	400	183	254	58	359	65	305	37	121	39
MA*.....	500	468	689	113	331	46	704	67	485	37	173	44
Average	279	516	374	115	235	58	346	70	278	34	104	72

NOTES: In this and in all tables through table 23, the courts appear in order of their disposition times. Data on additional case types appear in table 43. The case categories are defined in appendix G.

* Massachusetts ICC cases omitted from all tables.

speed of disposition appear only slightly related—if at all—to differences in case mix.

This finding is directly contrary to the perception of many judges and other court observers. For example, in our meetings, some judges of the Eastern District of Pennsylvania suggested that their district's relatively slow disposition time was due to an unusual concentration of complex cases there. The table indicates that (in fiscal 1975) Eastern Pennsylvania was relatively slow in almost every case type.[2] The table strongly suggests that the differences in disposition times are related to procedures that are applied to most or all cases.

The table is also surprising in some other respects. Routine personal torts cases are the slowest of any case type shown, and one of the slowest types of all. Constitutional cases, on the other hand, move remarkably quickly, considering the complex issues often presented.

Further information on the contrasting patterns found in treatment of the various case types will be deferred to the forthcoming reports already mentioned. The purpose here is to show, on a gross basis, the differences that emerge across case types between the courts that watch their civil cases closely and require speedy preparation in most or all cases, and the courts that are less demanding. In summary, the findings developed below are:

—The fastest courts are those with the most exacting controls.
—In the fastest courts, the amount of lost or unused time is minimized.
—In the fastest courts, more actions leading to disposition are accomplished during the time the case is on the docket, even though it remains there for less time than it would in a slower court.
—In the fastest courts, the interval between each individual action is less than in slower courts, yet in all courts, even the fastest, there is considerable time between the actions moving a case to final disposition.
—Finally, these data indicate there is a great deal of unused time in slower courts, which could reasonably be reduced through more docket control by the court.

[2] Disposition times in Eastern Pennsylvania have improved steadily in recent years. For the first half of fiscal 1977, its median time was nine months, which was also the national median.

The Procedures Observed

The six metropolitan courts represent the entire spectrum of the types of case management control exercised, from the most demanding to the least. Since the courts were chosen to represent extremes, it is fortuitous that relatively moderate approaches are represented. Therefore the data base provides an opportunity to evaluate each type of approach in use. Southern Florida and Central California are more aggressive in scheduling and monitoring their civil cases than are the other courts. In both, most judges maintain procedures designed to assure that the filing of all answers is closely monitored and that prompt action is initiated if a delay occurs. Southern Florida's system to monitor answers is much more effective than its counterpart in Central California, perhaps largely because practice in the state courts in the Los Angeles area effectively permits unlimited continuance of the answer by stipulation. The Southern District of Florida monitors civil cases on an exceptionally tight time schedule, without the benefit of a detailed local rule on the subject and without the strong participation of the courtroom deputy that is common in Los Angeles.

In most instances, case management in Miami is controlled by the judges' secretaries. They monitor the answers to complaints and mail a form to the attorneys who are in default. They also send out notices establishing a discovery schedule which is as tight as any observed in any district. Thirty or forty-five days for discovery is not uncommon, and the time permitted (from the initial notice to discovery cutoff) is rarely more than ninety days. A striking docket entry that seems to be unique to Miami is the motion to contract the time periods for discovery responses established by the federal rules. This is sometimes agreed upon to permit completion of discovery in the time allowed.

In Los Angeles, if the answer is late, most judges have their courtroom deputies routinely mail a form requesting the attorneys to show cause why the complaint should not be dismissed for failure to prosecute (if service is not complete), or move for a default judgment (if service was completed more than twenty days earlier). A sample of this form is included in appendix H. The case is also placed on the docket for hearing on "law and motions day." Most notably, once all answers have been received the deputy mails a notice setting the case for final pretrial on the first Monday sixty days or more from the date of the notice. This procedure is mandated by local rule 9, which also appears in appendix H. (Three or four of the sixteen judges rarely invoke this rule.) According to the rule, all discovery activity must be completed before the pretrial conference. A proposed pretrial order must be lodged five days before the date set.

This exacting schedule is rarely met, even in cases before the most demanding judges. Judges' policies on continuances contain varying degrees of flexibility; even the strictest judges grant at least one or two in ordinary cases. Discussion and observation during our visits suggested that the schedule had a great value: to assure that discovery begins very soon after the case is at issue. While judges differed in their practices with respect to continuances of the rule 9 pretrial, all felt the rule had an important effect. All declared that each of their cases was always "on calendar," meaning there was always a next date (usually the pretrial) when something was to be done and control was to be exercised. The practice also reportedly assures that discussions of scheduling, which normally take place in the form of a request to continue the pretrial date, occur when some discovery has been completed. At that time, the attorneys are in a position to discuss intelligently what remains to be done, in terms of what has already been accomplished. Data in the tables below, however, suggest that the Los Angeles practice is considerably more lax than it appears, and that its disciplining effect is not great in comparison to practices of other courts.

Schedules have been more relaxed in Maryland, Eastern Louisiana, and Eastern Pennsyl-

vania. (There are independent indications that the process has been more controlled recently, in at least two of these courts.) All judges in Maryland and almost all in Eastern Louisiana use one procedure or another to arrange an early "preliminary pretrial" or "scheduling conference," either in their own chambers or before a magistrate. At this conference, there is an effort to establish a realistic schedule for discovery, final pretrial, and trial, based on the particular nature of the case. Some judges reported they try to cut down the time requested by attorneys, others said they usually accept the attorneys' estimates, and a few said they sometimes extend the estimates. Time permitted for discovery is rarely less than ninety days in any of these courts, and usually is somewhat longer, even in routine cases. (These practices will be discussed in greater detail in connection with tables 21 to 23 below.) In complex cases the period is normally much longer, and is established by a detailed scheduling order.

Scheduling approaches in Philadelphia vary widely within the court. Both data and information from observation and meetings indicate that Philadelphia judges are particularly concerned with expeditious treatment of complex cases.

Finally, the civil docket in Massachusetts is generally regarded as being out of control, except in the practice of one judge. (One other judge is now making vigorous efforts to establish control of his docket by calling "wholesale pretrials" in all pending cases.) The District of Massachusetts has suffered a high and rising backlog for the last several years. The judges attribute this to a high volume of work—particularly complex civil and criminal cases—combined with an unfortunate series of illnesses, vacancies, and the reluctance of Congress to provide additional assistance. Whatever the cause, at the time of our visit only one judge was in a position to maintain a civil case management system at all, and that judge permitted a relatively long time to elapse between each step. Both observation and data suggest that civil case management is minimal in Massachusetts. In addition, it is extremely difficult for litigants to obtain a civil trial there. Therefore, lawyers have little reason to prepare their cases speedily.

Thus, the six districts represent the full spectrum of case management approaches (more detail appears in "Trials and Trial Activity" below). The reader should be alerted to the procedural alternatives represented by these districts to make sense of the data that follow. In summary, the Southern District of Florida has a particularly tight system, shared by all judges, for monitoring each stage. The District of Massachusetts has little uniform or systematic management practice. The other four districts occupy a middle ground. They are a heterogeneous group, and two are very diverse internally. Broadly speaking, a ranking of the courts by their relative aggressiveness in civil case management would be very similar to their ranking by median time. Southern Florida is the most consistently exacting, followed by the much more heterogeneous Central District of California. Maryland, Eastern Louisiana, and Eastern Pennsylvania follow in that order. Massachusetts is least exacting.

Pleadings

Timely filing of the answer is a precondition to subsequent judicial case management. Few answers are timely filed. More consistent monitoring seems called for.

Table 6 displays data concerning the time interval from filing of the original complaint until its answer is filed. For purposes of comparison, the overall disposition times from table 5 are presented in the first two columns. In the next two columns are the median time from filing of the complaint until answer, and the number of cases in which both an original complaint and its answer were recorded.

The Southern District of Florida was fastest, with a median time of thirty-eight days, while the Central District of California was slowest, with a median time of sixty-six days, in spite of what appeared (from observation) to be

TABLE 6

When Is the Original Complaint Answered?

	Disposition time		Filing until answer			
			All cases		Cases with no 12(b) motion	
	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S	121	595	38	405	30	284
CA/C	166	541	66	372	59	304
MD	223	502	47	360	42	318
LA/E	313	494	59	483	57	461
PA/E	352	497	51	456	49	420
MA	500	468	53	339	41	405
Average	279	516	52	403	46	365

NOTES: All columns (in all tables) showing the number of cases in a calculation show only cases in which both dates were recorded (here, both complaint and answer). Thus, fewer cases are shown under "Filing until answer" than under "disposition time," because answers were not received in every case. Tables 44, 45, and 48 show data from service until answer, and time in violation of other pleadings time limits.

considerable case management activity to assure timely receipt of the answer. The Eastern District of Louisiana, which also has a monitoring system that appeared both aggressive and effective, shows a median time of fifty-nine days, close enough to the California median that we cannot confidently insist the actual pattern differs between these two slowest districts. (See "Guide to Tables" in appendix F for an explanation of the use of confidence limits in these tables.)

When we exclude cases in which a 12(b) motion was filed, the picture changes somewhat in its details but not in its broad outline. The largest difference is that Massachusetts has a median time of fifty-three days for all cases but only forty-one days for cases with no 12(b) motion. The latter figure is relatively fast; it is second among the six courts and significantly faster than the medians for Eastern Pennsylvania, Eastern Louisiana, and Central California.

Several striking observations emerge from this table. First, the typical answer appears to be filed well after the twenty-day deadline in every court,[3] whether cases with 12(b) motions are excluded or not. (Filing of a 12(b) motion extends until the motion is ruled on the due date for the answer.) Second, with the partial exception of the Southern District of Florida, the control mechanisms established by these courts to assure timely filing of an answer seem to be ineffective. Especially surprising are Central California and Eastern Louisiana, both of which have apparently systematic, rigorous systems in wide use. Judges, courtroom deputy clerks, and others in those districts observed that timely filing of an answer is indispensable to all subsequent case management, because it is only when answers have been filed that the identity of the lawyers involved is known, permitting conferences, scheduling, and other controls.

As elsewhere, the monitoring systems of those courts were described as permitting occasional exceptions, or occasional possibilities for a case to "slip through the cracks." It is clear that

[3] The deadline in the rule, of course, runs from the date of service; the difference is addressed below and in table 48.

"exceptional" cases in this sense are actually more common than nonexceptional ones. Indeed, of all California cases in which we recorded a time interval from service to answer, the answer was filed within twenty days of service, as required by rule, in only 18 percent. The corresponding figure for Eastern Louisiana was 20 percent. (Table 48 shows data concerning the interval from service until answer, supplementing table 6, which shows the interval from filing of the complaint. We focus on the latter here because the date of service was not recorded in a large number of cases.)

A final observation is that comparatively timely filing of the answer is achievable without a great deal of monitoring activity. As already noted, the District of Massachusetts showed a significantly faster time for filing of the answer in cases without 12(b) motions than three districts that appeared to have more rigorous monitoring systems. This finding strongly suggests that independent practice of the bar, probably reflecting state practice, is a powerful influence on this particular variable. The United States district courts in Los Angeles and New Orleans appear to be swimming against a strong tide that is a result of comparatively lax state practice in this area.

Table 7 displays the time from filing of pleadings other than the original complaint until their answers. The Central District of California differs greatly from the other districts in the time for answers to amendments, with a long median time of sixty-four days. The other five districts vary over a rather narrow range, from a median of twenty-one days (Southern Florida) to thirty-six days (Eastern Pennsylvania). There is so much overlapping of the various times in which these answers are filed that the differences in medians are not necessarily significant.

Answers to third-party complaints are filed over a wide range of time; Southern Florida is slowest here, with a median of seventy-five days. Answers to counterclaims and cross claims are much more timely filed. Both are closely clustered around a twenty-day median in all six courts. Additional data are displayed in tables 44, 45, 46, and 47 showing the time elapsed between filing of counterclaims, cross claims, third-party complaints, motions to intervene, and amendments, and the original complaint or its answer. Data concerning the overall times for supplemental pleadings of those types are also shown.

Large service delays appear in a substantial minority of cases in some courts. Overall, service delays are a small part of the problem of delayed answers.

TABLE 7

Other Answers: Filing of a Pleading Until Its Answer

	Amendments		Third party complaints		Counterclaims		Cross claims	
	Median (days)	Number (amend-ments)	Median (days)	Number (com-plaints)	Median (days)	Number (claims)	Median (days)	Number (claims)
FL/S	21	106	75	78	18	43	18	16
CA/C	64	58	47	12	23	46	20	75
MD	25	27	34	16	21	19	17	19
LA/E	28	53	71	63	20	18	19	44
PA/E	36	22	55	78	17	51	23	84
MA	23	25	61	22	20	30	22	9
Average	33	49	54	45	20	35	20	41

Table 8 responds to a question suggested by previous tables on delayed answers: what is the impact of delay in service on delay in answer? The data provide several responses. First, the total amount of time consumed by service in the typical case is not great in relation to overall time for receipt of answers as shown in table 6.

Completing service takes a median of fourteen days in the slowest court (Massachusetts). Massachusetts was not especially slow in the time for answer overall, and fourteen days did not account for enough of the elapsed time to remove from attorneys the responsibility for delay, even in that district. In other districts the impact on the median case is relatively slight. Five or six days elapse between filing and completed service in the median case in Eastern Louisiana, Maryland, and Southern Florida, and nine or ten days in Central California and Eastern Pennsylvania.

A second observation that can be drawn from these figures, however, is that the relative differences between courts' time consumed by service are rather large, even if the overall magnitude is small. The extremes are at a ratio of nearly three to one (fourteen days compared to five). Although the total elapsed times here are not great, they are relatively important because the time interval from filing until completed service is a necessary part of the sequence leading to everything that follows in the case. It is plausible to assume a direct relationship between service delay and overall time for disposition of the case. A day saved here will lead directly to a corresponding reduction in the overall time a case is on the docket. That is true of few other stages of a civil case.

Finally, table 8 shows extreme differences in the service time for the slowest 10 percent of papers served. By a wide margin, service is best controlled in Eastern Louisiana, in this respect. In Central California, 10 percent of all service takes fifty-seven days or more to complete, and Massachusetts and Eastern Pennsylvania are nearly as slow. For at least 10 percent of the cases in these courts, service is a serious problem.

In table 9, the pleading process is shown in a different way: data on overall time for pleading are displayed.

In as many as 46 percent of all cases, the complaint was the only pleading filed. When those cases are excluded in the "adjusted" median, the times for pleadings range from a median of forty-eight days in Massachusetts to ninety-eight days in Louisiana. Massachusetts has the fastest time by this variable, despite its relatively lax controls over the pleadings process. The time interval from complaint until last

TABLE 8

Service Delays

	Filing until first service attempt			Filing until completed service		
	Median (days)	Number of attempts	10 pct. slower than— (days)	Median (days)	Number of papers served	10 pct. slower than— (days)
FL/S	5	667	19	6	654	27
CA/C	8	449	48	9	439	57
MD	6	450	20	6	446	25
LA/E	5	727	9	5	719	12
PA/E	9	651	39	10	664	49
MA	12	426	41	14	458	47
Average	7.5	561.7	29.3	8.3	563.3	31.2

TABLE 9

How Long Does All Pleading Take?

	Complaint until last pleading				Complaint until last answer	
	Median, all (days)	Total number (cases)	Percentage at 0 days	Median, adjusted * (days)	Median (days)	Number (cases)
FL/S	21	597	42	51	40	327
CA/C	20	543	46	71	52	284
MD	28	503	36	57	48	315
LA/E	59	494	26	98	57	352
PA/E	44	498	24	70	51	373
MA	35	469	35	48	54	297
Average	34.5	517.3	34.8	65.8	53.7	324.7

* The adjusted median excludes all cases in which a duration of 0 days appears. In nearly all those excluded cases, the only pleading ever filed was the original complaint.

pleading is very long for a significant minority of cases in which the pleadings process is extensive and drawn out. Some characteristics of those cases will be examined in subsequent reports. Many other questions that cannot be addressed here must also be deferred to our comprehensive report on the pleadings data.

Discovery

Discovery differs from pleadings in that it is governed by relatively few time limits in the Federal Rules of Civil Procedure. This phase is probably the most time-consuming element of federal civil litigation. There are no rules at all governing the total time allowed for discovery. Many federal judges have adopted procedures to assert early control of a case and set deadlines for discovery, in hope of assuring that discovery is completed in what they consider a timely fashion. Using a statistical test called analysis of variance, we have established that those techniques significantly affect the control of discovery duration. The test is discussed briefly in appendix I, and more extensively in our separate report on discovery.

In this section we address not only the impact of control on discovery time but also the further question of where the time is saved. If a court sets tight deadlines, do the attorneys simply respond by conducting less discovery? Or do they concentrate a given amount of work into a shorter period of time? We cannot confidently define a "reasonable" typical time interval for discovery. Nevertheless, it would appear sensible to approach the issue by determining whether fast courts seem to operate so restrictively that their controls reduce the amount of discovery undertaken by attorneys.

In most courts, some months elapse before discovery begins in the typical case. This delay appears to be controllable if management of the case is asserted early.

Overall time for discovery is greatly affected by discovery controls. Remarkably, more discovery is recorded in fast courts than in slow ones.

Judges and their case management staff expressed the concern that there is often a long hiatus between filing of the complaint and the start of discovery. Table 10 addresses this question, showing separate data on plaintiff and defendant discovery.

The differences are wide. In the Southern District of Florida the median time from filing until the first recorded plaintiff discovery action was only 36 days. Eastern Pennsylvania and Eastern Louisiana were clustered at 73 and 89 days, more than twice as long. The medians

TABLE 10

How Soon Does Discovery Start?

	Filing until first recorded plaintiff discovery			Filing until first recorded defendant discovery	
	Median (days)	Number (cases)	Percentage with complaint	Median (days)	Number (cases)
FL/S	36	259	30.1	59	175
CA/C	116	149	7.4	86	137
MD	115	153	17.6	113	151
LA/E	89	194	24.2	80	205
PA/E	73	244	23.0	57	258
MA	119	183	3.3	81	172
Average	91.3	197	17.6	79.3	183

in Maryland, Central California, and Massachusetts were 115, 116, and 119 days. The pattern for defendant discovery is very different. Eastern Pennsylvania is the fastest (57 days), followed so closely by Southern Florida that the difference is not statistically significant. Eastern Louisiana, Massachusetts, and Central California are clustered at 80, 81, and 86 days, and Maryland is slowest at 113 days.

Data in table 11 indicate overall time to complete discovery. Additional data on this point appear in table 49. The time from first discovery action to "substantial completion of discovery" varies from a median of 113 days in Southern Florida to 302 days in Massachusetts.

"Substantial completion of discovery" is a judgmental variable that was coded by the researchers who collected the data. It represents

TABLE 11

Overall Discovery Time

	First discovery request until substantial completion of discovery		Filing of complaint until substantial completion of discovery		Discovery requests per substantially completed case	Discovery requests per case [b]
	Median (days)	Number (cases)	Median (days)	Number (cases)		
FL/S	113	131	182	131	8.61	5.47
CA/C	190	96	315	96	7.57	5.11
MD	151	133	294	133	5.11	4.27
LA/E	194	179	308	182	4.48	3.78
PA/E	226	193	305	194	6.38	5.05
MA	302	152	434	154	5.40	4.57
Average	196	147.3	306.3	148.3	6.26	4.71

[a] This is the average (the mean) number of discovery requests recorded per substantially completed case. Included are such events as depositions, interrogatories, requests for admission, requests for production of documents, etc. Note that the count of discovery requests is a fairly rough measure of activity. Informal discovery is not included. Also, to compare districts, one must assume that the scope of the typical request is roughly comparable in each district.

[b] This figure also expresses an average (mean) for all cases except those with no discovery requests, or one request but no answer to it.

the date by which each party has conducted sufficient discovery to engage in informed settlement negotiations or prepare for trial. The number of cases that reach substantial completion of discovery also varies very widely; only 96 cases in the Central District of California, out of 544 cases in that district on which data were collected, reached substantial completion. The time from filing of the complaint until substantial completion varies as well. By this variable, Florida was particularly fast, Massachusetts particularly slow, and the other four courts so closely bunched that no significant distinction can be drawn between them.

Perhaps most interesting are the two right-hand columns in table 11. They suggest that the time saved by tight court control is not saved at the expense of discovery activity. If anything, that relationship is reversed. The district with the fastest discovery also had the most discovery requests filed per case, counting either only those cases that reach substantial completion or all cases in which some discovery was undertaken. The districts with the longest time for discovery are the districts in which the fewest requests were filed, suggesting a low volume of discovery activity generally.

A second observation: all the figures on discovery events per case are remarkably small, considering the widespread perception that federal civil discovery has gotten out of hand and become "a rich man's tool." A maximum of 8.61 discovery initiatives per completed case—interrogatories, depositions, requests for production of documents, requests for admissions, and so on—hardly seems excessive, especially since this is a total of initiatives by all parties. If these figures were considerably larger, it would be reasonable to guess that discovery controls seems to have a damaging impact in an entirely unexpected direction: increasing needless discovery. But figures in the ranges shown suggest that relatively little needless discovery is conducted in the typical case.[4] Of course it is quite possible that a large volume of needless discovery is conducted in a small number of complex or protracted cases, a possibility entirely consistent with these figures. If this should be so, a remedy directed at only those cases is needed.

Individual discovery responses are much more prompt in courts with strong controls than in those without. The greatest difference among the individual discovery responses is in time to answer interrogatories. Motions to compel are also filed sooner in courts with strong controls, as are the compelled answers.

Various discovery actions individually take vastly different times in the six courts. Wide differences emerge also in the length of time required for a lawyer to complete individual discovery actions. There is no necessary connection between the time required for attorneys to respond to interrogatories, to take depositions, to respond to a request for production of documents, or to carry out other discovery activities, and overall time for discovery or overall disposition time. Discovery actions can be carried out simultaneously or sequentially, or both. Even if they could not be, the low average number of discovery actions per case suggests that, in most cases, a good deal of time passes between discovery actions.

Even in the absence of a necessary connection, there does nevertheless seem to be an empirical connection. Table 12 shows wide differences among the districts in the time required to complete the various types of discovery actions; these differences correspond roughly to the overall disposition times of the six courts.

The time interval from request for a deposition until the date it was taken is a median of thirteen days in Southern Florida and twenty-seven days in Eastern Pennsylvania. Of course, no rule governs this time interval. Evidently, the thirty-day time limit from filing to answer of interrogatories is honored mainly in the breach. The Southern District of Florida is fastest in this regard, with a median of forty days. The courts show increasingly long median

[4] Since informal discovery (discovery not docketed, or discovery without a court order) does not appear in our data, questions remain on this point.

TABLE 12

Time for Selected Discovery Actions

	Depositions: from request until date taken		Interrogatories: from filing until answer		Requests for production of documents: from filing until response	
	Median (days)	Number (depositions)	Median (days)	Number answered (interrogatories)	Median (days)	Number answered (requests)
FL/S	13	268	40	223	34	119
CA/C	15	65	48	225	34	27
MD	25	87	65	294	34	44
LA/E	15	296	69	252	39	30
PA/E	27	123	80	425	59	47
MA	21	44	83	297	35	43
Average	19.3	147.2	64.2	286	39.2	51.7

times for interrogatories as one moves down the column, to a high of eighty-three days in Massachusetts. The thirty-day time limit for response to requests for production of documents is far more effective. Although every median is greater than the permitted thirty days, they are clustered between thirty-four and thirty-nine days, with only one exception.

Apparently, the tempo of discovery activity differs greatly among federal districts. This difference is greatest for interrogatories. In some districts, the bar seems to have become accustomed to speedier filing of discovery actions and to speedier responses. Table 13 shows there is a corresponding difference in attorney patience with discovery problems.

As usual, the Southern District of Florida is the speediest: the typical motion to compel was filed fifty-two days after the discovery request to which it was addressed. Medians in two districts were nearly twice that figure. A difference of more than two to one appears in the median time from motions to compel until the compelled answer, but in this respect, the Southern District of Florida falls in the middle. In Maryland and Eastern Louisiana, the median times were eighteen and nineteen days, respectively. The corresponding figure in Masachusetts was fifty-three days. The large number of motions to compel in the Eastern District of Pennsylvania suggests a particularly contentious bar, as some judges there observed.

Wide differences also appear in the speed of court responses to discovery problems. (See table 14.) The median time from filing until ruling on motions to compel was as short as fourteen or sixteen days in three courts, and as high as sixty-four days in Maryland (the number of motions there was the smallest). So few motions for sanctions were filed that we can make no statements at all about the speed of

TABLE 13

Attorney Responses to Discovery Problems

	Discovery request until motion to compel filed		Motion to compel filed until compelled answer	
	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S	52	140	28	54
CA/C	82	65	43	27
MD	77	67	18	17
LA/E	100	61	19	35
PA/E	99	197	40	124
MA	103	119	53	54
Average	85.5	108.2	33.5	51.8

TABLE 14

Court Responses to Discovery Problems

	Motion to compel: filing until ruling		Motion for sanctions: filing until ruling	
	Median (days)	Number (motions)	Median (days)	Number (motions)
FL/S.....	14	91	(12)	14
CA/C.....	39	37	(28)	4
MD.....	64	32	(37)	2
LA/E.....	16	39	(23)	1
PA/E.....	16	127	(20)	13
MA.....	26	38	(3)	85(9)[a]
Average	29.2	60.7	20.5	19.8

[a] Because of a coding problem, extraneous matters were recorded here; we estimate that nine is the actual number of motions for sanctions filed.

rulings on those motions. The different median times in this respect are not statistically significant, so each appears in parentheses.

Motions

It has already been suggested that a civil case does not proceed to disposition through a neat succession of stages in sequence. There is not a distinct pleadings stage followed by a discovery phase, followed by other phases that could be described as distinct elements. Pleadings are concentrated at the beginning of the case, but many pleadings can be filed at any time. Most discovery activity generally follows most pleadings, but there are numerous possibilities for overlapping. Motions, particularly, do not constitute a distinct phase of the case, except for posttrial motions, which are excluded here and treated separately in table 56.

Because motions do not constitute a definable stage of a case, court controls typically do not address the timing of motions specifically. Although a few scheduling orders and similar control devices may mention or stipulate a deadline for motion filing, motions often are not mentioned. (Motion deadlines are much more common for criminal cases.) Because motion practice is diverse, and not directly controlled by most docket management systems, we will limit ourselves here to some overall observations on the timing and treatment of motion practice, once again deferring detailed discussion until the forthcoming motions report.

Tables 54 and 55, respectively, show the numbers of substantive and procedural motions filed. As used here, "substantive motions" include temporary restraining orders and preliminary injunctions, as well as motions for summary judgment, 12(b) motions, etc. "Procedural motions" include consolidation, change of venue, leave to file an amended pleading, and others. Data on the timing of motions are displayed in table 15. These figures include all motions in any case, not just the first motion. It would be reasonable to predict a high degree of correspondence between median times for filing of substantive or procedural motions and the overall median time for case disposition; this would be in part an artificial result of the fact that no motion can be filed 200 days after the date of filing if the case is terminated in less than 200 days.

Actually, there is little correspondence. Substantive motions in Maryland are concentrated at the beginning of the case, and apparently this is also true in Massachusetts. The correspondence between procedural motions and overall disposition time is somewhat closer but still far from perfect. Clearly, the pattern of motion practice varies greatly within the districts; these patterns will be detailed in future work.[5]

The final columns of table 15 show the time interval between filing of the original complaint and filing of a summary judgment motion. The correspondence here to overall disposition time is close; only Massachusetts is out of sequence. Summary judgment motions are filed relatively late in relation to the median disposition time in each court.

[5] Table 50 contains supplemental information on the timing of motions filed by plaintiff and defendant.

TABLE 15

When Are Motions Filed?

	Complaint until each substantive motion		Complaint until each procedural motion		Complaint until each summary judgment motion	
	Median (days)	Number (motions)	Median (days)	Number (motions)	Median (days)	Number (motions)
FL/S	73	967	116	180	115	202
CA/C	78	535	224	74	133	107
MD	56	482	182	96	133	159
LA/E	173	441	211	112	191	100
PA/E	127	353	189	126	207	116
MA	93	479	253	125	141	95
Average	100	542.8	195.8	118.8	153.3	129.8

A pending motion often stops all other action in a case. For this reason, lawyer delays in responding to motions and court delays in ruling can prolong a case by weeks or months. Lawyers answer motions much faster in some courts than in others. In keeping with virtually all our other observations, the Southern District of Florida's bar responds most quickly (table 16). The median answer to substantive motions there was received in ten days, compared to a twenty-day median in Maryland and Central California. Unfortunately, we lack data on enough procedural motions to analyze confidently differences in times for receiving answers to those motions. Due to the combination of a small number of motions for which data was recorded, median values that are relatively close together, and a wide range of different values within each court, any median shown under "procedural motions" in table 16 could be above or below any of the others within the 95 percent confidence level we have adopted for these reports.[6] The effect of alternative briefing schedules, an important variable in many motions, will be explored in a subsequent report.

TABLE 16

How Soon Is a Motion Answered?

	Substantive motions: filing until answer		Procedural motions: filing until answers	
	Median (days)	Number answered (motions)	Median (days)	Number answered (motions)
FL/S	10	349	8	69
CA/C	20	204	12	54
MD	20	168	15	40
LA/E	15	33	14	11
PA/E	14	153	10	45
MA	18	166	15	40
Average	16.2	178.8	12.3	43.2

In three courts, serious delays exist in ruling on a minority of motions.

Although the time when motions are filed may not be readily controllable by the court, the relationship of filing to ruling obviously is controllable. Table 17 suggests that although they do appear in some cases, delays in ruling on motions are not a widespread problem in any court shown. Particularly if one realizes that

[6] In other words, we cannot say with 95 percent certainty that there are any two medians in that column of which the lower figure represents an actual lower median in the total case load of the court, and the upper figure represents an actual higher median of the total case load of that court; there is at least a 5 percent chance that the relationship could be reversed. Still, the observed relationship is more likely than any other.

TABLE 17

How Soon Is a Motion Ruled On?

	Substantive motions: filing until ruling			Procedural motions: filing until ruling		
	Median (days)	Number (motions)	10 percent slower than— (days)	Median (days)	Number (motions)	10 percent slower than— (days)
FL/S	16	809	70	12	202	64
CA/C	23	490	117	20	100	70
MD	29	453	220	6	120	119
LA/E	21	322	75	3	145	35
PA/E	37	271	357	7	150	95
MA	35	340	271	17	131	118
Average	26.8	447.5	185	10.8	141.3	83.5

the time interval from filing until ruling includes response time, the range of median time on substantive motions shown, from a low of sixteen days to a high of thirty-seven days, seems both low and rather narrow. Ruling on procedural motions is much faster, from three to twenty days. The slowest 10 percent of rulings are quite delayed in Pennsylvania, Massachusetts, and Maryland, however. Nearly 10 percent of all substantive motions ruled on in Eastern Pennsylvania cases were on the docket for more than one year.

Routine oral argument speeds disposition of substantive motions. Results are mixed regarding procedural motions.

The interim version of this report (published in June, 1976) contained a qualified recommendation that courts consider routine use of oral argument on motions. Observations and preliminary data led to the surprising conclusion that motion practice seemed especially efficient and effective when it automatically included routine oral argument on motions. Oral argument—hardly a new procedure—was observed to provide some characteristic benefits. First, a rule or procedure setting an automatic hearing date based on the date a motion was filed establishes a definite schedule for preparation of every motion. The Central District of California's local rule 3, which appears in appendix H, is a useful example. If the judge is able to rule from the bench on most motions, the schedule will include disposition of the motion as well as its preparation, and spare the judge the burden of a written opinion.

Another benefit is the obvious one: the judge has the opportunity to hear from both sides, exploring with the attorneys the possible consequence of a proposed ruling and providing counsel an opportunity to respond. Several lawyers in courts that discourage oral argument expressed regret that they did not have this opportunity. This sentiment was a notable exception to a general rule: we rarely heard specific suggestions from lawyers that a court service not provided by any judge in the district should be provided. For example, in districts in which opinions are rarely prepared, lawyers were often puzzled when we asked them if they felt deprived by that fact.

Finally, the oral proceeding provides a useful opportunity for a court to communicate its standards and expectations to the bar generally. Other lawyers awaiting argument on other motions are generally in the room, and they obtain useful, informal guidance.

Oral motion practice has often been criticized as a waste of time for both court and attorneys. We saw no instances of the most obvious abuse

of attorney time: a lengthy and unpredictable calendar requiring lawyers to wait many hours to argue a short or minor matter. Generally, guidance by court personnel was precise enough to restrict waiting time to one hour at most. Oral motion practice appeared to foster highly efficient use of the court's time; it may do the same for attorneys' time, though that appears less certain. Especially in Los Angeles and New Orleans, motions day is a good use of court time. On complex motions the judge has the papers before him for advance preparation, just as he would if oral argument were not held. Oral argument provides an additional opportunity to explore alternatives. It also provides a deadline for the judge's ruling if he disciplines his work appropriately. In routine motions that possibly could have been handled in a few moments, on paper, the oral proceeding may serve no other purpose than to transmit the ruling. For those cases, the court appearance may be a doubtful use of lawer and client money, despite the benefits to the court. That consideration may be minimal in courts where attorneys are generally located nearby, as in New Orleans.

Table 18 provides information on the relation of hearings both to filing and to ruling. Using this table in combination with others on motions, a preliminary evaluation can be made of the impact of rules and procedures that prompt routine oral argument on motions.

Regarding the calculation from filing of a motion to its hearing, the second column, "Number of hearings," is the most interesting. This column confirms that, as indicated in their rules, Central California and Eastern Louisiana have far more motions hearings than do the other courts. The preceding column suggests further that in those two courts, the large number of motions brought to hearing reach that stage considerably earlier than do the smaller number of motions in the other courts, except in the Southern District of Florida.

In Maryland, Eastern Pennsylvania, and Massachusetts, the minority of motions brought to hearing—presumably the most difficult motions—reached that stage after a considerably longer time, around fifty days median. The figures on the time interval from hearing until ruling confirm that most motions heard at oral argument are disposed of at that time. Only in Eastern Pennsylvania, where the number of hearings is the smallest, were less than half of the motions handled at oral argument; even in that district, the median time from hearing until ruling was only eleven days, surely not an excessive time for what would presumably be the eighty-four most difficult or demanding motions in the data base. In the other courts, the percentage of motions ruled on at the hearing was as high as 88 percent in Eastern Louisiana. Again, there are substantial delays in three

TABLE 18

Motions Hearings

	Filing of motions until hearing		Hearing until ruling			
	Median (days)	Number of hearings	Median (days)	Percentage at 0 days	Number of hearings [a]	10 pct. slower than— (days)
FL/S	24	136	0	65	171	17
CA/C	26	326	0	66	397	25
MD	50	155	0	61	185	59
LA/E	22	326	0	88	408	1
PA/E	45	64	11	35	84	227
MA	49	188	0	56	218	51
Average	36	199.2	1.8	61.8	243.8	63.3

[a] The date a motion was filed did not always appear in the case file. For that reason, fewer motions were completed from filing until hearing than from hearing until ruling.

courts' rulings on the slowest 10 percent of the motions heard.

Referring back to table 17, we find qualified support for the notion that routine oral argument expedites motion practice. On substantive motions, the two oral argument courts perform very well. Laying aside for the moment the Southern District of Florida, a court that does not practice routine oral argument and as usual the fastest court, the Central District of California and the Eastern District of Louisiana rule on substantive motions significantly faster than do the remaining three courts. But on procedural motions, the picture is very different. Although Eastern Louisiana is the fastest court, by a significant margin, in ruling on the procedural motions recorded in this data base, Central California is the slowest. The slow median time for California suggests that in that court, a good deal of time is unnecessarily consumed waiting for expiration of the time limits set in local rule 3. A procedure permitting waiver of those time limits would probably expedite handling of routine motions.

Table 19 presents summary data on the overall time for all motions activity. The time from the first substantive motion until the last activity relating to substantive motions is calculated, followed by a corresponding figure for procedural motions.

TABLE 19

Overall Time for Motions Activity

	Substantive motions		Procedural motions	
	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S.....	48	351	42	111
CA/C.....	49	243	42	69
MD.....	104	242	76	72
LA/E.....	58	202	45	76
PA/E.....	63	156	77	87
MA.....	128	220	54	104
Average.	75	235.7	56	86.5

Trials and Trial Activity

In contrast with some other projects that have collected data on civil case flow, no attempt was made here to "oversample" cases that went to trial. The focus here is on the progress of all civil cases, whether tried, settled, or concluded by motion. Thus, oversampling trials would not necessarily have served the purpose of the study: to explain differences in median would not necessarily have served the purposes disposition times for all cases. But because there are so few tried cases in our sample, little can be said about them. Only twenty-six of the sampled cases from the Central District of California, just under 5 percent, went to trial. More than 10 percent (sixty-three cases) from Southern Florida were tried. These numbers are small enough to limit severely any further analysis beyond the overall figures presented in table 20. Any refinements or breakdowns produce such small groupings that few statistically significant differences emerge.

Setting early and firm trial dates is an effective control, but some alternative controls are also effective.

The overall time from complaint until trial differs as widely as the time from complaint to disposition of all cases—more widely in some courts. Notably, the Southern District of Florida tries the highest percentage of cases while maintaining exceptionally short time intervals by this measure. Many judges in many districts insist that the way to keep the docket moving is to set trial dates for the cases and make sure that the cases reach trial as promised. A kind of support of this principle appears in the first column of table 20. As will be shown in chapter five, Southern Florida has a high number of trials each year per judge, as well as the noted high percentage of civil cases tried.

The central four columns of table 20 illustrate the effects of some alternative procedures regarding trial settings. In Central California, case management is not associated with the actual setting of the trial date. Rather, case man-

TABLE 20

Scheduling Trials

	Original complaint until trial		Initiation time [a]		Control time [b]		Resetting and continuance time [c]		
	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Percentage at 0 days	Number (cases)
FL/S.....	254	64	35	196	69	213	17	21	63
CA/C.....	476	27	245	50	71	51	1	50	26
MD.....	557	41	120	93	122	98	80	19	26
LA/E.....	444	35	175	217	139	223	0	51	35
PA/E.....	870	49	157	71	92	73	6	35	17
MA.....	997	42	638	65	57	68	0	61	28
Average	599.7	43	228.3	115.3	91.7	121	17.3	39.5	32.5

[a] This figure measures the time between the answer to the original complaint and the first date on which a trial date is set.

[b] This figure measures the time between the date on which a trial date is set and the date trial is set for.

[c] This figure measures the time from the earliest trial date set until trial was actually begun.

agement is conducted through imposition of deadlines for pretrial and termination of discovery under local rule 9. It is only at the final pretrial that a trial date is set. Thus, the initiation time, the median time from the answer to a complaint until the first date on which a trial date is set, is 245 days, much longer than that for any other court except Massachusetts. On the other hand, once a judge does set a trial date for a case, that date is much earlier than it is in some courts (control time). Also, trial dates are set in a smaller number of cases in Central California, because fewer cases reach the trial date setting stage there than elsewhere.

Data on practice in Southern Florida conform very closely to what was observed and described during court visits. At a median of thirty-five days after the complaint, a notice is sent out setting the trial date for a date that ordinarily is just over two months away (sixty-nine days median). (Table 22 shows that a discovery cutoff date is set shortly before the trial date.) The less exacting procedures in Maryland, Eastern Louisiana, and Eastern Pennsylvania involve a preliminary pretrial conference held four to six months after receipt of the answer, at which a trial date is set an additional three to five months away. (We have strong reasons to believe that many more of these preliminary pretrials are held in Maryland and Eastern Pennsylvania than are shown here. In those districts, many conferences do not result in a record in the file or a docket entry.)

Data in the central four columns of table 20 also confirm the observation that judges in Massachusetts do not set trial dates until a great deal of time has passed—nearly two years in the median case. Once a case is finally set for trial in Massachusetts, however, it proceeds to trial without delay. Massachusetts has the shortest interval from the date a trial is set until the date the trial is set for, and 61 percent of the cases tried were tried on the scheduled date.

The final columns in table 20 show data on the relationship of the first date on which trial was set to the date on which trial was actually held. It is surprising, in this period of exceptional strain on federal trial courts, that trial dates are as firm as shown. In three of the courts, at least half the trials were held on the date first set. In a fourth, Eastern Pennsylvania, the figure was close to half. In the Southern District of Florida there was significant disparity—seventeen days. Both that figure and some of the disparity in Eastern Pennsylvania are partly due to the use of trailing calendars.

Southern Florida's distinctive calendar system (discussed in chapter five), in which trials are set on a "two-week calendar" rather than on a particular day, would optimally lead to a median "resetting and continuance" time greater than zero. The seventeen days shown also reflect a number of continuances. In Maryland the picture is much worse. We were repeatedly told that that district was finding it extremely difficult to process the cases on its civil docket, due to a heavy burden of lengthy, complex criminal trials, combined with many exceptionally complex civil cases. Only 19 percent of the trials in sampled cases were held on the date for which trial had originally been set, and the median time from that date until the actual beginning of trial was eighty days.

Pretrial Conferences and Discovery Cutoff Dates

Some courts could save several months by asserting earlier control of civil cases. The controls asserted are fairly effective, once imposed.

Discussion of civil cases thus far has focused on the effects of alternative controls used. Data on the actual operation of the controls imposed has been deferred until this section. Table 21 shows the courts' pretrial conference scheduling practices. (As in the previous section, the Maryland and Eastern Pennsylvania figures are affected by several judges' practice of holding pretrial conferences, no record of which appears in the file or on the docket sheet.)

The key variable seems to be the time interval between the answer to the original complaint and the date on which the first pretrial was scheduled. The range of differences here is extraordinarily large, from 18 and 21 days, respectively, in Southern Florida and Central California, up to 595 days (in a very small number of cases) in Masachusetts. This appears to be a crucial variable. Eastern Pennsylvania, for example, could possibly save four or five months of "dead time" in many cases by earlier scheduling of the first pretrial conference.

There is a smaller range of differences among the intervals between the date on which the pretrial date was set and the date the pretrial was set for—from 28 days in Massachusetts to 63 days (precisely as mandated in local rule 9) in the Central District of California. Very large differences appear again among the time intervals between the answer to the original complaint and the time a first pretrial is actually held. Maryland and Southern Florida are fast-

TABLE 21

Scheduling Pretrials

	Initiation time [a]		Control time [b]		Overall time: answer until first pretrial	
	Median (days)	Number (cases)	Median (days)	Number (settings)	Median (days)	Number (cases)
FL/S	18	250	49	401	94	77
CA/C	21	196	63	342	186	96
MD	82	145	33	266	71	169
LA/E	104	305	43	603	158	253
PA/E	175	122	42	203	192	193
MA	595	58	28	91	763	84
Average	165.8	179.3	43	317.7	244	145.3

[a] Time interval between the answer to the original complaint and the first date on which a pretrial date is set.
[b] Time interval between the date on which a pretrial date is set and the date pretrial is set for.

est in this respect, with 71 and 94 days, respectively. Eastern Louisiana, Central California, and Eastern Pennsylvania are clustered between 158 and 192 days, and Massachusetts is much slower, with 763 days.[7]

Table 22 shows when discovery cutoff dates are set and when they are set for. In the first column, Massachusetts appears as the fastest court, an anomalous result in terms of other data shown on controls, especially in table 21; this may result from a large number of delayed answers in these cases, or some other factor. Southern Florida and Central California show a median time of twenty-one and twenty-two days, respectively, between answer and first setting of a discovery cutoff date, reflecting the practice in those courts to mail a scheduling order or notice (or a copy of local rule 9 in California) shortly after receipt of the answer. The schedules in the other three courts are somewhat more relaxed. The time interval between the first date the cutoff was set and the last date the cutoff was set for varies a great deal.

By this measure, it is clear that the granting of continuances in Central California is so widespread that the time limits in local rule 9 have little meaning. In cases sampled, Central California granted 899 continuances of all types, compared to a total of only 974 in all five of the other districts. The continuances are numerous enough to convert an apparently exacting time schedule into the least exacting time schedule shown. By this measure, again, Southern Florida imposes the strictest standard by a statistically significant margin. Supplemental data on setting discovery cutoff dates appear in table 51.

Setting discovery cutoff dates is only part of the battle. Equally to the point is the degree to which the discvovery cutoff dates are effective. In table 23, we can observe great differences in the impact of discovery cutoff dates. Most discovery cutoff dates are remarkably effective, however. Most effective of all are the comparatively undemanding dates set in Eastern Louisiana, where, in the typical case, substantial com-

TABLE 22

Setting Discovery Cutoff Dates

	Initiation time [a]		Control time [b]	
	Median (days)	Number (discovery cutoffs)	Median (days)	Number (cases)
FL/S	21	212	56	233
CA/C	22	184	180	192
MD	72	[c] 48	113	49
LA/E	116	145	121	148
PA/E	121	125	86	130
MA	0	76	162	76
Average	58.7	131.7	119.7	136.3

[a] Time between answer to original complaint and first date on which cutoff is set.

[b] Time between first date cutoff set and last date set for.

[c] Numerous discovery cutoff dates in this court are not recorded in the file, and were not recorded here.

[7] It should be noted that these figures, like similar ones elsewhere in this chapter, are not additive. One cannot add the median initiation time to the median control time. Medians in general are not additive. Beyond that, different groups of cases are involved in the variables displayed in this table, and a time interval measured for one group is not necessarily applicable to another. The clearest instance is the three medians shown for Maryland. The median overall time is actually shorter than the median initiation time. It is much shorter than the sum of initiation plus control time.

TABLE 23

Effect of Discovery Cutoff Dates

	First cutoff date until substantial completion of discovery		First cutoff date until last discovery activity	
	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S	4	102	−1	187
CA/C	115	88	87	152
MD	40	35	2	43
LA/E	−1	89	3	125
PA/E	15	81	24	119
MA	98	50	132	64
Average	45.2	74.2	41.2	115.0

pletion of discovery occurs the day before the cutoff date. In all other districts, there was some "slippage" after the first discovery cutoff date even in the median case, but in Eastern Pennsylvania and Southern Florida, the difference was not great.

Measuring the same question slightly differently, the right-hand columns of table 23 provide data on the time interval between the first discovery cutoff date and the last discovery activity. Measuring this way includes more cases, because there were many cases in the data base that never reached "substantial completion" as coded by Center researchers. Using this measure, we find four courts clustered with relatively effective discovery cutoff dates; Central California and Massachusetts show much more disparity between the first cutoff date and the actual termination of discovery activity. Of course, this is not an especially surprising conclusion regarding the Central District of California, because the system there is generally understood to imply or require a substantial number of continuances.

The data on pretrials and discovery cutoffs, in summary, show great differences among the courts in the nature and extent of case management control—differences that appear to have a powerful impact on disposition time. Future reports will extend this observation and supplement it with information on the differences *within* the courts in these factors and others. For the most part, these courts are each heterogeneous, yet the data in this section make it clear that there are great differences among the courts' typical patterns.

Settlement

The data just described, which were gathered from civil dockets, bear directly on the issue of speed of disposition, but only indirectly on questions involving "efficiency" in the sense used here, referring to the number of cases handled per year per judgeship (or some other unit). This is so because the data deal primarily with time periods and because we selected a uniform number of cases in each court, eliminating effects of alternative procedures on the number of cases handled per year. For that reason, the remaining sections in this chapter will refer to the docket data only indirectly, and will concentrate primarily on data gathered by the Administrative Office of the United States Courts, describing all cases terminated in fiscal 1975.

Judicial participation in settlement produces mixed results. A limited role may be valuable, but data suggest that a large expenditure of judicial time is fruitless.

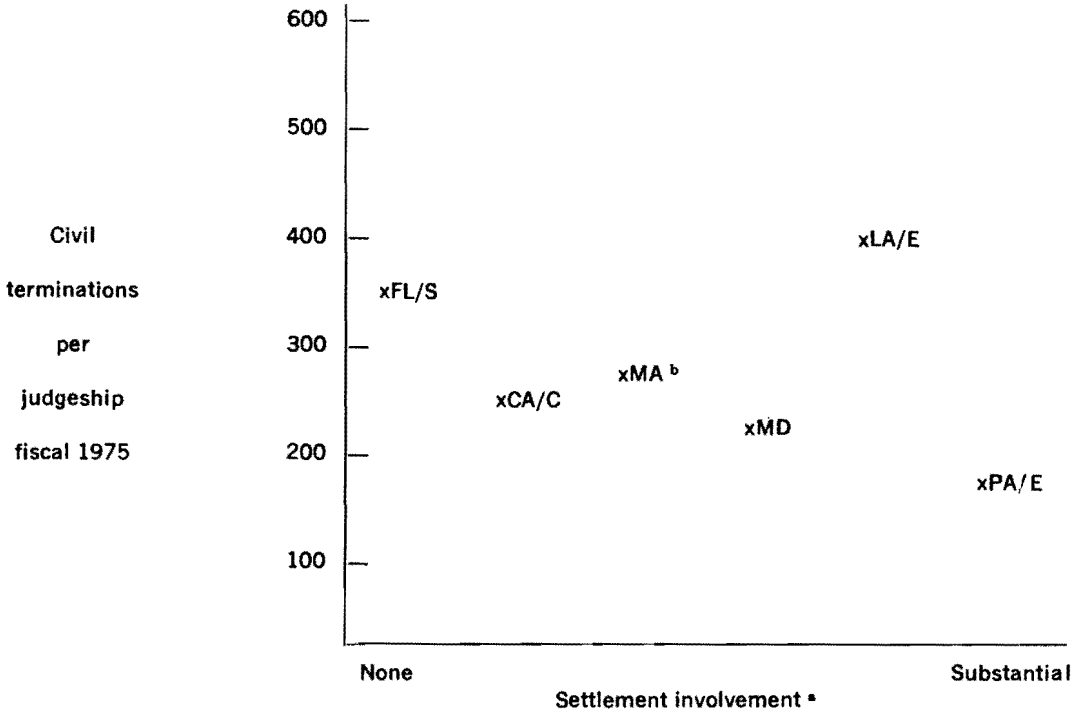
It is often asserted that a strong effort by the court to encourage settlement is essential if large dockets are to be handled. Settlement approaches and techniques have long been an important topic of discussion at Center seminars. Therefore, an essential element of the court visits was Center staff observation of pretrial and settlement conferences to estimate and compare the courts' involvement in settlement.

Figure 3 displays our estimate of the relative time and effort judges routinely devote to settlement, plotted against the number of civil terminations per judgeship in the six metropolitan courts studied. Table 24 shows the variables used in figure 3, supplemented by data on total terminations per judgeship and the percentage of civil cases terminated by trial. Figure 3 shows a rough inverse relationship between settlement involvement and terminations. Only a positive relationship would support the idea that routine settlement conferences are effective. Table 24 shows there is little pattern in the other two variables.

This outcome is striking, given the widespread notion that a strong judicial role in settlement is necessary—even if possibly risky or occasionally questionable—to handle a large and growing case load. Nearly all Philadelphia judges are active in settlement at several stages of a case, regularly holding conferences at which the issue of settlement is raised. On the other hand, few judges in Miami and Los Angeles attempt to play any part at all in settle-

FIGURE 3

Court Role in Settlement



[a] This is a somewhat arbitrary ranking based on observation. It reflects the number and frequency of settlement conferences and the degree to which the judge appeared to take an active role in encouraging settlement.

[b] Excludes ICC cases.

ment. The assumption in those courts is that settlement is the business of the lawyers, who apply what they have learned in the course of expeditious discovery activity under the rules.

TABLE 24

Court Role in Settlement

Settlement involvement	Civil terminations per judgeship (rank)	Terminations per judgeship (rank)	Percentage of civil cases tried (rank)
PA/E (greatest).....	189 (6)	230 (6)	9.4 (1)
LA/E.....	377 (1)	453 (1)	7.2 (4)
MD.....	218 (5)	332 (5)	8.9 (2)
MA.....	242 (3)[a]	425 (3)[a]	5.6 (5)[a]
CA/C.....	237 (4)	363 (4)	4.4 (6)
FL/S (least).....	341 (2)	447 (2)	8.2 (3)

Source: All fiscal 1975 case data are from the Administrative Office of the United States Courts.

[a] Excludes ICC cases.

The judge may become involved in the case if he is needed to assist in planning or to resolve a dispute; otherwise settlement belongs entirely to the lawyers.

The practice in Maryland and Eastern Louisiana is between these extremes. In Maryland, settlement is often discussed in conferences but the judge's role is rather distant and there is no "head banging." Practice in Eastern Louisiana is diverse: some judges are very involved and aggressive in negotiations, others are involved in negotiations only occasionally, and others are not "settlement minded" at all. Settlement activity in Massachusetts is sporadic, though one judge holds settlement conferences regularly.

This finding suggests that settlement procedures may suffer from the same kind of systematic misperception characteristic of remedies for the common cold. All cold remedies ap-

pear to work, as indicated by the fact that colds always go away. Statistical evaluation of cold remedies has been very difficult as a result. Similarly, all settlement procedures succeed, as indicated by the fact that most cases settle no matter what procedures are used.

On the other hand, many judges think a nudge early in the case may break the ice. If a judicial officer—judge or magistrate—can raise the possibility of settlement early, before much money has been spent, he may encourage negotiation that would not take place otherwise. Often, in cases that could be settled, each side is reluctant to raise the issue, fearing to betray a sign of weakness. For this reason, a judicial suggestion can be useful. A practice of briefly mentioning settlement at a preliminary conference would be consistent with our finding here. Also, in a substantial number of cases—especially among the complex ones—greater involvement by the judge may encourage settlement. This purpose might be best served if conferences could be held before a judge other than the one to whom the case was assigned, or before a magistrate, to permit free discussion of the merits of the case.

One "settlement-minded" judge's approach was widely praised by the bar of his court. He concentrates his settlement activity at the end of the case. To work out a settlement, he said, "you must have time and patience." He is highly sensitive to the characteristics of each case and explores them in depth. Where lawyers lack authority to settle, he makes vigorous attempts to achieve a satisfactory proposal and assure that it is presented to someone with the necessary authority. He is occasionally willing to talk to each side separately. At conferences, he occasionally mentions such considerations as the cost of trial (used concretely by adding an estimated cost to the offer and subtracting it from the demand, in an effort to minimize differences), and the fact that one or both parties could not afford to leave standing a district court decision in the case, necessitating the additional cost of appeal. In a bench trial case, he offers to move the case to another judge if negotiations should fail. Through a good deal of precise though circumspect reference to strengths and weaknesses in the positions of all parties, he is often able to "soften" their positions considerably.

Clearly, there seems to be a place for this kind of settlement activity in selected cases. The danger, suggested in figure 3, is that judges may be consumed by participation in the work of lawyers in *every* case, spending unnecessary time on cases that ultimately settle and would settle without their intervention. It is common, however, for relatively minor obstacles to block settlement, even though the major issues are resolved. Many judges are extremely sensitive to these obstacles and can contribute substantially to resolving them. One approach suggested by some settlement-minded judges was that courts consider establishing a settlement panel, to which cases would occasionally be sent for settlement and negotiation only. This is also an area where magistrates can be especially valuable.

Preparing Pretrial Orders

In all districts, we were surprised at both the informal nature of preparation for the final pretrial conference and the relative uniformity of actual procedure. Even in the Central District of California, with its detailed requirements imposed by local rule, we found pretrial orders surprisingly brief in all but especially complex cases. In all districts, a complex case was generally handled by special proceedings—roughly following the *Manual for Complex Litigation*—that included a comprehensive and lengthy pretrial order if the case had not settled before that stage.

Precise and burdensome pretrial requirements imposed in all cases have not been effective.

It may be that there are districts that actually insist on comprehensive pretrial orders in all cases that reach the final pretrial conference, as many current rules and orders require. Since no district in this survey insists on comprehensive

pretrial orders to that degree, we cannot evaluate what benefits might result. We can observe, however, that our study of ten courts suggests a large number of speedy civil dispositions are possible without insisting on a comprehensive pretrial order in all cases.

Given this observation, we see little reason for district courts to insist on such orders in routine cases, despite the widespread existence of local rules requiring them. There is general bar resistance to comprehensive orders in routine cases. Possibly the most frequently voiced objection to court procedures that we encountered was that courts are trying to insist "arbitrarily" that every case have a full, comprehensive pretrial order. In our observation, the resistance has been successful. Most pretrial orders submitted were very skimpy, especially in the sections dealing with stipulated facts.

Lawyers objected to comprehensive pretrials in routine cases. First, many find the requirements incompatible with the spirit of the Federal Rules of Civil Procedure. They feel that the accretion of technical hurdles to implement rule 16 is taking federal civil practice far down the road toward the absurdities ascribed to common law pleading. Second, they asserted that some judges' purpose in setting onerous pretrial standards actually has little to do with simplification of the issues or any of the other purposes listed in the rule. Some judges use the standards, rather, as a club to force attorneys to settle without going to the trouble and expense of meeting the court's demands. Attorneys expressing these views felt strongly that the court was requiring a great deal of "busy work" that delayed addressing the real issues and imposed considerable expense on litigants.

Our observations suggested there may be merit to these objections, although we saw few pretrial orders in routine cases that actually met the stated requirements of the more demanding judges. We also noted an additional purpose of comprehensive pretrial rules that is not listed in rule 16: the pretrial order provides the court with the opportunity to assure that a deadline for completion of discovery and motions has in fact been met. Especially in local rule 9 of the Central District of California, this seemed to be one of the most important purposes of the pretrial procedure. It seems likely, however, that this purpose could be served more informally through a simplified pretrial form that would be less burdensome to prepare, and more realistic. A simple form, such as the one used by Judge Robert J. Ward of the Southern District of New York (see appendix J) is also much easier to enforce.

It appears, then, that the judiciary is fighting an uphill battle, to little purpose, in its efforts to require comprehensive pretrial preparation of all cases. Lawyer resistance to this policy seems to have succeeded, for better or worse. Given the additional fact that some courts we observed have achieved excellent results without enforcing comprehensive pretrial requirements, we see no reason to insist on them. An expeditious schedule, firmly and realistically enforced, leading to a pretrial order tailored to the needs of the case, appears sufficient. The order may even be dispensable in some simple cases for which a list of witnesses and exhibits would be sufficient.

The system long used by former Chief Judge Seybourn H. Lynne of the Northern District of Alabama is greatly praised by lawyers, and seems to balance very well the conflicting considerations involved. It is, however, intellectually very demanding on a judge. Judge Lynne requires that lawyers prepare only a rough proposed pretrial order before the conference, one proposed order for each party, all in the same format. There is no need for attorneys to meet before the conference. At the conference, the differences are discussed in turn, and the judge dictates to his secretary the wording of the final pretrial order. The judge can press the lawyers to minimize unnecessary issues, the burden on lawyers is minimal, and all this is accomplished in a fairly brief conference.

Observations in Four Smaller Courts

Presentation and treatment of the civil data for the Northern District of Alabama, the Eastern District of Kentucky, the District of New Mexico, and the Eastern District of Wisconsin have been deferred until a later report, to keep the data presentation and analysis manageable.

Northern Alabama and New Mexico have civil case management systems that enable the bar to predict easily when any civil case will come to trial. The system in Northern Alabama is predictable because it is predicated directly on a published schedule that has guided the flow of civil cases for years. Civil trial terms are held roughly twice a year in every location where court is held. Civil pretrials are held at a fixed interval before each trial term; usually that interval is two to three months. A sample schedule appears in appendix J. All civil cases at issue within one to two months of the pretrial week are scheduled for pretrial correspondingly. Unless the attorneys are able to show that trial in the upcoming term is impossible, the case is scheduled for trial at that time. Attorneys therefore know precisely where they fit into the district's scheduling and what they can expect.

The one element of variability in the system occurs before the case is at issue. It is routine in the district—and was described to us as a long-standing tradition—that defendants file a (usually frivolous) 12(b) motion shortly after a suit is filed. This motion has the effect of delaying the due date of the answer until the motion is resolved. We understood from discussion during the visit that the typical effect was to provide about sixty days of "breathing space" before the mechanism just described went into effect. Preliminary data suggest that the practical effect may be to delay the typical case considerably longer; final judgment on that point must await completion of data analysis for that district.

The schedule for the District of New Mexico is established through scheduling orders agreed upon at pretrial conferences. Receipt of the answer is closely monitored by the courtroom deputies, who schedule the case for pretrial once it is at issue. Two of the judges rely almost exclusively on the full-time magistrate to conduct pretrials. The third judge conducts pretrials himself. Discovery cutoff dates are set for about ninety days from the date of the conference, in ordinary cases. The judge schedules the case for trial within the next two or three weeks. The judges who use the magistrate at this stage rely on him almost entirely for pretrial matters other than trial scheduling. The magistrate handles discovery motions and any other motions he can legally handle. The full-time magistrate was a respected trial lawyer. It was reported that his rulings are rarely appealed.

The civil trial calendars of Eastern Wisconsin and Eastern Kentucky are both so crowded and delayed that these districts have essentially abandoned systematic case management. In Eastern Kentucky, this is a result of a huge, sudden increase in the civil case load, especially black lung cases. In Wisconsin, the cause is less clear, though a recent long vacancy is clearly a contributing cause. For the most part, judges in both districts have found it necessary to limit their civil case activity largely to responding to emergencies, though there have been some efforts to maintain a semblance of procedures formerly used to monitor cases.

Settlement activities in the four nonmetropolitan courts show no more relationship to termination rates than those in the metropolitan courts. One judge in Northern Alabama is aggressively settlement oriented, one other mentions settlement at all conferences, and the others participate little in settlement. The two New Mexico judges who rely on the magistrate have minimal pretrial involvement with civil cases, so there is no opportunity for them to engage in settlement discussion. The magistrate holds settlement discussions at his discretion, raises the settlement issue at most pretrial con-

ferences, and participates in negotiations when he thinks it would be useful. In Eastern Wisconsin and Eastern Kentucky, the course of civil cases is sufficiently irregular that there is no systematic opportunity for settlement discussion. Eastern Wisconsin does hold periodic status conferences, often to little apparent purpose, at which there is occasional, desultory discussion of the possibility of settlement.

An accumulation of unresolved motions was a distinct problem in only one of the ten districts visited. For some time, the Judicial Conference of the United States has required each United States district judge to submit a quarterly report listing all motions that have been awaiting decision for sixty days or more, indicating why resolution has been delayed. In virtually all districts, there is essentially no motions backlog. Nearly half of all district judges in the system report, in any given quarter, that they have no pending sixty-day motions. One small district, however, had as many pending sixty-day motions as any (except two) of the circuits. The attorneys in that district voiced extraordinary concern with this problem. They described numerous motions that, having been pending for many months or years, forestalled the possibility of any serious preparation of the case.

Two lessons appear from this extreme experience. First, it reinforced our impression that United States district judges, as a group, have been remarkably effective in keeping their motions lists under control. Second, when a motions calendar is out of control, the effects are devastating. The district, and if necessary the judicial council, should make vigorous efforts to forestall or prevent this condition.

General Findings

—Courts with fast disposition times and high termination rates are characterized by routine, automatic procedures to assure that answers in every civil case are received promptly, and that discovery begins promptly, is completed expeditiously, and is followed by an early trial if needed. Although most courts visited have procedures intended to serve this purpose, few succeed in eliminating the large amounts of time commonly observed, in most civil cases, to be either unused or in violation of Federal Rules of Civil Procedure time limits. The approach of the Southern District of Florida is highly recommended (see tables 20 through 22 for median schedules set, and appendix J for a form used).

—Courts with high termination rates have procedures that minimize or eliminate judge involvement in the early stages of routine cases, until discovery is complete. Docket control, attorney contacts, and most conferences are delegated, generally to the courtroom deputies or to the magistrates as appropriate. Judge involvement is conserved for the cases and issues that especially require the attention of a judge.

—Courts with high termination rates minimize the time judges spend in settlement. Judges are highly selective in initiating settlement negotiations, and normally do so only shortly before the trial date, though a judge or magistrate may mention the issue earlier.

Findings: Pleadings

—Relatively few answers are filed within the time required in the Federal Rules of Civil Procedure. Some control mechanisms are ineffective in assuring timely answers.

—The time within which answers are filed appears greatly affected by state practices.

—Reduction of the normal time for completing service is both powerful and marginal as a way to reduce overall disposition times. It is powerful because each day saved at this point is likely to result in a corresponding saving in overall time. It is marginal because service delays account for only a small part of the delay in filing answers to complaints in most cases, though there are some cases with serious delays.

Findings: Discovery

—Practices to assert early control of a case and set discovery cutoff dates have a demonstrated effect on the time consumed by discovery.

—The courts with strong discovery controls experience—in general—a timely start of discovery, a short overall time to

complete discovery once it starts, and speedy completion of individual discovery actions.

—There is no evidence that relatively strong discovery controls are oppressive or excessive. The characteristic pattern in slower courts is that a relatively small amount of slow-moving discovery is spread over a long period of time.

Findings: Motions

—Oral motions practice is generally effective in assuring expeditious handling of substantive motions. Results are mixed regarding procedural motions.

—Oral motions practice appears to be a highly efficient use of court time.

—Old motions (awaiting decision for sixty days or more) are a problem in few United States district courts. In the one court visited where motions are out of control, the effect of this situation on the flow of litigation is devastating. Vigorous efforts (by a judicial council, if necessary) should be made where needed to prevent a lengthy motions backlog.

CHAPTER IV

MANAGING CRIMINAL CASES

Observation of procedures to manage criminal cases discloses a narrower range of differences in approach and technique than appear in civil case management. Every court had a system to supervise the progress of criminal cases, though the rigor and effectiveness of these systems differed greatly. Presumably, this is due to the fact that systems to monitor criminal cases have been mandated by law since 1972. In that year, the Federal Rules of Criminal Procedure first required (by rule 50(b)) that each district submit to its judicial council a plan for speedy disposition of criminal cases. Most followed the model plan promulgated by the Judicial Conference of the United States, requiring that criminal cases be brought to trial within 180 days of filing. The Speedy Trial Act of 1974 (28 U.S.C. §§ 3161–74) requires progressively more exacting time limits, including a final requirement, effective in 1979, that every case reach trial or other disposition within sixty days of arraignment. The act also mandates a rigorous planning process, and limited research funds have been appropriated to support it.

The conclusions here, unlike those in the preceding chapter, are based exclusively on observation and published data. Following the preliminary phase of this project, we decided to limit extensive data collection to civil cases for several reasons: observed differences among the courts' criminal case management were limited, the Speedy Trial Act mandated direct attention to criminal case procedures by providing for independent researchers in each district, and our preliminary efforts did not produce as useful a survey instrument as we designed for civil case practices. This may now seem regrettable because the additional five courts visited show a wider range of difference in procedures and approach than did the original five, raising questions that can only be answered imperfectly here.

Table 25 shows the percentage of criminal case defendants in each district whose cases were terminated within the various time limits mandated by the Speedy Trial Act of 1974. Following Administrative Office practice, we use defendants rather than cases as the measurement unit because in a single case, criminal case defendants follow different paths more often than litigants in civil litigation. If one defendant progresses to trial, his case remains open until he is sentenced, even though other defendants may have pleaded guilty (and been sentenced) long before. Corresponding to our observations during the court visits, the first five districts visited (the top five in the table), do not show very great differences.[1]

Looking at only the first column shows 50.3 percent of the defendants in criminal cases before the Central District of California reached termination in 70 days. In the Eastern District of Pennsylvania, 43.3 percent did so. This column roughly represents the 1979 time limit: 10 days from indictment to arraignment plus 60 days from arraignment to trial. Although those two courts are at opposite extremes (among the five visited first) under the 1979

[1] The differences had been much greater in fiscal 1973; the original selection of these courts was based on fiscal 1973 data. The median disposition times of the two slowest courts have improved greatly since that time, eliminating much of the contrast among those five courts.

TABLE 25

Percentage of Criminal Case Defendants Reaching Disposition by Speedy Trial Act Time Limits

Calendar Year 1974

	70 days and under (1979 limit)	90 days and under (1978 limit)	130 days and under (1977 limit)	190 days and under (1976 limit)	370 days and under
CA/C	60.3	71.1	80.5	88.0	94.8
LA/E	57.7	64.7	74.0	81.8	86.9
FL/S	52.9	65.9	78.4	87.8	93.6
MD	46.0	56.4	69.0	78.3	87.7
PA/E	43.3	59.7	80.0	90.8	97.9
MA	19.3	22.8	32.0	43.7	68.7
AL/N	87.2	89.2	93.0	95.7	98.4
NM	64.0	72.3	78.6	87.9	93.5
KY/E	38.5	48.2	56.8	70.4	88.7
WI/E	34.9	37.7	45.4	57.0	81.3
All districts	51.9	59.2	70.0	78.8	89.0

NOTES: See the full report from which these figures are drawn, in, appendix K, for some important definitions and qualifications. Each figure shows the cumulative percentage of criminal defendants reaching disposition in the time shown. The time periods indicate number of days from filing to dismissal, guilty plea, or commencement of trial.

time limit, the relationship is different when we look at the column representing the 1976 limit of 190 days. This limit approximates those common to most of the 50(b) plans in effect during the period the table describes. Eastern Pennsylvania has the highest percentage of defendants reaching termination within that time period. (These time periods do not take into account any "excludable time" under 18 U.S.C. § 3161(h).) Notably, data on every one of the five districts visited later are generally outside the range of data on these first five courts, as shown in table 25. For that reason, we will briefly discuss the first five metropolitan courts as a group.

Overall Approach

In Central California, Eastern Louisiana, Southern Florida, Maryland, and Eastern Pennsylvania, routine criminal cases were observed to move smoothly and expeditiously. Judges and staff generally thought these cases substantially complied with the 1979 time limits of the Speedy Trial Act of 1974. The system described in each court led to trial in thirty to sixty days. Few judges on those courts anticipated that their courts would require basic changes in their schedule or approach to comply with the act. Many expressed fears, however, that the act's inflexible requirement that *every* case be in complete technical compliance would have disastrous consequences for civil cases. The more permissive language of rule 50, as amended, still permitted discretionary decisions to accommodate conflicts with the civil docket, but the act eliminated nearly all flexibility. Special concern was also expressed that it might be impossible to try complex cases in the statutory sixty day period, though many judges assumed the various statutory exclusions would cover much of the excess time in complex cases.

The first column of table 25 indicates that a substantial number of cases appear out of compliance with the act's final time limit, in those five courts and in others. Although this information was not available at the time of the visit, we spot-checked criminal case files in an attempt to determine the causes of noncompliance with the final (1979) time limit. The results were inconclusive because much of the information necessary to determine whether a case would have been eligible for "excludable time" was not available in the file. It remains an open

question whether these districts are actually as close to compliance as most judges, prosecutors, and supporting staff believe. This question, of course, is the subject of much current activity in the Speedy Trial planning process, and most relevant data elements are now collected routinely.

The common features of criminal case preparation can be summarized briefly. All five districts scheduled trial according to a fixed routine, usually allowing between thirty and sixty days from arraignment to trial. All districts granted preference to criminal trials when conflicts occurred. All districts in this group except the Southern District of Florida had some form of "open files" discovery. (See below.) With a handful of exceptions, all judges adopted an arm's-length approach to plea bargaining: they did not discuss possible sentences directly with the defendant or with his attorney. Most did permit the United States attorney to propose a recommended sentence, though none felt bound by the recommendation. (Our visits took place before the 1975 amendment to rule 11.) It was gratifying to observe a high rate of pleas despite the lack of judge involvement in plea bargaining. Judge involvement is now prohibited by rule 11(e)(1).

The remaining five courts have substantially different scheduling procedures. Massachusetts, Eastern Kentucky, and Eastern Wisconsin terminate criminal cases much slower than all five districts just described. These three slowest courts have a much less exacting schedule for trial settings, and all three are suffering serious trial backlogs. Criminal cases are set for trial at a date comparatively late after arraignment—as much as about six months—and trials are frequently continued. Table 25 shows that the Massachusetts criminal docket is almost entirely out of control. This is partially explained by extraordinary circumstances: this six-judge district simultaneously suffered two vacancies and two serious illnesses.

Northern Alabama and New Mexico have the highest percentages of defendants in compliance with the 1979 limit. Despite substantial case loads—extremely heavy in Northern Alabama—these two districts have succeeded in maintaining early, firm trial dates. Some distinctive features of their practice appear below, in "Management and Scheduling."

Open Files

A few words of explanation are in order to clarify our use of the term "open files," and discuss its relation to the omnibus hearing technique. By open files we mean a voluntary procedure by which the assistant United States attorney and defense counsel hold an early, informal discovery conference in which most materials are usually exchanged. Not everything is necessarily exchanged; there is, of course, no requirement for either side to reveal more than the law mandates. Prosecution witness lists are often withheld.

There are numerous "wrinkles" in this approach, both within and between courts. Because of the voluntary nature of the approach, a great deal of discretion rests with the prosecutor in individual cases. The one other element generally common to open files, as the term is used here, is some discussion of any prospective motion activity, in an effort to resolve disputes directly and forestall unnecessary "paper."

No districts in this project currently use the omnibus hearing technique, as such, in most or all cases. (Omnibus hearings have been gradually discontinued in Massachusetts over a period of years.) Given the widespread opposition of prosecutors to omnibus hearings, it appears that the technique may raise a "red flag" unnecessarily. Many United States attorneys feel the omnibus procedure would excessively limit their flexibility, and that has also been the position of the Department of Justice. Our observation, based on brief visits to some additional districts that use omnibus hearings, is that the practical discretion regarding what is to be revealed does not differ between omnibus and open files districts.

Almost without exception, judges, prosecutors, and defense counsel in open files districts

praised the system, and attributed to it much of their success in speeding the processing of criminal cases. Little in our observations, however, could support a claim that open files or an equivalent is either necessary or sufficient to speedily dispose of criminal cases. In three of the ten districts shown in table 25, criminal discovery is comparatively "close to the vest." In two others, many participants described the system as generally "open files," but disagreed over whether there was actually a "policy" to that effect. (For this reason, we do not include a table defining discovery practices for all districts.) In the remaining five districts, there was no disagreement about the existence of an open files policy. No pattern whatever can be discerned in the relationship of open files or its absence to speedy termination of criminal cases; for example, there is a long-standing open files policy in both the fastest court (Northern Alabama) and the slowest (Massachusetts).

Despite the absence of a positive relationship between open files and speedy disposition, we recommend that districts not currently using open files might well experiment in that direction. A positive relationship could exist, but be masked by any of a number of variables. Virtually without exception, everyone with whom we discussed the issue in open files courts agreed that open files had improved and speeded criminal cases. The practice seems generally similar to omnibus, many of the claims on behalf of omnibus can be made for informal open files, and there seem to be few objections to the procedure as such, where it is used. The Southern District of Florida and others, however, have also achieved excellent results with a comparatively restricted approach to criminal discovery. In that district, and in others with a heavy volume of narcotics cases, many prosecutors and some judges believe open files would constitute a grave danger to witnesses and informants. Numerous defendants are thought sufficiently desperate to pose a serious danger. In fact, there have been several recent attempts on the lives of government witnesses in Southern Florida and elsewhere.

Defense Representation

There is no opportunity here to evaluate methodically the system of federal public defenders. Seven of the ten districts visited now have a public defender system. All instituted the procedure so recently that the effects are difficult to measure or identify. The system for representation—by public defenders and appointed counsel—used in Central California appears worthy of note, however. Some points of interest are:

—There are always deputy public defenders in the magistrate's court for rule 5 hearings. Case assignments are made at that time, which permits the public defender who initially handles the defendant to continue throughout the case. Continuity of representation is assured from the start, avoiding many of the logistical difficulties common in some courts as a result of confusion over representation.

—The public defenders are substantially involved in the case during the period between arrest and indictment. According to public defenders interviewed, this is a major difference between their office and the private bar (both those from the "indigent panel" and retained counsel), who typically become involved in the case after indictment. The public defenders believe there is more room for maneuvering between arrest and indictment.

—There are five "indigent panels," one assigned to arraignment each Monday. Each panel consists of five to seven attorneys from the private bar. The panels are periodically reviewed for competence, and had been purged less than a year before our visit. Most observers agree that the panel attorneys are highly skilled. The work of several panel attorneys amounts to pro bono service: they are very successful attorneys who are not on the indigent panel for money. This pattern seems to be common in small towns but a rare achievement in large

cities such as Los Angeles.[2] The indigent panels are composed of lawyers nominated to a master list by a committee of the Los Angeles Bar Association. The court appoints lawyers on the master list to panels. Each panel attorney knows that he has a fixed obligation on a specified Monday to be in court for panel assignments.

—The public defender's office has both a staff of investigators and a social worker. This permits more effective investigative work than is common in other offices. The social worker plays a key role prior to sentencing, working with a defendant and obtaining various forms of assistance for him. Often the defendants are in drug rehabilitation programs, have employment commitments, and so on. The assistance of a social worker is also described as important to the public defenders in "individualizing" the defendant at sentencing.

Management and Scheduling

Northern Alabama has an innovative criminal case management system that seems to account for its speedy disposition of a high volume of criminal cases. In fiscal 1975, the district ranked twenty-sixth among ninety-four districts in criminal case load size (128 filings per judgeship); as already shown, it is the fastest district we surveyed. Both prosecuting and defending lawyers seem to be comfortable with the system. The following characteristic features of Northern Alabama's system should be noted:

—The magistrates have complete responsibility for a criminal case until plea or trial, including responsibility to supervise plea negotiations.

—By traditional (and by consent in each case) nearly all criminal cases are heard in Birmingham, although the district is divided into eight divisions.

—The district, by long-standing practice, employs a "criminal duty judge" to whom all cases are assigned for a fixed period.

[2] Many districts outside the largest cities seem to have obtained outstanding free representation in the past. One clerk of a small court even asserted that the Criminal Justice Act had resulted in a generally lower quality of representation in his district.

Criminal cases are scheduled according to the following cycle. The grand jury meets every five weeks. (There is some feeling that it should meet weekly.) Trial weeks are set for six to eight weeks after indictment. Defendants are arraigned before the magistrate ten to fifteen days after indictment, at which time a pretrial date is set for approximately ten days later. After the conference, if the case appears likely to result in a plea, the case is placed on a "consent docket"; the criminal duty judge sets aside several days for this purpose. Otherwise, the case is set for trial during the established trial week.

For example, the schedule during the time of our visit was as follows. Defendants in the cases returned by the January 19, 1976 grand jury were arraigned on January 30, 1976, and pretrials were held on February 9 and 10. The consent docket before the criminal duty judge was scheduled for February 17, 24, and 27. The trial docket was scheduled for the weeks of March 1 and March 15 (the intervening week was left vacant due to a state-wide school holiday.) It is not difficult to understand, from this schedule and others before and after it, that a district maintaining this sequence would record a median disposition time of 1.7 months in criminal cases.

The obvious question is how such a busy district can handle so many cases so fast. This speedy disposition of criminal cases appears to result from the court's delegation of broad powers to the magistrates. From initial contact with the court until the case is placed on either the judge's consent docket (probable plea) or trial docket, the case is effectively in the magistrates' hands.

At the outset, the two full-time magistrates handle what is normally the commissioners' work, including bail setting, initial appearance under rule 5, and any other necessary preliminary appearances. These matters are handled by the "duty magistrate," an assignment which rotates every two weeks. No set schedule is followed. Rather, the magistrate is available whenever the defendant has been processed.

The pretrial conference procedure is more unusual. Conducted in the magistrate's chambers, the conference includes an assistant United States attorney, the defense attorney, and representatives of the probation department. The magistrate assumes that opposing counsel have not discussed the case in detail at this early stage.

The first matter of business is usually physical exchange of documents subject to discovery. Normally, all documents are exchanged. In addition, a tentative assessment is made of whether the case is likely to result in plea (in which case it is scheduled for the consent calendar) or whether it is going to trial. A preliminary assessment is also made regarding the probable length of trial; if it appears to be more than a four-day trial, a date for trial is set outside the two-week trial docket established for cases resulting from a single grand jury. Motions are also discussed; the magistrate is empowered to rule on any motions that do not require an evidentiary hearing.

The magistrate is an integral part of the plea process. The magistrate discusses with both attorneys sentences that might be recommended in the event of a plea. In the past, the probation recommendation was available to all participants. Currently, it is reserved for the judges only. (Normally the recommendation consists only of advice for or against probation.) The end result of the pretrial conference is a sentencing recommendation by the magistrate to the judge, who is, of course, free to accept or reject the recommendation. Although judges vary somewhat in this respect, the sentencing judge gives the magistrate's recommendation serious consideration, and often follows it.

The pretrial before the magistrate essentially becomes the forum for plea bargaining under judicial supervision, but without direct involvement of the judge who will hear the case and impose sentence. It seems to combine the best elements of several alternative approaches. The magistrate provides judicial supervision of the process, yet the independence of the sentencing judge in imposing final sentence is not compromised. Magistrate recommendations are a kind of "benchmark" to guide all district judges. This role has been particularly effective because until recently, all recommendations were made by a single full-time magistrate, a highly respected individual described by one judge as "the best trial lawyer ever seen in this district." He now has the assistance of a second full-time magistrate, also an able, experienced lawyer. The two work very closely, rotating all duties. Their offices are adjacent, and contact is regular. At the time of our visit, most judges and lawyers reported that the magistrates' efforts to preserve the former uniformity had been successful.

In Southern Florida, the magistrates handle all arraignments and most criminal motions, and a procedure involving a "notice of intent to plead guilty." In that district, when the defendant indicates his desire to plead, he signs the notice and goes over most rule 11 matters with the magistrate. The magistrate orders a presentence report and sets the date for sentencing before the judge. At sentencing, the judge completes the plea under rule 11 and sentences the defendant in a single proceeding. (Local rule 25(B)(2) is attached as appendix L.) This procedure combines the plea taking with sentencing, making entirely clear at one time what is admitted and the corresponding penalty determined by the court.

Central California has a more conventional managing and scheduling system, which is also highly effective. The preliminary examination under rule 5 is carried out by the "duty magistrate" (rotated weekly), who is available three times daily for these initial appearances. The magistrate advises the defendant of his rights under rule 5 and—as appropriate—sets bail and appoints counsel. He sets the date for a preliminary hearing within the ten or twenty days permitted, but few are held: the practice of the United States attorney is to indict on the day before the scheduled hearing. If a defendant is charged with an offense that can be tried by a magistrate, a date for appearance in magistrate's court is set. The case is then heard by

that week's duty magistrate. Otherwise, the magistrate is not involved after arraignment. On the Monday following indictment, the defendant appears for arraignment and the judge sets the trial date. The interval from arraignment is normally no more than thirty days.

The procedures described up to this point are highly effective, as are their counterparts in Eastern Louisiana, Southern Florida, Maryland, Eastern Pennsylvania, and New Mexico. On the other hand, an expeditious system to handle *preliminary* criminal matters is no guarantee of speedy disposition. At the time of our visit, the District of Massachusetts also delegated to the magistrate responsibility for all preliminary matters, including motions not requiring an evidentiary hearing. After this, the case was sent to the judge, who set a trial date. Unfortunately, the judges' trial dockets were so congested that little action was taken, as is evidenced in table 25. It is not easy to understand why Massachusetts has had such difficulty in bringing criminal cases to trial. Although in 1975 there were one hundred criminal cases per judgeship filed in that district, there were sixty-three in 1974 and eighty-three in 1976. As noted, Massachusetts has suffered greatly from vacancies and illness. A large number of visiting judges, however, have to some extent compensated for those factors. Table 25 strongly suggests that a bottleneck at the end of the process—at trial—forestalls any benefit from expedited procedures at an earlier stage. This is so in Massachusetts for nearly all defendants, as table 25 shows, even though few are tried. In fiscal 1975, 15 percent of all Massachusetts defendants were tried; the corresponding national figure was 14.4 percent.

The contrast between Massachusetts's experience and those of most other districts—many of which also have crowded dockets—strongly suggests that much earlier trial settings could be accomodated, and would speed the entire criminal docket. This change is difficult at a time when trial calendars are already full. Perhaps it could be accomplished in Massachusetts and other slow districts with the assistance of visiting judges handling the resulting "overflow." Since the criminal docket in Massachusetts is actually smaller (in filings per judgeship) than that in several courts with expeditious schedules, it is likely that the overflow would be only temporary.

The two other districts with particularly slow disposition times also suffer from a serious backlog at the trial-setting stage. In Eastern Kentucky, the backlog is an obvious, direct result of a heavy criminal caseload (178 cases per judge, twelfth in the United States in fiscal 1975) combined with an extraordinary number of black lung cases as well as other civil cases. These factors have resulted in one of the most crowded dockets in the United States. In 1975, the district ranked fourth in civil filings per judgeship. Although Eastern Wisconsin has a much smaller case load (see appendix B) the district did suffer a vacancy for three and one-half years—one of the longest vacancies any district has experienced recently—producing extraordinary impact in a district of only three judgeships.

Pretrial Proceedings

Criminal pretrials were not a major burden. Except in Northern Alabama, it was not clear that they achieved much in ordinary cases. In Eastern Louisiana, most judges delegated pretrials to magistrates. Those judges established a system that delegated all permissible criminal matters to the magistrates until trial or plea. In Maryland, the judge held a pretrial a month after indictment in all cases on the "routine criminal docket," at very brief intervals, in chambers. We found very little was accomplished at these conferences. Routine criminal pretrials also seemed to serve little purpose in Southern Florida. There is extensive motions activity in that district, evidently a result of the restrictive discovery policy there. Virtually all criminal motions are sent to a magistrate. In the other districts, there was very little motions activity in routine cases. In all districts, complex and highly contested cases often had one

or several hearings on motions to suppress. We observed no unusual difficulties in that area, nor any distinctive approaches to recommend.

Observations

—Informal "open files" procedures appear to achieve many of the results often claimed for the omnibus procedure, and they appear to be easier to implement.

—Case assignment to public defenders at the rule 5 hearing appears to permit especially effective representation.

—Selection of private court-appointed lawyers following screening has been highly successful in some courts, especially Los Angeles.

—Delegation to the magistrate of all responsibility to supervise the case before trial or plea can be highly effective.

—An automatic, routine system to move cases through all preliminary stages is a necessary but not sufficient condition for expeditious handling of criminal cases. If the judges' trial dockets are crowded and trial dates are late, the cases move slowly, whether tried or not.

—Some courts that are far from compliance with Speedy Trial Act time limits should experiment with procedures to set much earlier trial dates, even though this may seem inconceivable at present. Ideally, this would be done at a time when visiting judges are available to handle additional trials that could not be accommodated. Data suggest strongly that speeding the criminal docket does not increase the burden per case, except temporarily.

CHAPTER V

CALENDARS, TRIALS, OPINIONS

Calendaring

Trial calendaring is—like judging—more art than science. Certainly there is more art in calendaring than in any other administrative activity in district courts. Considering the uncertainties and difficulties in the process and the high stakes in terms of inconvenience and expense to litigants, it is surprising that calendaring generally works as well as it does; it speaks well for the skill of the district judges and their suporting staffs. The calendaring of an individual case is inherently unpredictable to a remarkable degree. Any upcoming trial could settle or proceed, and any case that reaches trial could take longer than estimated. A judge's calendar depends on the accuracy of a best guess about the relative probabilities. Any trial involves people and organizations with different—often conflicting—interests. Litigants, lawyers, law enforcement and investigative agencies, jurors, marshals, probation officers, other government agencies, witnesses from all over the country or the world—all must be drawn together in scheduling trials. An effective calendaring system obtains the best possible estimates of all the relevant probabilities and permits enough flexibility to accommodate the occasional unavoidable mishaps.

Each alternative calendaring system requires a good deal of juggling, and none entirely prevents mishap. A hybrid system used in Southern Florida and New Mexico was especially effective.

Broadly speaking, we saw three calendaring systems in use: the "date certain" system, the trailing calendar, and the two-week calendar, a hybrid. All were administered separately for each judge—all courts visited used the "individual calendar" system. All three systems were observed to work well in some instances and less well in others, depending on the skill of those involved. However, the hybrid two-week calendar generally seemed to work more smoothly than the others and seemed to constitute a satisfactory balance between the respective virtues and difficulties of the other techniques.

The date certain system is by far the most common in federal courts. Its virtues are well known and do not need to be reargued at length: it provides the discipline of a specified date that can be the basis of case preparation, schedules, and communication with witnesses. Many judges feel that a date certain is an indispensable element of any effective system for case management. At its best, the system does indeed accomplish its intended purposes well. Judges (or their staffs) calendar a sufficient number of cases, in just the right mix, that they have a case before them during all trial weeks and yet have no forced continuances resulting from unexpected conflicts.

To say the least, this is a delicate balance. As discussed in chapter two, in some courts the "safety valve" is the possibility that a judge with no trial will handle a trial for a judge with more than one, knowing that he may be the beneficiary of a similar favor in the future. Alternatively, a judge may send a civil case to a magistrate, with the consent of the parties. In other courts these exchanges are rare.

In the absence of remarkably effective calendaring, or a "safety valve," or good luck, the date certain system leads to difficulties. A few

judges "overschedule," with the result that the "certain" dates they have set turn out to be false promises. When the appointed day arrives, attorneys and their witnesses are told that the judge cannot reach their case and it must be continued a few days or weeks. Most judges are so conscientious that they are more likely to err in the direction of conservatism. They schedule too few cases for trial and occasionally or often find themselves with no trial before them, even though they may have a considerable list of cases ready for trial.

The trailing calendar system has the opposite virtues and defects. In this system, cases are typically set for trial on a trial term of six weeks or so, and the list is published periodically in the local legal newspaper. This system is now relatively uncommon, but it still has staunch advocates. Judges who use it insist that the trailing calendar is more realistic: instead of providing false promises, the court describes its actual situation and permits the attorneys to make plans on that basis. The plans they make, however, are much more complex than they would be in a "date certain" court. Flexibility is maintained, permitting the judge always to have a case to try, and he may—through "special settings" or similar devices—provide certainty to a minority of attorneys whose special situations require it.

We saw the system work well in a few instances and poorly in a few more. It does appear possible for a judge to administer a trailing calendar in a fashion that retains the certainty of imminent trial characteristic of the "date certain" system. He must keep the list short enough that all cases are reached, and he must communicate to attorneys a realistic estimate of their probable trial date.

Few attorneys seem to prefer the trailing calendar, however, even in courts where it is used by many judges, some of whom seem to experience no difficulty with it. Attorneys complain that lack of a specific date greatly complicates their plans. This seems to be true even when the system operates at its best. When it does not, it leads to serious inconvenience to lawyers and witnesses, extra cost to litigants, and sometimes complete absence of court control of the case. There is also a much greater possibility of conflict with proceedings in other courts, which adds to the uncertainty. Unless the list is closely monitored and excellent guidance provided by the court to attorneys at every point on the list, the situation can be very confusing and changeable indeed. It is particularly difficult, under those conditions, for the court to insist a case be tried when it is finally reached, since it may be reached quite unexpectedly.

The two-week calendar used in New Mexico and Southern Florida seems to combine the best features of both systems. There, typically, trials are set for the Monday of the first of two weeks. The number of trials set varies from fifteen to twenty-five per judge in Florida; somewhat fewer are usual in New Mexico. At a convenient time (on the preceding Thursday in Florida) a calendar call is held by the judge or by his law clerk, courtroom deputy, or secretary. A current reading of the status of each case is obtained, and the necessary juggling is done to provide a realistic sequence of the cases and an approximate date for each prospective trial.

Judges vary in their precise approaches to this process. Some feel strongly that they must conduct the calendar call themselves, while others delegate it occasionally or regularly to supporting staff. Some set more cases than others, and one uses the same system on a one-week basis only. All approaches seemed, from our observations, to provide a certain deadline for case preparation, combined with sufficient flexibility to assure that the dates could be kept. We suggest that a court that is not satisfied with its present calendaring system consider experimenting with this one. It appears to be particularly effective when—as in Miami—it can be adopted for the whole court. Also, it is best suited to a docket containing a large number of fairly short trials.

Trial Technique

Although we observed portions of several trials, we could not include in this project a sys-

tematic evaluation of alternative trial techniques. To do so would have been impossibly complex and time-consuming. Judges' trial tasks are complex, varied, and unpredictable, and their approaches to them are very different. Many man-years of observation alone would be needed to evaluate these techniques adequately.

Our most important observation was a negative one: we were unable to find any statistical connection between comprehensive pretrial preparation and a high number of trials per judge per year. In our preliminary work we observed that courts with high rates of terminations per judge also had high rates of cases tried per judge. Early visits to some courts with poor records in both respects failed to disclose any great amount of unused or underused trial time; far from it. We hypothesized that the high "productivity" courts might be able to handle more trials through more aggressive enforcement of exacting requirements for comprehensive pretrial preparation.

No such pattern appeared, however. Table 26 shows the number of trials per judge per year for each district visited; the courts are listed in order of their terminations per judgeship in fiscal 1975. Table 62 shows trials as a percentage of all terminations. The courts that completed the most trials did not appear to have especially comprehensive pretrial orders, as a general rule. The most comprehensive pretrial orders observed in ordinary cases were in Central California, whose rate of trials per judge is not particularly high.

It is possible that these data conceal as much as they reveal. Perhaps courts that have disciplined their bars to eliminate most of the easy issues achieve that result without necessarily insisting on lengthy stipulations in the pretrial order. Especially in Southern Florida, this appeared to be a possible explanation. In that district, pretrial orders were not necessarily comprehensive, but trials moved very smoothly and expeditiously.

In all the courts we visited, nearly all judges occasionally used the final pretrial conference to simplify issues, reduce their number, and reduce the number of witnesses. Very few judges do this "by the book," that is, by insisting that the proposed pretrial order be comprehensive, then going through the remaining issues comphrensive pretrial orders, as a general

TABLE 26

Comparison of Terminations and Trials Completed per Judgeship

	Terminations per judgeship, 1975 *	Trials completed per judgeship					
		1976	1975	1974	1973	1972	1971
MA	667 [b]	37	30	29	24	38	35
LA/E	453	49	55	59	62	57	50
FL/S	447	68	71	65	73	64	47
CA/C	363	39	37	38	49	55	56
MD	332	48	48	52	46	34	26
PA/E	230	36	33	33	33	35	33
KY/E	519	49	56	68	78	51	62
AL/N	474	76	94	85	73	87	57
NM	362	83	75	75	78	68	76
WI/E	306	28	25	23	27	22	24
All districts	371	49	48	46	49	47	44

* Within each group, courts appear in order of their terminations per judgeship in fiscal 1975. Although it is not the most recent data now available, fiscal 1975 is used to preserve comparability to other data in this report. Data on terminations per judgeship for each year 1971–1976 can be found in appendix B.

[b] Includes ICC cases.

served for particularly complex cases. In routine cases the entire procedure was much more informal.

One striking difference among judges was their scheduling of each trial day. Several individual judges with particularly high disposition rates make a great effort to use their trial time efficiently. Their trial days are relatively long: at least from 9:30 a.m. until noon, and from 2:00 p.m. to 5:00 p.m., with a strictly limited ten- or fifteen-minute break in each segment. Many trial days are longer when necessary. The basic trial hours are considered inviolable by these judges and are never affected by hearings or conferences, all of which are held either at other times on trial days or on different days. These judges often extend the trial day when that is necessary to keep their calendar commitments. Evening hours for trials are not uncommon, especially in court trials but also sometimes in jury trials. In most of the courts with especially many trials per judge, there is a great effort to limit trials to the days scheduled, even if long hours are necessary. This determination to do whatever is necessary to fulfill calendar commitments seems lacking in some courts.

It is a common observation among federal judges that long hours are an unacceptable imposition on jurors. This observation must be balanced by other judges' observation that completing a trial as early as reasonably possible often better serves jurors' interests and responsibilities than prolonging the trial. Claims that short trial days are necessary for jurors' safety seem dubious. All the urban courthouses visited in this project are in downtown neighborhoods that some consider unsafe. Despite that fact, many judges in each court have occasionally maintained long hours without difficulty.

Long Trials

Our visits to district courts often suggested that long trials create a large and distinct burden. The impact of a long trial is felt not only by the judge to whom the case is assigned but by the entire court. The judge may be forced to seek assistance. This may be done either by reassigning some of his cases or by reducing or temporarily suspending assignment of new cases for the duration of a long trial. Either course directly affects the case loads of the other judges on the court by assigning them more than their normal share of cases.

In addition, there may be other detrimental effects on the other members of the court. If a court does not have courtrooms for each judge, a long trial preempts essential facilities for an extended period. It is difficult for other judges to schedule their hearings and trials. Sometimes the number of large courtrooms is limited. Long trials nearly always require a large courtroom because of large jury panels, numerous lawyers, and numerous spectators. Lawyers involved in long trials are not available for hearings or trials of other matters, which may interfere with other judges' trial calendars. Finally, there may be excessive demands on supporting personnel during a long trial. This may affect availability of court reporters, courtroom deputies, and others.

Of course, the impact of a long trial is greatest on the judge to whom the case is assigned. The impact on his calendar can be devastating; dozens of scheduled trials may be disrupted. He will not be able to keep his trial docket current, nor will he be able to conduct pretrial hearings or other preliminary matters during a long trial unless he does so at irregular times, often at the expense of the trial. A judge may have particular difficulty meeting Speedy Trial time limits during a long trial. Not least of the effects of a long trial is the physical impact on judge and court personnel, who may be involved in the trial for eight or more hours per day and have to handle additional duties on evenings and weekends.

Table 27 shows that long trials are not evenly distributed among the courts visited. Their impact was greatest by far in Maryland and Central California. Over the five-year period from 1972 through 1976, 13.8 days per judge per year were consumed in trials that lasted twenty days

TABLE 27

Impact of Long Trials (1972-76)

	Days spent on long trials per judge, per year	Total number of trials	Number of long trials	Number of days in long trials	Long trials per judgeship
MD	13.8	1,599	14	482	2.0
CA/C	13.8	3,482	29	1,107	1.8
FL/S	6.1	2,428	5	215	.7
PA/E	6.0	3,232	19	569	1.0
MA	3.2	944	4	96	.7
LA/E	.5	2,538	1	24	.1
WI/E	7.5	378	4	113	1.3
AL/N	5.9	1,660	3	118	.8
KY/E	4.7	789	2	59	.8
NM	2.1	1,137	1	32	.3
All districts	6.9	95,624	419	13,829	1.1

NOTES: This table shows the impact of trials lasting twenty days or more, the definition of "long trials" used by the Administrative Office in its annual reports, from which these figures are drawn. Table 63 displays this and related information on all United States district courts.

or more in those courts. Except for Eastern Wisconsin, all other districts visited had fewer than the national average of 6.9 days in long trials per judge per year. In Eastern Wisconsin the figure was 7.5 days.

We have not used any overall figures on trial days to measure the trial load because definitions of a "trial day" vary greatly among courts. The twenty-day threshold defining a "long" trial is useful, though arbitrary. The chief differences in definitions apply to short proceedings. Once a proceeding reaches its twentieth day there can be little disagreement that it *is* a trial. Differences remain, of course, in the number of hours per trial day.

Examination of table 63 confirms something that is suggested in table 27 above: the impact of long trials is greatest in metropolitan courts, especially those in the very largest cities. In fourteen courts, at least 10.0 days per judge per year are spent in long trials, compared to a national average of 6.9. Of these fourteen, eight are metropolitan courts: Eastern Michigan, Middle Florida, Northern California, Northern Illinois, Maryland, Central California, New Jersey, and Southern New York (listed in order of their number of long trial days). The same table also shows an irregular pattern, however: large and small courts can be found with both high and low impact from long trials.

We have no solid explanation for the concentration of long trials in metropolitan courts. There appears to be no relationship between long trials and techniques in pretrial, settlement, or trial, nor between long trials and any variable identified in the current case weights. There appears to be a combination of factors operating in large cities to produce long trials. Possibilities include a more contentious bar, higher stakes in big cases, and a concentration of cases that present especially complex issues. It is also possible that trials in metropolitan courts are conducted less efficiently, in some respect we failed to identify.

Published Opinions

The rate at which district judges prepare written opinions appears to vary widely among the districts. The number of opinions published has a strong inverse relationship to terminations per judgeship. This variation appeared during our discussions and observations, when some judges expressed concern that a great deal of time is spent preparing opinions, and others indicated a negligible amount of time is spent on

opinion writing. As a result of this observation, we tabulated opinions actually published in *Federal Supplement* and *Federal Rules Decisions* during an eighteen-month period. (See appendix M for discussion of the data used.) The results appear in table 28.

These figures indicate a remarkably wide difference among courts in the number of opinions published per judge and in the number of opinion pages published per judge. Table 29, a similar tabulation, shows similar results. Here, however, published opinions of two and one-

TABLE 28

Published Opinions, January, 1973–June, 1974

	Opinions per judge	Opinion pages per judge	Judges	Opinions	Total pages	Length, pages (percentages) Under 5	5–10	Over 10	Average length	Long opinions (20 pages or more)	Minimum and (maximum) Opinions by a judge	Pages by a judge
CA/C	4.1	23.9	16	65	383	59	32	9	5.9	2	0 (21)	0 (99)
LA/E	6.7	44.4	9	60	500	37	47	17	6.7	0	3 (15)	16 (99)
FL/S	7.4	57.7	7	53	362	41	51	8	5.2	2	0 (14)	0 (110)
MA	12.3	61.8	6	74	371	59	28	13	5.0	1	8 (16)	30 (79)
MD	13.8	122.1	7	97	848	27	50	24	8.8	6	8 (20)	98 (187)
PA/E	24.7	172.0	18	445	3,104	46	35	19	7.0	16	6 (40)	38 (326)
NM	4.0	20.3	3	12	61	50	42	8	5.1	0	2 (5)	7 (38)
AL/N	5.5	31.6	4	22	127	50	32	18	5.8	0	3 (7)	13 (45)
KY/E	17.7	42.2	3	53	127	91	9	0	2.4	0	1 (27)	1 (83)
WI/E	48.6	116.4	3	145	349	93	4	3	2.4	0	5 (87)	13 (176)

Source: *Federal Supplement* volumes 357–376, *Federal Rules Decisions* volumes 58–63.
NOTE:—Senior judges are not included in this tabulation.

TABLE 29

Adjusted Published Opinions, January, 1973–June, 1974

	Opinions per judge	Opinion pages per judge	Judges	Opinions	Total pages	Length, pages (percentages) Under 5	5–10	Over 10	Average length	Long opinions (20 pages or more)	Minimum and (maximum) Opinions by a judge	Pages by a judge
CA/C	3.2	22.0	16	51	353	47	41	12	6.9	2	0 (15)	0 (95)
LA/E	5.7	42.1	9	51	379	25	55	20	7.4	0	2 (13)	7 (97)
FL/S	6.6	49.7	7	46	348	32	59	9	7.6	2	0 (12)	0 (109)
MA	8.9	56.3	6	53	338	43	40	17	6.4	1	4 (13)	26 (86)
MD	13.1	119.4	7	92	837	24	52	25	9.2	6	8 (19)	96 (167)
PA/E	20.6	163.3	18	371	2,940	34	42	23	7.9	16	5 (35)	35 (323)
NM	2.7	17.8	3	8	54	25	63	12	6.7	0	1 (5)	5 (38)
AL/N	4	29.4	4	16	118	31	44	25	7.3	0	2 (6)	11 (43)
KY/E	3.9	25.9	3	20	78	75	25	0	3.9	0	0 (15)	0 (50)
WI/E	14.3	63.3	3	43	190	76	19	5	4.4	0	2 (53)	7 (133)

Source: *Federal Supplement* volumes 357–376, *Federal Rules Decisions* volumes 58–63.

NOTES: Published opinions of two and one-half pages or less are not included in this tabulation. Senior judges are not included in this tabulation.

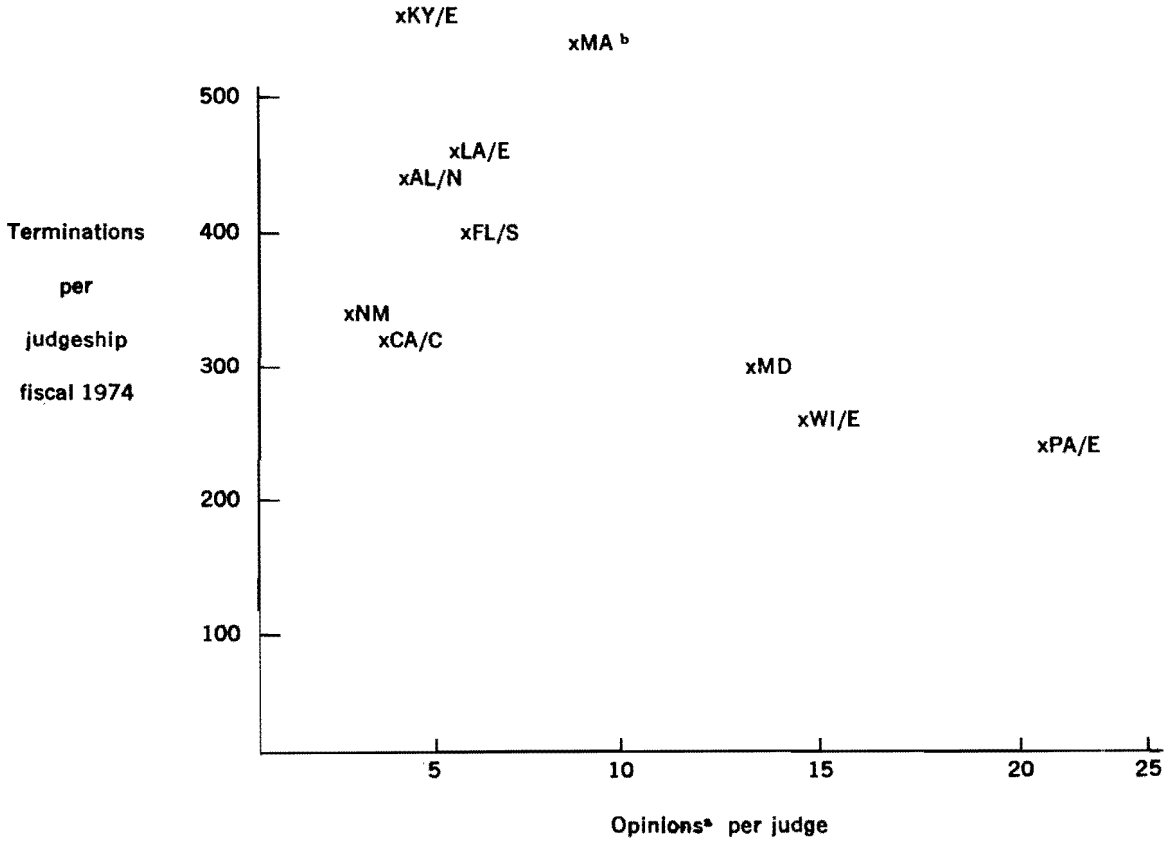
half pages or less (short opinions) were excluded in an attempt to control for possible variation in publication policy, on the assumption that, while judges have different policies regarding the opinions they publish or do not publish, their policies may be more uniform with respect to lengthy opinions than to short ones. Two and one-half published pages (approximately seven and one-half pages of typescript) seemed a useful cutoff point.

A large expenditure of time preparing opinions for publication appears to limit productivity in at least three courts.

Although the data in tables 28 and 29 may not measure opinion writing (as opposed to publication) precisely, they are highly suggestive, particularly in considering that they reinforce our observations in the courts. Judges in Philadelphia frequently mentioned the burden of preparing and editing lengthy opinions. There, in Baltimore, and in Milwaukee, judges consider opinion preparation an essential part of their jobs. They feel trial judges are uniquely equipped to contribute to development of law in many areas, and are proud of their courts' contributions in areas such as grand jury, the parole guidelines, discovery, class action certification, and summary judgment. Most judges in Miami, New Orleans, Los Angeles, and other places consider opinion preparation a minor task.

FIGURE 4

Opinion Writing and Termination Rates



a More than two and one-half pages long.

b Includes ICC cases that require negligible judge attention. Without those cases, terminations per judgeship would be fewer.

Figure 4 shows published opinions per judgeship plotted against terminations per judgeship in the five courts. This graph suggests that the district courts experiencing difficulties in handling their present work loads might consider reducing the number of opinions prepared and published by preparing published opinions only in those cases for which a published opinion seems (for some reason) indispensable.

One judge remarked facetiously that it is fine to prepare and publish numerous opinions, provided it does not "interfere with the effective administration of justice."

Finding

—High rates of opinion publication are closely associated with low termination rates. Many judges may wish to consider reducing the number of opinions they prepare, in the interest of conserving their time to meet the demands of other cases on their dockets.

Observations

—Courts that are unsatisfied with their calendaring procedures should consider the two-week trial calendar system of New Mexico and Southern Florida, including the calendar call held late in the week preceding trial.

—Courts experiencing a shortage of trial time should consider efforts to "protect" their hours of trial time carefully, assuring that a trial is actually underway for six hours or more each trial day.[1]

—Long trials have a distinct and disruptive impact that falls most heavily on metropolitan courts.

[1] In addition, these courts may wish to consider some of the suggestions proposed by Senior Judge Gus A. Solomon, of the District of Oregon, in Techniques for Shortening Trials, an address delivered to the Ninth Circuit Judicial Conference at Reno, Nevada, on August 2, 1974. It is reprinted in Federal Judicial Center, Seminars for Newly Appointed United States District Judges 283–93 (1974). While some of his proposals are "hard-nosed" and may be unacceptable to some judges, Judge Solomon provides an invaluable range of approaches for experimentation.

CHAPTER VI

SUPPORTING STAFF

Magistrates

The open-ended language of 28 U.S.C. § 636, the Magistrates Act of 1968, especially in subsection (d), clearly contemplates district courts' innovation and experimentation in assigning tasks to magistrates. In this respect, as in others, the district courts have been innovative indeed. They have expanded the magistrates' duties far beyond the bounds of the former commissioners' jurisdiction and have found distinctive ways to take advantage of this new resource Congress made available, in accordance with the needs and procedures of each court.

The activities that were within the jurisdiction of the former commissioners have comparatively little bearing on the variables for this project (the trial jurisdiction has none at all), so we will not discuss those areas directly. Our interest is limited to new assignments in response to the Magistrates Act.

The commissioner duties affect our concerns in one respect: in Maryland, commissioner duties require so much time that only limited expansion under section 636 has been possible. It seems clear that the commissioner work should be considered in allocating the number of magistrates, as the Administrative Office has urged.

Some districts suffer because magistrate duties are very limited. In more than one instance, courts employ magistrates in whom they have little confidence.

In civil cases, assignments varied according to magistrates' availability as well as to judges' preferences. In Maryland, magistrates were able to provide only limited assistance in some prisoner petitions. With an additional full-time magistrate—there are now four—the Maryland magistrates have provided more help with civil pretrials since the original visit, following a suggestion we made at the time. This assistance has been limited by a corresponding increase in the number of minor and petty offenses handled by the magistrates.

In New Orleans, the judges can assign to magistrates all of their prisoner petitions (a relatively small number) and Social Security appeals for initial review. In addition, some judges delegate to the magistrates nearly all judicial activity before the final pretrial. The magistrates—following the specific instructions of each judge—normally hold a preliminary pretrial shortly after the case is at issue, discussing settlement in a preliminary way and establishing a schedule for discovery, motions, final pretrial, and trial. The judges who use this procedure combine the benefits of several alternative procedures observed in the courts. They are free from time-consuming involvement in the early stages of a case. Yet they have the benefit of an early, low-pressure discussion of settlement possibilities, as well as an early opportunity to establish a tailor-made schedule for preparation of the case. Another benefit is that in settlement negotiations, the magistrate can be freer than a judge, since he will not try the case if negotiations fail.

Similarly, the full-time magistrate in New Mexico handles nearly all pretrial matters for two of the three judges. Those judges have minimal contact with their routine civil docket

except in trial; thus, the majority of civil cases that do not reach trial do not occupy these judges' time. As noted in chapter three, this system is supported by the important fact that the full-time magistrate is an experienced trial lawyer with a sound local reputation.

Civil trials held before magistrates by consent, while not a solution to the general problem of crowded calendars, can solve some specific, important calendaring problems. The number of magistrate trial days in relation to the total number of civil trial days is not large in any court studied in this project. The possibility of sending a case to a magistrate can be important in maintaining the credibility of trial settings, however. Having a magistrate available to try a case when it otherwise might have to be continued permits the judges to schedule an adequate number of trials per week.

This practice was most common in the Eastern District of Louisiana, a district that has fortunately been able to appoint some capable, experienced trial lawyers as magistrates. For example, one of the magistrates serving during our visit is now a United States district judge there. He was replaced as magistrate by the former chief assistant United States attorney.

The magistrate system does not always aid docket control. Reference of civil matters to the magistrate must be closely controlled and monitored. In more than one court, we observed that prisoner petitions sometimes remained before the magistrate for many months and were not subject to the controls applied to other cases. On the other hand, table 5 shows that every court listed handled the median prisoner petition much faster than the median of all civil cases. Eastern Louisiana and Central California, the two courts that sent all prisoner petitions to magistrates during the relevant period, were among the fastest courts in handling prisoner petitions. Nevertheless, occasional mishaps, even in a considerable minority of prisoner petitions, would be consistent with these low median times.

Similar problems appeared in procedures to refer civil matters to magistrates for pretrial. Some judges who did not initiate early pretrials themselves referred all their cases to the magistrates. In many cases, nine months to a year passed before the court took any action in a civil case; it was then referred to a magistrate, who scheduled and held an initial pretrial conference. But some magistrates also have heavy backlogs; sometimes four months would pass before the magistrate reached a case for a pretrial conference. Thus, it could be a year or more before any conference was held, a precondition (in those districts) to any judicial control.

Several judges held that referring civil cases to a magistrate weakens the power of the individual calendar system. This appears to be a personal matter, and one that is remediable, since a number of judges who use magistrates effectively are prominent advocates of the individual calendar system. This evidently is a fruitful area for experimentation by individual judges. New Mexico judges who use the magistrate are able, through their courtroom deputy clerks, to retain overall supervision of cases before the magistrate. The same is true in New Orleans and in other courts.

Magistrates perform a wide variety of duties in criminal litigation, as well, although in Maryland, the magistrate role was also small in this area. At the time of our visit, the magistrates there were not involved in any criminal case duties beyond commissioner work. Again following our suggestion, the Maryland judges have since assigned most arraignments to the magistrates. In chapter 4 under "Management and Scheduling," some innovative magistrate assignments in Northern Alabama, Southern Florida, Massachusetts, and other districts were discussed in some detail. Magistrates in those places have greatly reduced the burden of criminal cases on judges.

The magistrate contribution was substantial nearly everywhere, with one exception: one district visited, where the judges are substantially behind in several respects, has assigned magistrates no significant new duties at all under section 636. Several areas appeared to present

obvious opportunities for magistrate assistance, but the judges lack confidence in any magistrate now on the staff to handle the more sensitive duties permitted under section 636. This deplorable situation in effect places a large and unnecessary additional burden on the judges of that court. Since both the Judicial Conference of the United States and Congress apply as uniform a standard as possible in evaluating requests for additional judges, this troubled district is not likely to obtain significant permanent assistance from any source.

Clearly, the magistrate system has been greatly beneficial to some courts. There appear to be three necessary conditions to successful procedures in this area, however. First, a court must attract highly competent, respected lawyers to magistrate positions. We know of no position in the federal courts that is staffed by individuals with a wider range of competence than United States magistrate. Second, judges must closely monitor reference of cases to magistrates, to assure that the magistrates themselves do not become a source of delay. This can occur either because the magistrate has a backlog of his own or because of a poor system for routing papers between judge and magistrate. Third, it must be clear that a magistrate function serves a real need. For example, we would not want to see the magistrates in Los Angeles or Miami involved in civil pretrials to any great extent, because those districts' systems work well with little or no judicial involvement of any kind in the early stages of civil cases. Magistrate assignments should clearly promise to save judge time. Magistrates should not hold conferences for which there is no more than a vague hope that something useful may be accomplished. Magistrates also should not hear motions that are likely to be appealed, especially dispositive motions, motions to suppress, and the like.

Law Clerks

Law clerk duties vary widely among districts as the needs and approaches of judges vary. The only constant factor we observed was that law clerks in every instance had initial responsibility for the motion practice. Even there, duties depended on the procedures of the court. An especially effective job for law clerks was working up a tentative ruling in preparation for "motions day." Especially in New Orleans and Los Angeles, many judges were able to prepare themselves, with the assistance of their law clerks, to the extent that they often seemed to know more than the attorneys did about the case at hand when the case came to hearing. Law clerk assistance was often described as indispensable in achieving a degree of preparation sufficient for the judge to rule from the bench in most cases. In Los Angeles, this assistance was the primary law clerk responsibility. In Philadelphia, quite by contrast, most law clerk time was devoted to drafting, preparing, and editing opinions.

There was no pattern in law clerks' term of service, despite the strong views many judges hold on this question. All law clerks in Baltimore serve for only a single year, a system that seems to work effectively despite strong objections to it elsewhere. A few judges in other courts have one permanent law clerk and one law clerk position that is rotated, while most law clerks serve staggered two-year terms. In Los Angeles, on the other hand, most of the judges employ a permanent, nonlawyer bailiff and a law clerk (for either a one- or two-year term). In many courts, having a bailiff instead of a clerk would weaken the judge seriously. Los Angeles judges, however, write sufficiently few published opinions that we observed no such difficulties.

Court Reporters

All the courts we visited assign one reporter permanently to each judge. The great majority of judges we interviewed spoke highly of the court reporting service available to them, referring both to their own court reporters and to the system as a whole. Of course, the main "consumer" of court reporting service is the court of appeals, so there may be difficulties that were not apparent in our visits to district courts.

Improvement seems needed in some courts in two areas. First, some judges observed that the court reporters were reluctant to substitute for each other in case of illness or backlog difficulties. Another aspect of the same problem is that some magistrates were unable to get court reporter assistance when needed. Evidently, strong control must be exercised to assure that court reporters are available when needed.

Some districts, particularly Maryland and Eastern Louisiana, control court reporter assignments well, permitting coverage as needed. Both of these districts have a chief court reporter who is aware of his colleagues' schedules and the demands on their time. Both districts seem to have been remarkably successful in assuring court reporter coverage of all proceedings, despite particularly heavy trial loads.

There were also some observations that court reporters were not always as highly qualified as the court should expect. Maryland seems to have the most effective approach in this area also. Court reporter recruitment there is tightly controlled by a series of examinations under the clerk's supervision. Only when a candidate has been approved through this process may he be appointed by a judge. This permits an independent evaluation of the reporter's technical skills, something many courts do not require.

Clerk's Office—General

District court clerks' offices differ greatly in their structure, management, organization, and manner of functioning. Responding to local needs and traditions, and the skills of the personnel involved, they have developed in diverse directions. Systematic evaluation of the different approaches would justify a separate, large-scale study. At the outset of this project, we intended to devote substantial effort to this area. We modified our plan because our preliminary work indicated that differences in district court clerks' offices functions do not explain much of the difference in our central variables.

This conclusion was forced upon us primarily by our observations in Maryland, where the clerk's office functions well in all respects we could examine, but the court's statistical performance is below average in several respects, or was at the time. Concluding that the explanation for statistical differences must lie elsewhere, in subsequent court visits we limited our observations to exceptional situations or problems as they were brought to our attention in more general discussions. We did not, for example, obtain the information necessary to compare quantitatively the district courts' recruitment and promotion practices. The list of questions in appendix A concerning the clerk's office indicates our interests, but we did not compile exhaustive data on each point.

A clerk of court who fills a comprehensive role as court administrator can strengthen almost every aspect of the court's operation.

The importance of the clerk's duties varies widely. The office is pivotal in some instances, marginal in others. In the former case, the clerk is a court administrator, a nerve center for the diverse and sometimes conflicting offices and agencies that make up what sometimes is optimistically called the "court family." In the latter instance, the clerk's work is limited to supervision of his own office, transmitting directions of the court. The activities characteristic of clerks who play a pivotal role are summarized well in a statement prepared in 1974 by Paul Schlitz, clerk of the District of Maryland:

> The Clerk must serve as Court Administrator and as manager of his office. Since the former function requires priority, the latter function should be delegated partially or totally to the Chief Deputy Clerk.
>
> As Court Administrator the Clerk serves as the executive officer of the court and upon his own initiative, pursuant of the directives of the court, should plan, execute and review nonjudicial court operations. This may include the employment and supervision of court reporters, coordinating operations with the United States Attorney, United States Marshal, Chief Probation Officer, United States Magistrates

> and [bankruptcy referees] and other government agencies. He should serve as secretary of bench meetings and bring to the attention of the court all administrative matters that require prompt consideration and decisions. He should serve the court in a staff capacity to obtain information, conduct studies, and provide whatever information the court requires to study and solve administrative problems.

A clerk who acts in this capacity fills a void, and the court may suffer if there is no one to provide the kinds of coordination Mr. Schlitz mentions. Although United States district courts are not large in comparison to either large state courts or large federal agencies, they are structually complex and may easily be crippled by lack of central direction or coordination. In this sense, the small courts are as complex as the large ones: the operations of every district, whatever the district's size, are affected by essentially the same number of agencies. In general, the smaller courts we visited benefitted from particularly effective and comprehensive clerk support. Of course, the clerk in a small court typically has minimal staff assistance.

The relevant agencies are independent of one another to various degrees. Fortunately, federal courts are spared the special difficulties characteristic of some state systems, where many agency heads are elected separately and may have separate political power bases. Though the various administrative heads do not have this kind of independent power within the federal system, they occasionally seem to behave as though they do. By tradition and statute, of course, the chief judge is responsible for coordination, but he has other concerns, to say the least. The clerk is usually the individual best able to serve as full-time administrative head of court operations, under the judges' direction.

The various functions of clerks in their court administrator role are necessarily intermittent; they are best presented simply by listing several areas in which clerks have been especially effective in the courts we observed.

—Several clerks have become experts in courtroom and courthouse design, supporting committees working on a new building. They (or sometimes members of their staffs) have made surveys of possibilities and needs regarding almost every relevant problem. These include courtroom layout, office and courtroom furnishings, security (in courtrooms, halls, chambers, offices), general floor plan, lighting in each part of the building, power supply (placement of outlets), keying and locks, and so on.

—The clerk is often called upon to draft proposals to amend the local rules or one of the various plans in effect (for instance, Criminal Justice Act, Jury Selection, and Speedy Trial). Typically, the judges may agree that a rule should be amended to address a certain problem, and ask the clerk to draft language that would accomplish their purpose.

—Clerks have conducted studies of court operations at the request of judges. Examples are studies of juror utilization, space utilization, and alternative local rules in use in other courts.

—The clerk places before the appropriate bench committee or the full bench any problems that come to his attention, assuring the court adequate warning before new problems grow beyond solution.

In more than one instance, we feel courts do not have available, through their clerks, the assistance they need and deserve. This appears to be partly a result of the fact that judges have not requested assistance of the type described. Some judges view the clerk as only an office manager. Few districts we visited are mismanaged in any respect touched on here, but we feel that expanded responsibilities for the clerk could help in some areas. In several districts, the judges themselves spend a good deal of time on administrative matters that could readily be delegated to the clerk and his staff. In others, communication among the "court family" is less open than it might be if the clerk served as a recognized conduit for the exchange of information and concerns. Finally, in courts with relatively poor communication among the judges in administrative matters, the clerk can help

defuse some matters of controversy. Proposals that originate in the clerk's office in response to recognized problems may be less explosive than similar proposals devised by any individual judge or group of judges.

Generally, clerks of court in the courts we visited have full powers to recruit and promote deputy clerks according to standards they maintain. We did encounter some unfortunate exceptions, however. In one court, the courtroom deputy clerks have normally been recruited by the judge and are responsible only to him. Some recent appointments included individuals with no previous court experience, who knew little about the general responsibilities of the office. Some of these people, in fact, are excellent courtroom deputies from the judge's point of view. Nevertheless, they are often wholly unresponsive to the needs of the clerk's office.

Since the courtroom deputies are the source of most information included in dockets, as well as many of the orders dispatched over the signature of the clerk, poor communication between courtroom deputy clerks and the rest of the office can have a disastrous effect, not only on court records but also on orders and judgments. Fortunately, we are aware of no more than a few instances in which recruitment by others than the clerk has resulted in hiring individuals who are poorly qualified for court work.

Less fortunately, judge recruitment of courtroom deputies has led, in a larger number of instances, to poor communication between the courtroom and the clerk's office. There is a wide difference in the quality of the records maintained by these courts. Most generally maintain excellent records. Three courts have serious, recurring problems, however. Two of these have perhaps the least clerk control of courtroom deputy positions among the courts we visited.

By contrast, courts with well-maintained records generally have a strict policy of recruitment from within for courtroom vacancies. This policy also has a favorable effect on morale and on the incentive structure of the office. The entire office can benefit if all deputy clerks know that promotion to the position of courtroom deputy is open to them.

Although courtroom deputy clerks must be responsive to direction from the clerk, they should not necessarily spend much time assisting with general tasks in the clerk's office. Full docket and calendar responsibilties are a full-time job, requiring considerable experience and discretion (see the following section). A courtroom deputy who is so busy filing that he is diverted from docket control work poorly serves the court. The most effective deputies are available to perform occasional special assignments for the clerk and are responsive to the needs of the office in their own work, but devote their primary efforts to managing the judge's case load and handling related paperwork.

The six metropolitan clerk's offices differ greatly in their organization. Central California has perhaps the most "industrial" pattern of office organization: strict specialization of function and a clearly defined hierarchy. At the other extreme, Eastern Louisiana uses what has been called the "team" approach. Each judge there is supported by a courtroom deputy and a docket clerk who work together on all clerical matters involving his cases, including appeals. Both of these models have their champions and their detractors. Some consider the "industrial" pattern to be a throwback to the master calendar system, incompatible with effective case management support for each judge. Others feel the "team" system is incompatible with adequate control by the clerk of courtroom deputy functions and activities. Having observed the two courts mentioned, we concluded that either type of organization can be made to work extremely well. A clerk who is aware of the dangers of either approach can forestall them. We would make one observation in this area: we have doubts concerning the practice of installing a courtroom deputy in the judge's chambers. The courts that did so seemed to suffer substantially as a result: courtroom deputies were not responsive to the needs of the clerk's office (especially the docketing section) and minute orders were often late, incomplete, or misleading.

Clerk's Office—Courtroom Deputies

An effective system to train and supervise courtroom deputy clerks in case management has numerous benefits.

The responsibilities of the courtroom deputies we observed varied from only filing, at one extreme, to full calendar responsibility, at the other. Judges who did not use their courtroom deputy clerks for case management often were able to get satisfactory assistance from their law clerks or their secretaries, which indicates that an effective system to recruit and train courtroom deputies is not necessary for effective case management. It does appear desirable, however: courts in which courtroom deputies managed the cases generally functioned better, according to our observations, than courts otherwise organized.

It is the courtroom deputy who, under current procedures, receives compensation reflecting these important responsibilties. In one district where the courtroom deputies had minimal case management responsibilities, there was widespread dissatisfaction among secretaries and other deputy clerks over the high pay awarded the courtroom deputies. This dissatisfaction was clearly justified in terms of the relative responsibility of the people involved. In addition, secretaries and law clerks have their own responsibilities, which often suffer if the secretaries or clerks are diverted to manage the docket. Law clerks are also a doubtful choice for case management because they are short-term employees. Finally, courts that have achieved outstanding recruitment, training, and supervision of courtroom deputy clerks have developed a high degree of professional communication and exchange among the courtroom deputies, which permits the deputies to reinforce and assist one another. This is less possible for personnel whose responsibilties are strictly limited to a judge's chambers.

The Central District of California has a highly developed system for recruiting, training, and deploying courtroom deputy clerks. All recently appointed court clerks were drawn from existing staff of the clerk's office. It is especially clear there that this practice assures an attractive promotional ladder within the office. It is interesting to note that in Los Angeles, a city with relatively high salaries and cost of living, where the federal court might be expected to suffer in its attempts to recruit high-quality personnel at competitive salaries, turnover in the clerk's office has not been a serious problem.

The Director of Courtroom Services, one of four directors of divisions in the clerk's office at the time of our visit, supervises the court clerks. Candidates are selected by examination; judge recommendations are advisory only. All candidates participate in a training program that includes supervised experience in the courtroom and substantial service as a relief courtroom deputy. There are also role-playing exercises among the clerk's office staff to explore ways to handle problem situations. Thus, when a vacancy occurs for a courtroom deputy, the judge normally has a choice between two or more experienced, trained deputies. With few exceptions, the court now seems to have high-quality court clerks who are fully capable of handling various docket control responsibilities.

Within the federal court system, there is a great deal of discussion about the difficulty of achieving the proper balance between the respective demands of judges and the clerk upon the courtroom deputies. While no one would deny that it is difficult to strike this balance successfully, it can be done. In most of the courts we visited, the balance seems to be almost ideal. Judges receive the assistance they request and require, yet it is understood, and was often expressed to us, that "the deputy works for the clerk." As one supervisor observed, the courtroom deputies have an independent, semi-professional status as a result of their responsibilities to the clerk. They seem able to meet both sets of responsibilities without particular conflict. Control of clerks is not as difficult to as-

sert as some believe. Most courtroom deputy clerks will probably work for the court longer than the judge to whom they are assigned, because they generally are younger and less professionally mobile. A strong clerk can use that fact to assure that courtroom deputies remain responsive to him, as well as to the judge.

Findings

—Although most magistrates are highly talented and experienced, a number of courts employ United States magistrates in whom they have limited confidence. More than one court has suffered substantially as a result.

—Some courts should consider increasing the matters referred to magistrates. Recommended possibilities appear elsewhere in this report.

Observations

—All procedures to refer matters to magistrates should be monitored closely.

—Court reporters should be expected to substitute for each other in case of absence for any reason, as well as to handle matters for magistrates as necessary.

—Court reporter recruitment should be systematized, possibly under the direction of the clerk.

—Some courts should increase the management and coordination responsibilities delegated to the clerk.

—Recruitment and training of courtroom deputy clerks should, in nearly all instances, be under the direction of the clerk, with the judge selecting his deputy from candidates provided by the clerk.

—Courtroom deputy clerks should be located together, in offices furnished by the clerk.

CHAPTER VII

SOME CONCLUDING PERSPECTIVES

Quantity, Quality, and Speed

During our visits, several judges questioned our concern with the speed of case disposition and the volume of cases judges handle. In their view, there is excessive concern in Washington with speed and efficiency. They feel that the Center is encouraging judges to sacrifice justice on the altar of case management. This matter is an issue of great concern in this project. We determined at an early stage that we would make no recommendations from this project unless they appeared consistent with a high quality of justice.

Little evidence has emerged in this project to confirm the existence of a conflict between speed and quality.

The issue is a difficult one to address. As several judges observed, quantity is much easier to measure than quality. Beyond that, no staff member on this project could be considered qualified to attempt a comprehensive evaluation of the quality of justice rendered in the several courts we observed. That evaluation is a task well left to others, though scrutiny from any source is limited. The courts of appeal scrutinize trial courts to a degree, but their purview is limited to appealable judgments, a small part of the work of trial courts even if all judgments were actually appealed. The judicial councils and the bar both attempt a degree of supervision, but their powers and opportunities are limited.

Our concern here is not with substantive decisions directly but with specific procedures and actions that some judges consider inconsistent with a high quality of justice. We conducted a preliminary inquiry that we feel is partially responsive to the quantity versus quality issue. We met at length—in return visits—with six judges who had expressed special concern with this issue. We explored many aspects of the question with them, and asked them to describe precisely what a court would look like, or how it would behave, if it were sacrificing justice to speed and efficiency. There was no difficulty in obtaining useful responses to this question: each judge recounted "horror stories" he felt would result from pressure to "perform" in a statistical sense.

Armed with these responses, we examined our notes, detailed observations of the five courts visited in the project's first phase, to consider whether the abuses described by the six judges are more characteristic of the fast or the efficient courts than of the others. The answer, simply, is that they are not. With few exceptions, the "horror stories" concerned only the period just before trial. Pressured judges, as described in these discussions, are judges who insist on a headlong rush to trial over any and all obstacles. If late discovery shows that a new witness or a new party should be included, that is not permitted. Or if a conflict makes it impossible for the attorney who prepared the case to appear, he is forced to turn the trial over to an inexperienced associate. If litigants request a delay pending completion of related state court proceedings, the delay is denied, requiring two expensive trials on the same issues.

There were other examples. It is interesting to note, however, that nearly all are instances

of essentially the same issue: failure to grant a trial continuance for good cause. The findings listed in "Summary and Recommendations" are consistent with occasional trial continuances resulting from new problems that arise at the end of discovery. A court that has established a procedure to assure that case preparation begins early and is completed early, with minimal intervention by the judge, will have no difficulty maintaining an excellent statistical "portrait," even if it is relatively permissive in granting trial continuances for substantive reasons. Cases that reach trial are a small portion of the total number of cases in any district court. Cases in which some unforeseen crisis develops at the end of discovery are a fraction of that portion of the total. Many continuances for good cause could be granted in those few cases without noticeable effect on the variables that define this project.

The judges' concern with preparation of tried cases does beg some important questions that we have not addressed. Are lawyers and litigants being forced into unfavorable settlements? What about the trials themselves? Do fast courts discourage or prohibit cross-examination that might be fruitful? We have not been able to devise useful ways to address these questions. Evaluating the quality of settlements is an especially difficult problem. In one sense, every settlement must be the best possible result since all participants agreed to it. In another sense, it is trivial to regard settlements that way: rather, one must evaluate the litigants' alternatives. We do not expect ever to be able to conduct a precise inquiry that would include that evaluation.

Another index of quality the judges mentioned is the preparation and quality of written opinions. We have no basis on which to assert confidently any specific relationship between opinions and quality. We can observe, however, that lawyers in districts where written opinions are rare were almost always puzzled when we inquired whether they felt the court prepared too few opinions. While they generally agreed that written opinions are rare in their districts, they did not feel deprived in any way.

As a follow-up to the data in chapter five on published opinions, we plan further analysis to determine the extent to which published opinions actually break new legal ground. Some Philadelphia judges asserted that the district's published opinions are its major contribution to the law. If this is true, we would expect that the many opinions published in that district would be cited elsewhere at a rate at least equal (per opinion) to the rate at which the fewer opinions of other districts are cited. We are now testing this proposition. If it is supported, it would substantiate the view of Philadelphia judges that their high rates of opinion writing are justified by the legal importance of the cases and issues involved.

Many lawyers feel that tight schedules are incompatible with the highest quality justice because lawyers cannot prepare their cases properly. It can hardly be denied that deadlines sometimes prevent lawyers from completing an important task, or one that seemed important at the time. Data in chapter three (especially table 11), however, strongly suggest that a great deal of the time during which most cases are pending is essentially lost. The lawyers undoubtedly are busy, but they are busy on other cases. Our meetings with lawyers indicate that there is less of a subjective sense of pressure among lawyers in relatively speedy courts like Southern Florida and Central California than in somewhat slower courts like Eastern Pennsylvania. Apparently lawyers can accommodate exacting case management by the court, perhaps by hiring more associates or turning away more cases.

On the other hand, there is a close positive relationship between speed and quality. As everyone knows, witnesses die and memories dim with the passage of time. If a plaintiff is entitled to relief, justice demands that it be granted as early as practicable. If a defendant is threatened with a loss, the threat should be either realized or eliminated. All indications are that many months are lost in most civil

cases to no apparent purpose. Further, there is a cumulative effect.

> [D]elay begets delay. . . . [A] backlogged docket operates until a witness is unavailable, preliminary objections postpone until plaintiff is gone to the service, a tardy reporter waits with the notes of testimony until a case is stale and the attorney too busy. Procrastination repeatedly reproduces in kind. Like a series of generations carrying on in sequence, the force of one brought into being as the force of another subsides, the causes of delay combine to the injury of litigants.[1]

Finally, a compelling argument can be made that expeditious preparation of a case is an effective way to control the cost of litigation. Judge J. Lawrence King of the Southern District of Florida feels that litigation cost is generally proportionate to litigation time. In his view, court imposition of deadlines requires the lawyers to choose between essential and nonessential lines of preparation. In the absence of a deadline, a lawyer can (and possibly should) pursue every possibility, no matter how remote. Also, delay leads to increased cost by requiring lawyers to reopen files repeatedly to refresh their memories.

Bar Practices

It is widely asserted that differences in the practices and work habits of the bar in different districts both explain many of the differences in the ways the courts operate and limit the possibility of change. Obviously, bar practices are so closely linked to court process that one cannot discuss one without discussing the other. Most of the data in this report deal simultaneously with court and bar activity. Judges see their bar as an important limiting factor when they consider changes in court operation. A common response to proposals for change is "our bar would never put up with that."

There are many instances in recent years, however, in which it has been proved that bar procedures can be manipulated by a United States district court. We hope to be able to monitor some pilot projects that would measure the effects of changes involving bar practices. In any case, there are enough instances of bar practices having been fundamentally changed due to court initiatives that we doubt the proposition that a bar cannot accept basic change. Districts whose procedures are both demanding on the bar and highly expeditious for case management did not achieve that result by accident, but rather through court policy over a period of years. When one visits any court with very effective procedures, those procedures are generally traced—both by court personnel and by the bar—to practices and traditions established by certain dominant individuals, usually judges.

Variables in bar practice that affect court business include:

—**The time interval** from the incident on which litigation is based until the date a suit is filed. Preliminary data show wide variation that may or may not be due to differences in case mix and in relevant state statutes of limitations. Many people think this time interval is heavily governed by lawyer perceptions of the probability of immediate court action. If lawyers expect a court to require speedy completion of discovery, pllaintiffs may delay filing until their case is ready, or nearly so.

—**Choice of forum questions.** Because federal jurisdiction is limited and overlapping, a district court's work load depends heavily on the circumstances under which local lawyers choose to bring suits in federal court. This is true not only of civil cases but also—indirectly—of criminal cases, because many federal cases could be prosecuted by state authorities. United States attorneys prosecute various kinds of cases at different rates, depending on their views concerning current needs, the relationship of federal to state resources, their perceptions of possible problems in the state law enforcement mechanisms, their interpretations of Justice Department policy, pressures from en-

[1] A. L. Levin & E. A. Woolley, Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania 3 (1961).

forcement agencies, and, of course, differences in the rates at which various federal crimes are actually committed in the districts. There are any number of variables that enter the choice-of-forum decision in civil cases. These include the different populations from which juries may be selected in federal and state courts, perceptions that either federal or state rules may be more favorable to particular categories of cases, and differences in state substantive law.

Pleadings practice (see the pleadings section of chapter three). In many districts, attorneys rarely move for default judgments when their adversaries fail to file answers on time. We have been told that to do so is considered ungentlemanly. In other districts, these motions are not infrequent. In some districts, and in state practice in the states they serve, it is routine for a defendant to file, before the day the answer is due, a motion to dismiss for failure to state a claim or some other 12(b) motion. These motions may extend indefinitely the time within which the answer must be filed.

—**Settlement patterns.** In some courts, attorneys appear to avoid discussing settlement directly, and will do so only when encouraged by the judge, usually in the judge's chambers. In others, as observed in the settlement section of chapter three, the judge is practically never involved in settlement discussions, which take place without the court's assistance.

—**Contentiousness.** In some courts, attorneys are said to rely on the court to assist in the resolution of every issue that divides them. In others, many difficult issues are resolved between attorneys during discovery and during preparation of a pretrial order. One attorney made a particularly noteworthy comment in describing his occasional practice in a distant low-volume federal court. In his discussions with his adversaries, he was surprised at their habit of saying, when a difficult issue arose, "that should wait until we meet with the judge."

Trial practice. Lawyers in some courts appear to present more repetitious testimony than their counterparts do—or are permitted to do—in other courts. There are also differences in many other aspects of trial work. These include different rates of objections, leading to many or few bench conferences, differences in time required for closing arguments, and so on.

These differences are important, and are certainly striking in any comparison of districts. They somewhat limit the possibility of change in many districts, and they greatly affect a district's statistical performance. On the other hand, many courts have successfully effected basic changes in the practice of law in their courts. We hope to evaluate future efforts, adding to the available knowledge in this area. For the present, we can only point out that past successful reforms belie the assumption that "our bar would never stand for that."

Statistics

Most performance measures applied to courts are sometimes misleading or unfair. For this reason they should be used with care. The conclusion sometimes drawn, that performance measures should be abandoned, is unwarranted.

The United States district courts present extraordinary obstacles to any effort to measure their work in a manner that is consistently fair and useful. The courts differ greatly from one another, they are remarkably subject to external influences over which they have little control, and their environment often changes rapidly. Any application of a quantitative measure to any court is probably unfair and misleading in certain respects. This might be nearly as true of any improved measure yet to be designed as it is of measures in use now.

Nonetheless, it would be absurd to insist that no quantitative measures be used. Decisions on allocation of judges, supporting personnel, and other resources could not be made sensibly without quantitative measures. Similarly, the quantitative measures now in use disclose such wide differences among the courts that it would be unpardonable to ignore their implications simply because the measures might be somewhat misleading. Not only is this project based on

that proposition, so also are any decisions made by judges and supporting personnel about choices among alternative procedures. One purpose of this project is to generate ideas that may lead to some refined measures of district court work load, resources, and performance. Although most concrete proposals will be made only in the future, it may be useful at this point to set down some observations that have emerged thus far concerning various statistical measures.

The central difficulty in measuring the work of a district court is that there is no accepted measure of work load. The starting point, of course, is the number of cases filed per year. Unfortunately, cases differ from one another and no one would claim that all filings are equivalent. The obvious refinement is to use the case categories that are established at filing. Unfortunately, cases *within* a given category (motor vehicle personal injury, private civil antitrust, and so on) vary almost as much as do cases across all categories. More unfortunately yet, the difficulties presented by cases in a given category vary greatly among districts, due to differences in bar practices, court practices, and the substantive difficulty of the cases themselves. Still, none of this would present any problem if the differences were sufficiently uniform that they cancelled one another out. Unfortunately they do not appear to be uniform among districts, as is suggested by the difficulty we have had in explaining the relatively unimpressive statistics of the District of Maryland, especially through fiscal 1975. We are left with the conviction that there is a combination of factors in the cases in that district that cuts across case categories, and makes the cases there more demanding, on average, than their counterparts elsewhere. A similar pattern may prevail in Eastern Pennsylvania and other districts. We hope a revision of the case weight system, now underway, may identify factors that have this type of effect.

The only comprehensive attempt to measure the relative difficulty of districts' case loads is the system of case weights now in use. (This system has counterparts in several state systems, though they differ substantially.) The system is based on the Federal Judicial Center's *District Court Time Study* (1971), which measured the actual hours judges expended on cases (grouped by case category), and calculated a weight for each category reflecting differences in judge time per case. A case category that required average judge time was given a weight of 1.0; one requiring twice the average judge time, 2.0; one requiring half the average, 0.5, and so on.

This system, at best, can identify differences among districts only if those differences result from unusual concentrations of certain types of cases. An unusual concentration of effort or time expended on an average number of cases in a category would not be reflected. Whether for this or for some other reason, there is remarkably little difference between raw case data and weighted case data (using the current system).[2]

The statistical profiles in appendix B show the disappointing results of this phenomenon. For example, Maryland in 1975 had 361 filings per judgeship and 377 weighted filings per judgeship. This slight difference is all the system of weights produced to demonstrate a pattern of especially difficult cases, a pattern that appears from observation to impose large and unusual burdens.

The weighted filings figures are so similar to their raw filings counterparts that they are essentially useless for policy purposes. We have found more useful a ranking of weighted filings divided by raw filings, as a kind of index of case difficulty. This index gives some feel for relative case load difficulty. If one assumes that the weighting system does reflect relative difficulty, but does so within too small a range of difference, this ranking provides a rough guide to the kind of adjustment one might wish the system made directly. Table 30 shows weighted filings per raw filing over a six-year period.

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[2] The correlation between raw and weighted filings has never been below 0.90 for any recent year; it has run as high as 0.98.

TABLE 30

Weighted Filings per Raw Filing

	1976	1975	1974	1973	1972	1971
PA/E	1.12	1.07	1.06	1.07	1.00	1.02
FL/S	1.07	1.02	.96	.94	.99	.98
CA/C	1.04	1.06	1.05	1.03	1.02	1.02
MD	.96	1.04	1.02	1.01	.92	.87
MA	.84	.84	.78	.80	.85	.83
LA/E	.84	.82	.78	.75	.76	.79
WI/E	1.06	1.12	1.07	1.07	1.02	.97
NM	1.03	1.03	1.00	1.00	.93	.92
AL/N	1.01	1.04	1.03	1.04	1.01	1.05
KY/E	.87	.91	.95	.96	.94	.88
All districts	1.00	1.00	.98	.97	.92	.90

Notably, Eastern Pennsylvania has the most difficult case load by this measure, a finding that confirms what several judges observed. The Maryland figures dropped substantially between 1975 and 1976, primarily due to the redefinition of minor offense criminal cases, especially numerous in Maryland, which were not included in these figures before fiscal 1976. Massachusetts and Eastern Louisiana appear to have much less difficult case loads. If this measure is taken to be an index of case difficulty, these figures may explain part of Eastern Louisiana's success in achieving very high rates of terminations per judge without abnormally long disposition times.[3]

Another difficulty in measuring district court work load lies in the fact that figures for filings per year measure, in effect, both input and output. Thus it is difficult to measure productivity; in this report, the word "productivity" generally appears in quotation marks. Though it may sound trivial to report this fact, it is in fact significant that the number of terminations is very closely tied to filings, both in comparing different courts in a given year and in observing any court or group of courts over several years. One interpretation that has been made of this fact—it is not made here—is that there is a great deal of slack in the system. It might appear that courts will terminate more cases if they are offered more cases for termination. According to this hypothesis it would be nonsense to consider the number of terminations per year to be a measure of productivity. If courts simply terminate the cases that are filed, and they have no control over the number of filings, the number of terminations is entirely beyond their control.

The first element of this notion is belied by the experience of districts like Maryland and Eastern Pennsylvania, which have relatively few filings and terminations but are working near their apparent capacity. Especially in Maryland, there does not seem to be any excess capacity that could absorb increased filings. Some increase, of course, could be absorbed in the way that is always available: cases will eventually settle if they are permitted to remain on the docket long enough. The high termination rate in Massachusetts appears to be a result of this fact, combined with a large number of ICC cases.

The difficulty of measuring the work load of the clerk's office is especially great. As noted in chapter six, we abandoned hope of explaining differences in clerk's office productivity by reference to clerk's office procedures. The productivity of a clerk's office is tied directly to the productivity of the court (which itself is affected by several uncontrollable factors). For this reason, it appears that the system must permit considerable flexibility in staffing clerks' offices.

Also difficult to measure are resources, especially the single resource on which so much in the judiciary depends: the number of judges. In our evaluation of the districts we resorted to the simple number of judgeships as the prime measure of "judge power," despite the fact that this number does not include the contributions of senior judges or visiting judges, nor does it account for vacancies or for visits by judges to other districts. Data are available to estimate all these factors. There is no satisfactory way, however, to standardize a measure of the contribution a judge makes.

Each of the possible approaches presents its own difficulties. One could, for example, create

[3] A striking implication of table 30 (one not examined in this project) is the strong evidence in the bottom line that the case load of all district courts is rapidly becoming more difficult.

an index to adjust for senior and visiting judges, based on the number of cases terminated by judges actually in a particular district. This adjustment could easily produce results that would be badly distorted by the specialized assignments senior and visiting judges often take. For example, a usual assignment for these judges is to handle only trials, sometimes a single lengthy trial. Any index based on terminations would understate the judge power of a district that assigned senior and visiting judges in that way. An index based on trial days, on the other hand, would overstate the contribution of judges assigned in this way, but possibly understate the contribution of judges assigned in some other way.

There are also sound data on the number of months of vacant judgeships a district has experienced during a year. This figure is more usable. We could not justify introducing an adjustment for vacancies when we could not adjust for the contribution of senior and visiting judges; we concluded that the standard measure of judgeships was as satisfactory as anything we could devise.

Another variable that is extremely difficult to measure is "backlog." The standard measure of backlog in the federal system is simply the number of cases pending, a figure that is seriously misleading, though no more so than the most common alternatives. A case enters this pejorative category the day it is filed, and is no different and makes no greater contribution to backlog in this sense when it has been on the docket for five years. If backlog is to be discussed intelligently, there must be a measure that distinguishes between cases that are proceeding rapidly to termination and cases that are not.

Another difficulty with the equivalence of "pending" to "backlog" is that the number of pending cases increases as the system expands. Even if a court were operating in a way that could be independently determined to be optimal, and yet the number of cases filed increased from year to year, there would be an annual increase in the number of pending cases proportionate to the increase in filing, if all else remained the same. It would be odd to describe this situation as an increase in backlog.

Finally, a difficulty results from the fact that the amount of time a case is on the docket depends on a judge's philosophy of case management. A judge who manages his cases in a way that leads to an average disposition time of six months will have one-third fewer pending cases than a judge whose procedures lead to a nine-month disposition time, if their rates of cases filed are similar. Both judges could be "current" in two senses: they could try any case ready for trial, and they might move all their cases at a rate they considered desirable and appropriate. If "backlog" is equivalent to pending cases, however, the former judge has a smaller backlog.

That conclusion does not easily accord with the reality of the situation, and can only be reconciled if it were always desirable (to the extent that reducing backlog is desirable) for a judge to have the fastest possible mean disposition time. Few would insist that faster is *always* better. Chapter three of this report certainly suggests that many courts might well speed their treatment of most civil cases. We do not at all suggest that all courts should move faster no matter how fast they may proceed already.

We propose greater use of two alternative measures of backlog. One is the ratio of pending cases to terminations. An increase in this ratio indicates that a court is falling behind by its own standard: its past tempo in disposing of cases. Another measure is the number of civil cases pending that are at least three years old. The Judicial Conference of the United States has determined such cases are unacceptably delayed and constitute a judicial emergency. This measure is currently published. As shown in appendix B, it appears in *Management Statistics for United States Courts*, both in absolute numbers and as a percentage of all pending civil cases.

Our calculation of the relation of pending cases to terminations can be described as an Inventory Control Index. This is the number of cases pending at the end of a year, divided by

the number of cases terminated per month during that year. The result is the number of months it would take for the court to handle its pending case load at present rates (if cases to be filed in the future are not considered). The measure is appealing in two respects. First, it provides an assessment of a court's capacity to handle new cases. Second, increases in this index from year to year would show that a court is falling behind by the standard of its past tempo for moving cases.

Our preliminary work suggests that the Inventory Control Index may operate as a kind of leading indicator. Changes in the index often precede, by two or three years, similar changes in case disposition. Table 31 shows that the first five courts visited (the first five in the table) all had index figures better than the national average (the bottom line of the table) in fiscal 1974, the year our visits began. This is true despite the fact that we chose to study Maryland and Eastern Pennsylvania because of their relatively poor performance by other measures, especially median time for civil and criminal terminations. In fact, reference to appendix B shows that both courts experienced considerable improvement in the years immediately following.

TABLE 31

Inventory Control Index

(In months)

	1976	1975	1974	1973	1972	1971
FL/S	6.8	7.6	6.0	5.4	4.8	8.1
MD	10.1	9.9	10.0	9.1	10.2	14.1
PA/E	10.9	10.9	10.9	12.2	14.0	16.3
CA/C	11.2	10.0	10.8	10.0	8.4	9.5
LA/E	15.2	12.5	10.8	9.5	12.0	15.1
MA	36.5	32.9	34.5	39.8	21.1	17.7
NM	6.7	7.2	7.5	6.7	6.9	6.0
AL/N	8.9	8.3	7.6	8.9	8.9	10.3
WI/E	16.1	15.8	17.2	15.2	13.4	12.3
KY/E	24.5	16.6	10.7	13.6	17.7	13.2
All districts	12.5	11.5	11.2	10.6	10.6	11.8

NOTE: These figures result from dividing the number of cases pending at the end of each fiscal year by the number of cases terminated per month that year.

The Inventory Control Index also identifies some courts with substantial and increasing backlogs, which conventional measures failed to do for purposes of this project. We were surprised that none of the first five courts we visited had an unmanageable backlog in any subjective sense: that is, many cases awaiting court attention at any or all stages. Rather, the wide differences in their times from filing to termination apparently reflect differences in the courts' insistence on expeditious preparation of a case for trial or other disposition.

These differences are real and important. It would also be useful, however, to have a measure to distinguish between courts with many cases awaiting court action, and courts without such an accumulation. The Inventory Control Index may measure this indirectly. It is the only measure we have found by which all five of the courts we studied initially have been ranked statistically superior to the national average. On the other hand, when we added the Inventory Control Index to other measures used, we identified a group of additional courts with obvious backlogs in several senses.

The index reflects well some other changes that have occurred in courts' statistical profiles. The "All districts" line in table 31 indicates the impact of judgeship bills that have been enacted and judgeship bills deferred. A major judgeship bill was enacted in 1971, creating sixty-one new judgeships. This 18 percent increase in judges is associated with a significant drop in the index in 1972 and succeeding years.[4] Since 1972, there has been a steady rise, showing the judges' plight in handling rapidly increasing demands, with no additional judgeships created. The sudden increase in the index for Eastern Louisiana in 1976 reflects a crisis due to the numerous vacancies and illnesses in the district that year. The extreme rise in the index for Massachusetts between 1971 and 1973 reflects a similar but more extreme crisis there.

Neither this index nor any measure now published adequately reflects the situation in Mary-

[4] The index was fairly constant before 1971: 11.9 in 1969, 11.7 in 1970, and 11.8 in 1971.

land, as we understand it. The case of Maryland illustrates the perhaps unavoidable limitations of the statistical system. This project's staff never responded satisfactorily to the first request we received: to identify the causes of Maryland's unimpressive record through fiscal 1973, which the chief judge found incomprehensible, given what he knew of the demands on his judges, their abilities, their habit of extremely hard work, and the excellent support they receive from a similarly overworked staff. Our response was marginal at best, though it appears to have been useful. We could identify no major problems, and concluded that the court's poor record was related primarily to an exceptional burden of complex criminal trials that is not reflected in "weighted filings." Long criminal trials do appear in table 27, but that profile can be prepared only retrospectively, too late to be very useful for resource allocation.

We did make several suggestions for procedural innovation, most of which were adopted to some degree. The suggestions included delegating to magistrates the routine criminal arraignments and many civil pretrials. Several judges have refined their civil case management along lines suggested in chapter three: they supervise more cases on a tighter schedule. Also, an "accelerated trial docket" has been used.

The subsequent history is gratifying in one sense but puzzling and disturbing in another. The district is handling more cases and doing it faster, according to every relevant measure shown in appendix B. Subjectively, however, the situation in Maryland is worse than ever. The docket is now so crowded that many judges have little hope that they will ever reach most civil cases for trial. Trial dockets are more than ever disrupted by long trials. Despite this, the statistics on the time to terminate the median case continue to show steady improvement! This is true even of the time, for the median civil cases, from issue to trial, a figure reasonably conceived to measure precisely the problem of crowded civil trial dockets. Although the court has undoubtedly improved its performance in some ways, clearly something important is not being measured, even by the wide and balanced variety of measures shown in *Management Statistics*.

There undoubtedly are many ways the statistical system could be improved. The Administrative Office and the clerks' offices are working steadily to strengthen the system, especially by eliminating remaining differences among courts in the bases on which statistics are collected. These differences, and the respects in which the measures used may measure something other than what is intended, should not lead to the conclusion that the statistics are useless. We based our work on the assumption that differences among courts as large as those that appear in tables 1 and 2 must identify real differences in the courts' effectiveness. We see no reason to doubt this assumption now. The statistics led to observation of widely different procedures that seem to explain much of the difference in statistical performances. There is no apparent reason to question—indeed, there is every reason to recommend—a presumption in favor of procedures used by courts that are particularly fast or particularly efficient, or both.

Epilogue: Case Management, Court Management, and the Chief Judge

According to the observation and data in this project, the benefits of effective case management seem great indeed. Some of these benefits are obvious and some are less so; some have been mentioned in previous discussions; some that are more speculative can be deduced only here in conclusion. A district whose docket is manageable and intelligently supervised, and in which the judges do their work promptly, can control many of the ills considered characteristic of litigation, even endemic to it.

Delay. An obvious implication of chapter three is that there is nothing unavoidable about delay. Delay can be controlled and eliminat even by courts suffering from heavy case loads. It is often asserted that to control delay, alterna-

tives to litigation must be sought. For example, consider the following:

> Formal American judicial systems deliver a precise brand of justice. Pleadings and motions refine the issues; interrogatories, depositions, and other discovery devices identify every potential relevant fact; a matrix of evidentiary rules ensures that the court hears only the pertinent facts and weighs those properly; and appellate review ensures that all procedures and rules were adhered to during the trial. But the very thoroughness of the formal judicial process means it is expensive to both the government and disputants. The care taken with each individual case tends to jam the system when volume is high. More significantly, the high cost of the process makes the courts inaccessible to low income disputants and impractical for resolution of modest claims involving disputants of any economic level. Substantial expenditures of time are also required at each step of the proceeding and between steps to allow thorough investigation and effective presentation of the law and facts. Justice is slow at best, and with the congestion virtually endemic to formal court systems, it sometimes barely moves at all.[5]

This passage suggests that the rigor of formal adjudication breeds such excessive delay that we must find alternatives to litigation. The findings of this project suggest the system is more resilient. There are reasons to seek alternatives to litigation (especially alternatives to federal litigation), but not because delay is inevitable.

Cost and Abuse. The first section of this chapter proposed, following suggestions from Judge J. Lawrence King, Judge Alvin B. Rubin, and others, that litigation cost may be proportionate to litigation time. Setting schedules is an indirect way to control cost; judges also control cost directly by limiting the case preparation to be undertaken. Perhaps there is no one but the judge, in an adversary system, who can prevent lawyers from imposing unacceptable costs and other burdens on each other, to their mutual detriment and that of their clients. A judge can serve that purpose, however, only if he is able to supervise his docket energetically.

Administrative Slips. The most well-managed districts we visited are remarkably free of bureaucratic snarls: an intelligent and satisfactory answer is available to most questions from lawyers and litigants. Despite the administrative complexity of the network of agencies they belong to, and despite huge demands on them, these courts are able to serve their several publics well.

There seems to be a cumulative effect here: when a court is under a reasonable amount of control in most respects, it can function rather well in all. That has been true even of districts like Maryland and Eastern Louisiana that have been under great pressure for years. (Now, most districts are under great pressure.) The districts that have an effective administrative structure, effective case management, and adequate internal communication have a resilience and an ability to handle new problems that are sadly lacking elsewhere.

By contrast, some districts seem to be out of control in nearly every respect. There is no routine supervision of the docket. Judges are unable to act except in emergencies. The effect of wasting resources is cumulative. Motions are filed and adjudicated to determine who shall have priority among competing demands on the court's time. The court holds desultory status conferences whose main value is to reacquaint participants with an old and forgotten case. There is little control of cost or harassment. This survey suggests that all of these situations are avoidable. It suggests also that a sudden rise in the Inventory Control Index may be a useful indicator of trouble. Chief judges and, where necessary, judicial councils, should be alert to this and other indications that a district is losing control over its docket.

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[5] E. Johnson, Jr., V. Kantor & E. Schwartz, Outside the Courts: A Survey of Diversion Alternatives in Civil Cases 77 (1977) (published by Nat'l Center for State Courts).

Though no statistical analysis can address the point, observation suggests that the resilience noted above can be traced in large part to the past and present effectiveness of a court's chief judge. Some essential characteristics of the most effective chief judges, as other judges have portrayed them to us, include:

1. exceptional personal skills
2. a talent for compromise
3. an interest in, and talent for, procedural issues
4. an exceptional capacity for hard work, to a degree unusual even among federal judges.

Under the relevant statute, 28 U.S.C. § 136, the chief judge attains his post according to seniority. Subsection (d), which permits any chief judge to pass on his responsibilities as chief judge (while retaining active status) to "the district judge in active service next in precedence and willing to serve," is often overlooked. Although there are probably many chief judges who dislike or are unsuited to the position, few have taken advantage of the provision in section 136(d). (Judge Walter E. Hoffman of the Eastern District of Virginia is one of the few judges who has; he did so well before his appointment as director of the Federal Judicial Center.) Greater use of this subsection might mitigate the obvious difficulty contained in the law: judges are placed in this sensitive and important post without regard to any qualification other than seniority. This difficulty has been a source of widespread concern. It is, for example, the subject of a recent report, by the Association of the Bar of the City of New York, that proposes chief judges be elected by the judges of their court.

The central purpose of this report is to evaluate procedures used in United States district courts. The courts have been inventive in devising and testing new techniques. The resulting diversity provides a remarkable opportunity for us and others to evaluate the value of procedural alternatives. We hope this report will significantly improve the information base on which chief judges, district judges, and supporting personnel rest their choices. At the same time, as future choices are made and new procedures are designed and implemented, we hope to evaluate them as well, continuing any service that may be rendered by these reports.

APPENDIX A

METHODOLOGICAL SUPPLEMENT, INTERVIEW QUESTIONS

Several points discussed in chapter one require elaboration for readers concerned with our research approach and purposes. These points are discussed in roughly the order they appear in chapter one.

Choice of Courts

Choosing "units of analysis" for their exceptional character is likely, for well-known reasons, to yield results that are also exceptional, reflecting practices or events that are unique to those particular units (courts, in this case). Also, when one examines the extreme instance, particularly extreme years, one is likely to see, over time, a natural change toward more "normal" behavior. We considered these dangers acceptable. Regarding the first point, we felt that so little was currently known about the causes of extreme statistical results, we had no choice but to examine courts that were as different from one another as possible. If this procedure uncovered exceptional or unique factors, those were likely to be joined with other factors that were less so. Concerning the second point, we assumed that statistical performance for several successive years was not chance or random. The court performances shown in figures 1 and 2 had been similar to those of 1973 and 1974 for several years. In more than one instance, earlier performances were more extreme in the direction indicated.

Measures

The measures used require some additional comment. As noted, the civil median time is the number of months the median civil case (for all cases terminated during the year in question) was on the docket until it was terminated. Note that in some respects, this is a restricted population of cases. It is possible, for example, for a court to have a fast median time, indicating that cases terminated in a particular year had not been on the docket long, while at the same time having a high backlog of old cases which were not terminated and are still pending. The figure for the median time of criminal terminations shows the median defendant rather than the median case. Otherwise it is similar to the civil median time figure, and the above comment applies.

We used weighted filings per clerk position as the measure of clerk activity because filings appear more closely related to the volume of clerk work load than do terminations; the opposite applies to judge work load. Although filings and terminations are obviously closely related, examination of the figures of many districts often shows a "bulge" in one figure without a corresponding bulge in the other. Thus, we decided weighted filings were a more logical measure of current work load for clerks, and terminations for judges' current work load, on the assumption that clerk's office work load is often concentrated in the early stage of a case, while judge work is more likely to be concentrated near the end.

We considered and rejected several possible adjustments to the figure for number of judgeships, to account for senior judges, vacancies, visiting judges, visits elsewhere by authorized

judges, and so on. All the available possibilities seemed to introduce as many difficulties as they resolved, as discussed in chapter seven under "Statistics." The number of authorized judgeships, while a rough and imperfect measure of "judge power," seems to be no rougher than other measures available.

Visits

During the court visits, Judicial Center staff interviewed each judge extensively. A list of the questions used appears below. An effort was made to assure that there were two staff members at each interview; normally one was the project director. With two staff members present, the discussions could be conversational and any resemblance to "interrogation" was avoided. Since both staff members took notes and checked them against each other, there was no need for electronic recording, yet each could free himself from note-taking at any time, sustaining the conversational atmosphere. This atmosphere was valuable because it allowed coverage of matters on the list of questions and also permitted staff to explore judges' views on other relevant issues that had not been considered when the questions were drawn up. There was no attempt to use identical wording in the questions asked of each judge; the interviews were open-ended and relatively informal. The presence of the project director at all of the discussions, however, was planned to assure maximum uniformity.

The approach and coverage of each judge's activities varied with different needs and different opportunities. If, for example, a judge said that his "docket control" was mainly in the hands of his courtroom deputy, the staff talked to the courtroom deputy on that subject, unless he in turn suggested others instead. Thus the bulk of time on particular issues was spent in different ways for different judges. Opportunities also were not uniform. This was particularly true with respect to the court proceedings observed. Federal judges are involved in such a variety of different proceedings at different times, and on such an unpredictable schedule, that it would probably be a matter of many man-years to observe a representative, comprehensive, comparable assortment of proceedings before every judge. Staff simply followed up any opportunities that presented themselves, and tried to fill in the unavoidable gaps by discussing with the judge or supporting personnel procedures that were not observed. When our luck was good, staff observed a wide variety of proceedings. For example, for one judge, Center staff observed a number of civil pretrials, some civil and criminal motions hearings, a short criminal jury trial, portions of a lengthy civil court trial, and several plea-takings and sentencings. On the other hand, two judges were tied up in a single trial throughout our entire visit to their courts, so observation was limited to portions of those trials plus a few brief proceedings that were squeezed into breaks. Another problem, resulting from the fact that two visits occurred during the summer, was that vacations often limited opportunities.

The Bar

We explored some possible ways to sample the federal bar and found the area highly problematic. Federal practice is divided between a small number of lawyers who appear regularly and a very large number who appear rarely. Unfortunately, the two groups specialize in different substantive fields: patent, admiralty, antitrust, etc. in the former case; torts, contracts, etc. in the latter. How should one "weigh" the two groups? How can representative views in all fields be obtained? We found no satisfactory answer and concluded that it was best to be satisfied with the opportunities that presented themselves naturally for informal discussion.

There were two approaches. First, we took advantage of any opportunity for informal exchange. Observation of court proceedings often led naturally to informal discussions with the attorneys involved. Most lawyers seemed very interested in our work and were anxious to convey their views on many matters. As this approach suggests, however, coverage of the bar was particularly unsystematic. There was no attempt in any court to contact litigants

directly, except for a small number of chance conversations in and around the courtrooms.

There was generally one meeting in each district with invited representatives of the bar. Most of these meetings were held with lawyers with a large federal practice, based on a list of attorneys suggested by judges and other court personnel. In each court, we attempted to balance the "constituencies" we talked with, by contacting plaintiff, defense, criminal, large firm, and small firm attorneys. It was not possible to obtain anything but a rough balance according to these variables. This process limited us to lawyers whose primary practice is in litigation, and to lawyers who in general were highly successful. Observing that the process normally led us to the most qualified lawyers, it occurred to us that we were failing to obtain the views of less competent lawyers, and of lawyers who were less familiar with federal practice because it was an infrequent part of their work. We found no ready solution to this.

Scope

This report assumes that conclusions useful to all or most of the ninety-four district courts can be drawn from observation of a few. Two elements make this assumption less bold than it might appear. First, the sample we used is somewhat larger than the group directly discussed in the report, since the conclusions advanced here have been checked informally against observation of other courts. Most members of the project staff have more or less continuous contact with judges and other personnel in various courts. There has been a continuous effort to refine what is included here by rejecting positions that "don't make sense" in terms of that experience as well as the experience of the director, the senior staff, and others. Second, this or any similar venture can only, at most, recommend that districts experiment with successful procedures if they are not already using them. Conditions in different districts vary sufficiently that no principles applicable to all courts are ever likely to emerge. Districts vary greatly in size (by population, geography, and court resources), in case load volume and composition, and in various personal respects as well. We would not know where to begin to assemble a truly "representative" sample of district courts. Such a sample is not essential for the limited purpose here, however: to identify successful procedures worthy of experimentation.

The courts discussed here are all internally diverse. This presented a considerable problem when interim reports on each court were submitted to the courts. The problem continues here: it is difficult to summarize usefully the range of diversity that distinguishes one court from another. As tables 1 and 2 and figures 1 and 2 indicate, something in the districts we observed evidently distinguishes the results of their activities from one another. This impression was confirmed by an analysis of variance we conducted to determine whether judges' disposition rates are affected by the courts in which they sit. We found, at a level always stronger than .01 and usually stronger than .001, that the numbers of civil and criminal terminations for each judge are closer to the mean per judge for the particular judge's court than to the mean for the whole court system. Much of this report is an attempt to find a common thread that links the diverse procedures of different judges within a court. Although some violence is unavoidably done to the diversity we observed, the common threads are there.

The data on civil case flow presented in chapter three are discussed in appendixes F through J.

QUESTIONS FOR DISTRICT COURT JUDGES

Governance of the Court

How do the committees function? How is their composition decided?

What is the special value of the bench meetings?

When is judges' work load shifted? (When there is a protracted case? Illness?)

Does this system of work load shifting work well?

How do you use the case load reports?

What would you change (in governance)?

Criminal Case Processing

How is the 50(b) plan [for speedy trial] working? What has helped? What obstacles have arisen? How are schedules set?

Do the criminal bar and United States attorneys seem to expect you to push them (for rapid disposition)?

What is the magistrate's role in your criminal cases?

How do you handle motions?

What is your role in discovery?

What is your policy on extensions?

Do you distribute any special forms to the attorneys?

What are your views on sentencing councils?

Have you had any problems with presentence reports?

What is your role in plea bargains?

Civil Case Processing

What procedures have been most effective in moving your civil cases?

What difficulties have you encountered in moving your civil cases?

Suppose both attorneys want to proceed slowly. Is the court responsible for prompting action? Why (or why not)? Do attorneys seem to expect this of you?

What is your role in discovery?

How do you set schedules in your cases?

To what extent do you push settlement?

Are magistrates ever involved in your civil cases?

Do you bifurcate trials? Under what conditions?

How do you handle pretrial proceedings?

What use do you make of oral rulings?

Do you use any special attorney forms (in civil case processing)?

What is your policy on continuances?

Managing Procedures and Staff

How are your law clerks most useful?

How is your courtroom deputy most useful?

Have you had any court reporting problems?

How is your calendar set? Is the courtroom deputy involved?

Have Federal Judicial Center seminars influenced your procedures in any way?

Have you had any particular problems with the clerk's office?

Is there anything further we should know?

PLAN FOR CLERK'S OFFICE VISITS [1]

Clerk's Office Structure

Organization of the office
- who reports to whom
- duties of divisions or units
- responsibilities of supervisors (ask supervisors)

Responsibilities of courtroom deputies in relation to clerk's office functions (ask the courtroom deputies)

To what extent are deputy clerks trained in procedures outside their direct responsibility? (ask supervisors)

Personnel Practices

Justifying new positions
- grounds
- data used
- experience (success)

Hiring (ask all supporting personnel how they were hired)
- recruitment sources
- judges' role
- requirements maintained

Promotion
- policies
- practices (ask everyone who has been promoted about his last promotion)

Turnover (approximate annual rate) over past two years

Median age (estimate if necessary)

Clerk's Office Services (excludes work of courtroom deputies)

Case records maintained

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[1] This plan was followed in every detail only in Maryland. Thereafter, as noted in chapter six, it was used only as a guide; we did not obtain systematic data on each point.

Regular reports prepared
- data sources
- distribution
- use (ask purported users)

Relation of Clerk's Office to Judges

Case assignment system
Flow of case information and records between clerk's office and chambers (including courtroom deputies)

Activities of Clerk and Chief Deputy

Most time-consuming activities
Delegation
Management
Planning

APPENDIX B
STATISTICAL PROFILES OF COURTS STUDIED

Following are statistical profiles of each district we visited. The profiles are from *Management Statistics for United States Courts 1976*, a publication of the Administrative Office of the United States Courts. Note, as mentioned in chapter one, that initial planning for this project was based on fiscal 1973 data, visits took place during fiscal 1974 through fiscal 1976, and the civil data collected are a sampling of cases terminated in fiscal 1975.

TABLE 32

MASSACHUSETTS

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		5,777	5,646	5,243	4,466	4,726	3,232		
	Terminations		4,140	4,000	3,242	2,209	2,876	2,176		
	Pending		12,602	10,965	9,319	7,318	5,061	3,211		
	Percent Change in Total Filings Current Year	Over Last Year		2.3					4	55
		Over Earlier Years			10.2	29.4	22.2	78.7	1	8
	Number of Judgeships		6	6	6	6	6	6		
ACTIONS PER JUDGESHIP	FILINGS	Total	963	941	874	744	788	539	1	4
		Civil	880	841	811	682	680	449	1	3
		Criminal	83	100	63	62	108	90	1	53
	Pending Cases		2,100	1,828	1,553	1,220	844	535	1	1
	Weighted Filings		810	789	685	597	667	448	1	4
	Terminations		690	667	540	368	479	363	1	5
	Trials Completed		37	30	29	24	38	35	3	73
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	7.5	7.6	8.4	7.6	4.6	3.7	5	90
		Civil	23	19	18	12	11	10	5	94
	From Issue to Trial (Civil Only)		29	26	28	17	17	15	3	79
OTHER	Number (and %) of Civil Cases Over 3 Years Old		1,321 (10.9)	931 (9.0)	444 (5.0)	226 (3.3)	132 (2.8)	123 (4.3)		
	Triable Defendants in Pending Criminal Cases Number (and %)		173 (27.2)	60 (23.3)	90 (30.9)	41 (22.8)	21 (13.1)	20 (19.2)		
	Vacant Judgeship Mos.		0	0	6.2	17.1	0	0		
	Juror Usage Index		18.54	17.62	15.87	18.06	16.23	16.66	4	42
	% of Jurors Not Serving		31.6	34.1	37.4	32.2	23.1	23.9	3	24

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	5,278	70	3,155	190	139	44	182	405	491	97		31	204
Criminal	460	2	29	3	40	3	-	69	84	34	67	44	85

TABLE 33

PENNSYLVANIA EASTERN

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		4,718	4,319	3,882	3,582	3,661	4,772		
	Terminations		4,552	4,367	4,437	4,509	4,707	4,809		
	Pending		4,134	3,968	4,016	4,571	5,498	6,544		
	Percent Change in Total Filings–Current Year	Over Last Year		9.2					3	33
		Over Earlier Years			21.5	31.7	28.9	-1.1	6	84
	Number of Judgeships		19	19	19	19	19	19		
ACTIONS PER JUDGESHIP	FILINGS	Total	248	227	204	189	193	251	4	87
		Civil	209	186	167	152	155	209	4	82
		Criminal	39	41	37	37	38	42	5	91
	Pending Cases		218	209	211	241	289	344	4	82
	Weighted Filings		277	242	217	203	193	255	3	82
	Terminations		240	230	234	237	248	253	4	83
	Trials Completed		36	33	33	33	35	33	5	75
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.9	4.2	4.3	7.0	7.4	8.5	2	59
		Civil	10	12	16	17	20	21	5	59
	From Issue to Trial (Civil Only)		16	18	22	29	32	31	4	55
OTHER	Number (and %) of Civil Cases Over 3 Years Old		192 (4.9)	178 (4.8)	289 (7.7)	532 (12.4)	482 (9.7)	619 (10.6)		
	Triable Defendants in Pending Criminal Cases Number (and %)		203 (52.5)	11 (29.7)	12 (38.7)	31 (56.4)	112 (40.3)	73 (32.3)		
	Vacant Judgeship Mos.		0	7.0	6.9	12.0	16.4	49.1		
	Juror Usage Index		19.21	18.83	20.15	19.89	18.63	24.21	4	51
	% of Jurors Not Serving		47.8	43.8	48.5	47.3	43.3	47.2	5	82

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3,978	225	32	288	71	65	211	819	1,465	62	427	68	245
Criminal	712	3	30	14	69	1	-	77	146	94	115	107	56

TABLE 34

MARYLAND

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		3,348	2,529	2,027	2,008	2,113	2,004		
	Terminations		2,854	2,323	2,044	2,278	2,359	1,916		
	Pending		2,411	1,917	1,711	1,728	1,998	2,244		
	Percent Change in Total Filings–Current Year	Over Last Year		32.4					3	6
		Over Earlier Years			65.2	66.7	58.4	67.1	4	13
	Number of Judgeships		7	7	7	7	7	7		
ACTIONS PER JUDGESHIP	FILINGS	Total	478	361	290	287	302	286	7	35
		Civil	285	237	189	196	212	215	9	58
		Criminal	193	124	101	91	90	71	2	11
	Pending Cases		344	274	244	247	285	321	7	53
	Weighted Filings		458	377	296	291	278	249	8	41
	Terminations		408	332	292	325	337	274	6	39
	Trials Completed		48	48	52	46	34	26	5	49
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.1	4.5	5.6	5.7	5.6	6.3	8	47
		Civil	7	9	10	11	14	12	3	18
	From Issue to Trial (Civil Only)		9	11	11	11	9	12	3	15
OTHER	Number (and %) of Civil Cases Over 3 Years Old		97 (5.6)	84 (5.9)	97 (7.4)	120 (9.0)	173 (10.9)	230 (12.4)		
	Triable Defendants in Pending Criminal Cases Number (and %)		161 (21.0)	20 (15.6)	29 (20.6)	45 (25.7)	38 (24.4)	34 (27.0)		
	Vacant Judgeship Mos.		0	0	0	0	2.8	24.2		
	Juror Usage Index		18.34	17.71	18.01	18.70	18.95	20.00	4	38
	% of Jurors Not Serving		32.2	37.3	32.4	35.8	32.3	39.0	5	28

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1,995	139	9	409	113	131	94	379	333	30	219	28	111
Criminal	1,322	2	43	21	62	-	1	273	139	97	77	76	531

TABLE 35

ALABAMA NORTHERN

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		2,409	2,099	1,707	1,574	1,639	1,475		
	Terminations		2,135	1,897	1,761	1,572	1,572	1,278		
	Pending		1,592	1,318	1,116	1,170	1,168	1,101		
	Percent Change in Total Filings– Current Year	Over Last Year		14.8					6	19
		Over Earlier Years			41.1	53.0	47.0	63.3	3	18
	Number of Judgeships		4	4	4	4	4	4		
ACTIONS PER JUDGESHIP	FILINGS	Total	602	525	427	394	410	369	5	17
		Civil	454	397	318	298	303	274	4	14
		Criminal	148	128	109	96	107	95	6	15
	Pending Cases		398	330	279	293	292	275	11	38
	Weighted Filings		606	545	438	408	413	386	3	11
	Terminations		534	474	440	393	393	320	6	16
	Trials Completed		76	94	85	73	87	67	3	11
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.0	1.7	1.7	3.1	3.0	2.0	4	12
		Civil	7	7	8	8	8	8	5	18
	From Issue to Trial (Civil Only)		6	7	7	7	6	5	4	6
OTHER	Number (and %) of Civil Cases Over 3 Years Old		61 (4.3)	59 (5.2)	69 (7.1)	57 (5.7)	58 (6.1)	43 (4.6)		
	Triable Defendants in Pending Criminal Cases Number (and %)		76 (40.4)	3 (6.1)	1 (2.9)	17 (40.5)	25 (58.1)	13 (54.2)		
	Vacant Judgeship Mos.		0	0	0	6.6	0	4.2		
	Juror Usage Index		16.99	13.05	13.63	13.45	15.87	16.70	2	18
	% of Jurors Not Serving		43.7	29.1	39.2	35.2	27.1	31.7	16	66

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1,818	288	8	313	56	54	169	396	291	19	166	5	53
Criminal	560	-	17	111	87	-	23	56	41	117	36	23	49

TABLE 36

FLORIDA SOUTHERN

U.S. DISTRICT COURT — STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		4,751	3,694	2,867	3,081	2,863	2,731		
	Terminations		4,299	3,126	2,817	3,043	3,287	2,592		
	Pending		2,429	1,977	1,409	1,359	1,321	1,745		
	Percent Change in Total Filings—Current Year	Over Last Year	28.6						3	7
		Over Earlier Years		65.7	54.2	65.9	74.0		2	10
	Number of Judgeships		7	7	7	7	7	7		
ACTIONS PER JUDGESHIP	FILINGS	Total	679	528	410	440	409	390	3	9
		Civil	558	408	290	310	275	279	1	7
		Criminal	121	120	120	130	134	111	9	27
	Pending Cases		347	282	201	194	189	249	12	50
	Weighted Filings		729	538	395	412	403	382	2	7
	Terminations		614	447	402	435	470	370	3	10
	Trials Completed		68	71	65	73	64	47	6	23
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	3.5	3.1	3.2	3.0	3.4	4.2	16	53
		Civil	4	4	4	4	5	7	1	1
	From Issue to Trial (Civil Only)		6	5	5	5	6	11	4	6
OTHER	Number (and %) of Civil Cases Over 3 Years Old		23 (1.5)	15 (1.2)	30 (3.2)	26 (2.8)	26 (2.8)	47 (3.7)		
	Triable Defendants in Pending Criminal Cases Number (and %)		61 (7.5)	2 (0.7)	6 (2.3)	32 (15.4)	9 (6.3)	17 (14.5)		
	Vacant Judgeship Mos.		9.5	0	0	0	6.5	8.0		
	Juror Usage Index		20.61	18.78	19.02	20.82	25.20	29.68	13	66
	% of Jurors Not Serving		42.0	43.1	40.6	45.9	55.4	57.4	13	59

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	3,909	29	120	377	100	1,118	350	1,007	309	60	174	56	209
Criminal	772	79	37	33	9	-	-	52	221	103	66	34	138

TABLE 37

LOUISIANA EASTERN

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		4,793	4,551	4,135	4,142	4,268	4,731		
	Terminations		3,988	4,076	4,181	4,817	4,504	4,168		
	Pending		5,059	4,254	3,779	3,825	4,500	5,228		
	Percent Change in Total Filings – Current Year	Over Last Year		5.3					13	45
		Over Earlier Years			15.9	15.7	12.3	1.3	16	81
	Number of Judgeships		9	9	9	9	9	10		
ACTIONS PER JUDGESHIP	FILINGS	Total	533	506	459	460	474	473	8	22
		Civil	452	423	393	391	411	414	5	15
		Criminal	81	83	66	69	63	59	16	57
	Pending Cases		562	473	420	425	500	523	2	12
	Weighted Filings		447	417	360	347	362	372	12	43
	Terminations		443	453	465	535	500	417	9	27
	Trials Completed		49	55	59	62	57	50	16	46
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.5	2.4	2.7	2.9	4.7	3.9	7	20
		Civil	10	10	11	11	11	9	16	59
	From Issue to Trial (Civil Only)		11	13	15	17	14	11	11	31
OTHER	Number (and %) of Civil Cases Over 3 Years Old		186 (3.8)	115 (2.9)	114 (3.2)	182 (5.1)	302 (7.1)	403 (8.3)		
	Triable Defendants in Pending Criminal Cases Number (and %)		63 (29.3)	15 (13.0)	30 (21.9)	95 (65.1)	15 (31.9)	24 (21.1)		
	Vacant Judgeship Mos.		19.2	0.5	0	0	0.5	23.9		
	Juror Usage Index		16.88	16.31	16.10	15.35	16.96	21.26	1	17
	% of Jurors Not Serving		41.0	40.4	43.6	43.5	46.7	42.4	12	55

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4,063	76	4	178	65	184	47	922	2,205	18	253	26	85
Criminal	718	57	15	21	32	-	-	47	70	79	73	29	295

TABLE 38

KENTUCKY EASTERN

U.S. DISTRICT COURT — STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		2,555	1,882	1,324	1,190	1,052	914		
	Terminations		1,428	1,298	1,364	1,106	794	833		
	Pending		2,926	1,799	1,215	1,255	1,171	913		
	Percent Change in Total Filings—Current Year	Over Last Year	35.8						1	3
		Over Earlier Years		93.0	114.7	142.9	179.5		1	3
	Number of Judgeships		3	2½	2½	2½	2½	2½		
ACTIONS PER JUDGESHIP	FILINGS	Total	852	753	530	476	421	365	1	6
		Civil	753	575	346	264	234	206	1	5
		Criminal	99	178	184	212	187	159	5	40
	Pending Cases		975	720	486	502	468	365	1	4
	Weighted Filings		740	685	505	456	395	321	1	6
	Terminations		476	519	546	442	318	333	1	21
	Trials Completed		49	56	68	78	51	62	6	46
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	4.4	4.1	4.2	3.1	2.1	1.0	7	69
		Civil	9	7	15	13	13	14	5	40
	From Issue to Trial (Civil Only)		27	11	26	11	-	22	9	78
OTHER	Number (and %) of Civil Cases Over 3 Years Old		119 (4.4)	91 (6.1)	72 (7.9)	105 (11.3)	152 (17.1)	100 (13.7)		
	Triable Defendants in Pending Criminal Cases Number (and %)		74 (38.9)	68 (59.1)	40 (51.3)	35 (50.0)	19 (50.0)	13 (41.9)		
	Vacant Judgeship Mos.		2.7	2.5	0	0	8.9	12.0		
	Juror Usage Index		23.51	27.05	22.36	27.43	21.96	21.78	9	84
	% of Jurors Not Serving		43.4	45.5	48.7	51.3	38.7	38.8	6	64

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	2,259	1,723	1	91	64	38	56	108	83	3	51	3	38
Criminal	285	-	8	33	76	-	5	26	1	27	10	19	80

The roving judge spends most of his time in the Eastern District.

TABLE 39

WISCONSIN EASTERN

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		1,001	1,026	809	962	963	878		
	Terminations		946	919	773	843	854	821		
	Pending		1,268	1,213	1,106	1,070	951	842		
	Percent Change in Total Filings - Current Year	Over Last Year	-2.4						3	73
		Over Earlier Years			23.7	4.1	3.9	14.0	4	68
	Number of Judgeships		3	3	3	3	3	3		
ACTIONS PER JUDGESHIP	FILINGS	Total	334	342	270	321	321	292	6	72
		Civil	278	252	204	222	248	233	5	59
		Criminal	54	90	66	99	73	59	6	79
	Pending Cases		423	404	369	357	317	281	3	34
	Weighted Filings		353	383	289	342	329	283	6	70
	Terminations		315	306	258	281	285	274	6	71
	Trials Completed		28	25	23	27	22	24	6	85
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	6.8	6.9	6.3	6.5	6.6	4.2	7	89
		Civil	13	14	13	13	12	7	5	83
	From Issue to Trial (Civil Only)		29	28	-	17	18	13	5	79
OTHER	Number (and %) of Civil Cases Over 3 Years Old		132 (11.5)	91 (8.6)	67 (7.2)	61 (7.4)	67 (8.4)	49 (7.0)		
	Triable Defendants in Pending Criminal Cases Number (and %)		75 (44.3)	8 (11.6)	19 (16.0)	16 (21.1)	21 (33.9)	20 (42.6)		
	Vacant Judgeship Mos.		0	3.3	12.0	12.0	12.0	0		
	Juror Usage Index		17.69	17.94	19.81	17.44	14.34	20.29	2	28
	% of Jurors Not Serving		30.9	39.6	43.4	41.8	43.1	38.4	1	21

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I.	J	K	L
Civil	838	25	1	182	54	59	86	126	96	35	104	5	65
Criminal	144	-	16	6	19	-	-	8	17	18	28	14	18

TABLE 40

CALIFORNIA CENTRAL

U.S. DISTRICT COURT -- STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		5,962	6,270	5,162	5,301	5,344	5,236		
	Terminations		5,594	5,803	4,859	4,908	5,251	4,539		
	Pending		5,215	4,847	4,380	4,077	3,684	3,591		
	Percent Change in Total Filings Current Year	Over Last Year		-4.9					11	78
		Over Earlier Years			15.5	12.5	11.6	13.9	9	69
	Number of Judgeships		16	16	16	16	16	16		
ACTIONS PER JUDGESHIP	FILINGS	Total	373	392	323	331	334	327	7	60
		Civil	261	268	214	195	193	190	7	68
		Criminal	112	124	109	136	141	137	6	31
	Pending Cases		326	303	274	255	230	224	8	61
	Weighted Filings		389	414	339	341	340	335	7	58
	Terminations		350	363	304	307	328	284	7	60
	Trials Completed		39	37	38	49	55	56	7	66
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.9	3.3	3.5	3.3	3.3	2.6	5	39
		Civil	7	7	7	7	7	6	1	18
	From Issue to Trial (Civil Only)		11	12	13	10	10	10	2	31
OTHER	Number (and %) of Civil Cases Over 3 Years Old		306 (7.3)	256 (7.0)	202 (6.3)	175 (6.5)	132 (5.4)	51 (6.5)		
	Triable Defendants in Pending Criminal Cases Number (and %)		361 (26.2)	30 (4.5)	58 (7.5)	67 (9.2)	69 (11.2)	34 (8.0)		
	Vacant Judgeship Mos.		18.0	0.2	8.5	0	2.4	33.8		
	Juror Usage Index		19.64	20.83	20.08	20.44	19.15	18.85	5	56
	% of Jurors Not Serving		37.6	38.1	39.0	36.8	33.7	31.1	4	45

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	4,169	159	19	695	209	51	296	950	613	272	326	88	491
Criminal	1,641	74	141	48	128	20	-	181	176	154	235	193	291

TABLE 41

NEW MEXICO

U.S. DISTRICT COURT – STATISTICAL PROFILE

			FISCAL YEAR						1976 NUMERICAL STANDING WITHIN	
			1976	1975	1974	1973	1972	1971	Circuit	U.S.
OVERALL WORKLOAD STATISTICS	Filings		1,096	1,122	1,029	1,147	879	726		
	Terminations		1,124	1,087	988	1,032	804	768		
	Pending		625	653	618	577	462	387		
	Percent Change in Total Filings – Current Year	Over Last Year		-2.3					6	72
		Over Earlier Years			6.5	-4.4	24.7	51.0	1	29
	Number of Judgeships		3	3	3	3	3	3		
ACTIONS PER JUDGESHIP	FILINGS	Total	365	374	343	382	293	242	5	64
		Civil	260	246	214	216	192	143	6	69
		Criminal	105	128	129	166	101	99	4	35
	Pending Cases		208	218	206	192	154	129	6	83
	Weighted Filings		377	385	343	381	272	223	6	62
	Terminations		375	362	329	344	268	256	4	50
	Trials Completed		83	75	75	78	68	76	2	5
MEDIAN TIMES (MONTHS)	From Filing to Disposition	Criminal	2.7	2.4	2.9	3.0	2.4	1.6	5	32
		Civil	6	7	6	6	6	9	2	7
	From Issue to Trial (Civil Only)		3	3	4	3	5	8	1	2
OTHER	Number (and %) of Civil Cases Over 3 Years Old		12 (2.6)	8 (1.8)	7 (1.7)	5 (1.3)	7 (2.1)	3 (1.1)		
	Triable Defendants in Pending Criminal Cases Number (and %)		26 (17.3)	4 (5.1)	17 (18.5)	0	2 (5.9)	1 (4.2)		
	Vacant Judgeship Mos.		0	0	0	0	0	4.0		
	Juror Usage Index		19.25	16.69	15.93	20.14	19.29	20.85	7	52
	% of Jurors Not Serving		35.3	40.4	35.3	46.6	40.4	36.9	6	39

1976 CIVIL AND CRIMINAL FILINGS BY NATURE OF SUIT AND OFFENSE

Type of Case	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	781	37	6	158	39	41	21	177	153	1	97	2	49
Criminal	302	23	8	22	33	-	-	17	88	23	9	34	45

APPENDIX C

BENCH COMMITTEES IN MARYLAND AND CENTRAL CALIFORNIA

Committees—Maryland

Admiralty
Admissions
Bankruptcy
Bar Liaison Committee on Supplemental Rules for Admiralty and Maritime Claims
Bar and Liaison Committee with Federal Courts
Central Library
Civil Rules
Construction of New United States Courthouse
Court Plan for Speedy Disposition of Criminal Cases
Court Security
Criminal Justice Act
Criminal Rules
Disbarment and Disciplinary Proceedings
Federal Criminal Code Revision
Federal Public Defenders
General
Housing of Federal Prisoners
Jury Selection Plan, Jury Utilization
Legal Representation for Indigent Defenders in Criminal Cases
Liaison with Court Reporters
Liaison with Probation Department
Liaison with Bankruptcy Judges
Liaison with United States Marshal
Routine Criminal Calendar
Space Utilization in Building
State-Federal Comity
Supporting Court Personnel
United States Magistrate
Washington Metropolitan Area Court Facilities
Weighted Case Load Statistics

Committees—California Central

Attorneys Admittance Fund
Bankruptcy
Case Load: New Judges
Clerk's Office
Criminal Procedure
Judges' Lounge
Jury Selection and Use
Liaison
Magistrate
Probation
Public Defenders and Indigent Panel
Reporters
Rules, Orders, and Resolution
Security
Space
Statistics

APPENDIX D

DISPERSION OF COURT BUSINESS TO OUTLYING PLACES

The Administrative Office of the United States Courts, the General Accounting Office, and the individual district courts share the widespread concern over excessive dispersion of court resources among several court locations. There are ample reasons to assume that numerous locations hamper a court's ability to conduct an efficient operation. However, a number of researchers who have explored the effects of this factor have failed to show any detrimental effect. For example, Professor Robert W. Gillespie, an economist at the University of Illinois, found a *positive* relationship between judge productivity (defined in terms of terminations per judge; Professor Gillespie devised and used a measure of his own) and the number of court locations. Between 1969 and 1974, this positive correlation varied from 0.06 to 0.20. This appears in National Institute of Law Enforcement and Criminal Justice, *Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts*, 87 (1977). It can reasonably be assumed that this peculiar result does not indicate that courts will actually be able to handle more cases if only the judges would travel more. More likely, the result may be a strong confirmation that the case load of rural courts is indeed less demanding than that of urban courts, even within the various case categories used in the system of case weights. (See chapter seven, "Statistics.") This result certainly bears no evidence, however, that multiple court locations severely limit district court productivity.

Clearly, there is no national standard regarding the proper number of places where court should be held. In some districts, court is held in some very small locations, including some that are relatively close to other court locations. Elsewhere, much larger cities, much farther from the nearest statutory locations, do not have federal court service. For example, Thomasville and Valdosta, Georgia, cities of approximately 18,000 and 32,000, respectively, are only thirty-eight miles apart and yet federal court is held regularly in each. Batesville, Arkansas has a population of only 7,209, and is located between two other court locations in the district approximately forty and sixty miles away. Some larger court locations are much closer together. Bridgeport and New Haven, Connecticut both have federal court facilities, and regular terms of court are held there. The two cities are certainly large enough to justify service—each is the center of a metropolitan area with close to 400,000 population. They are only seventeen miles apart, however. Similarly, Fort Lauderdale, Florida is less than thirty miles from Miami. It serves a large county of 620,000 people, but perhaps that county could be served adequately from Miami.

At the other extreme, some very large sections of the country, some with substantial population, have no federal district court service at all. The entire northern section of California above Sacramento has had no federal trials whatever in recent years, although Eureka (in the Northern District) and Redding (in the

Eastern District) are both statutory places of holding court (28 U.S.C., ch. 5). This region includes Humboldt County, with a population of nearly 100,000, whose county seat of Eureka is 280 miles from San Francisco. On the other side of the country, the situation is similar in the northern section of New York State, above Albany and Syracuse. Clinton County (population 73,000) is served only by Albany, more than 170 miles from the county seat of Plattsburgh. St. Lawrence County, in the same region and almost as far from the nearest place where court is held, has a population of more than 100,000.

The differences among the courts in this regard can be demonstrated by exploring briefly what would be needed to give the entire country the relatively luxurious service provided by Southern Florida. There, three adjacent counties on the East Coast have federal courthouses, at least one resident district judge, and a full-time clerk's office. The cities served are Miami, Fort Lauderdale, and West Palm Beach. In addition, court is held regularly at Key West and Fort Pierce, serving additional counties directly. The Fort Lauderdale courthouse is now nearing completion; its counterpart in West Palm Beach is also new. If the entire United States were to be served by federal courts on the same basis, dozens of additional courthouses would have to be constructed. The Central District of California would require at least six major facilities, one each for Orange County, Riverside County, San Bernardino County, San Luis Obispo County, Santa Barbara County, and Ventura County. All of those counties have large populations, and are substantial distances from the single existing facility in Los Angeles. All except San Luis Obispo County could probably produce sufficient business for at least one full-time district judge. Possibly, an additional courthouse also could be justified to serve the northern part of Los Angeles County, which has a very large concentration of population in the San Fernando Valley at a considerable distance from the existing courthouse.

Similar examples all over the country could be cited. If the Florida standard were adopted nationally, numerous additional courthouses would be constructed in the New York metropolitan area, including perhaps two on Long Island; two in the northern suburbs of New York State; an additional one in Fairfield County, Connecticut; one on Staten Island; and two in suburban New Jersey.

Many factors must be considered in a decision to either pretermit court in a remote and low-volume location or to initiate court in a new place. The factors to be examined must include the size of the population to be served, convenience (measured in travel time, not simply in mileage) to other locations, likely sources of federal jurisdiction, the availability of facilities, and the obvious question of political pressure. We cannot stipulate a policy in an area that is so complex and so completely lacking in consistent policy directives from Congress. Perhaps a useful purpose may be served, however, in identifying some extreme situations where a change should be seriously considered if an opportunity occurs.

—*Any court location within forty miles* of a larger one is a natural candidate for pretermission, unless it occupies outstanding and relatively new facilities and provides a sufficient volume of business to keep a judge occupied essentially full-time. Locations where some but not all of these factors hold should certainly be considered for pretermission.

—*Smaller locations between forty and one hundred miles* from the nearest larger one should be considered for pretermission if their business is small, if facilities and transportation are a problem, or if there is specific concern for another reason.

—*Court locations with extremely low utilization* that are more than one hundred miles from the nearest location should be considered for pretermission as well.

What locations could be considered seriously as candidates for new facilities and court sessions? Some possibilities would be:

—Places more than fifty miles from the nearest location that are the center of

metropolitan areas of 300,000 or more. For example, federal court has been held only intermittently in Lansing, Michigan in recent years. Lansing is the state capital, it is seventy miles from Grand Rapids (the nearest court location), and the metropolitan area in 1970 had a population of just under 400,000 people. A similar candidate on a similar basis would be Bakersfield, California, nearly one hundred miles from Fresno, with a metropolitan area population of 329,000. Bakersfield currently is not a statutory court location.

—As suggested above, places more than one hundred miles from the nearest court location, with populations of more than 100,000, are at least worth consideration as new locations.

TABLE 42

Sample Schedule of Court Terms in the Northern District of Alabama (Civil Only: All Criminal Matters Heard in Birmingham)

	Anniston	Florence	Gadsden	Huntsville	Decatur	Jasper	Tuscaloosa
August and September 1975					Judge Guin, pretrials, Aug. 28		Judge Pointer pretrials, Sept. 2–4
October 1975	Judge Guin, pretrials, Oct. 23	Judge Hancock, pretrials, Oct. 8–9	Judge Pointer, pretrials, Oct. 6 Judge McFadden, pretrials, Oct. 29–31	Judge Guin, jury and nonjury trials, Oct. 27–31	Judge Lynne, pretrials, Oct. 8–10 Judge Hancock, jury and nonjury trials, Oct. 28–31		
November 1975		Judge Hancock, jury and nonjury trials, Nov. 17–26		Judge Guin, jury and nonjury trials, Nov. 3–7	Judge Lynne, jury and nonjury trials, Nov. 3–21	Judge Hancock, pretrials, Nov. 3–4	Judge Pointer, jury and nonjury trials, Nov. 10–21
December 1975	Judge Guin, jury and nonjury trials, Dec. 8–19		Judges McFadden and Lynne, jury and nonjury trials, Dec. 1–12 Judge Pointer, jury and nonjury trials, Dec. 1–5			Judge Hancock, jury and nonjury trials, Dec. 8–19	
January 1976							
February 1976		Judge Hancock, nonjury trials, Feb. 9–12.		Judge Guin, pretrials, Feb. 12–13	Judge Lynne, pretrials, Feb. 16–18	Judge Hancock, nonjury trials, Feb. 2–4	Judge Pointer, pretrials, Feb. 9–11
March 1976		Judge Hancock, pretrials, Mar. 31					
April 1976	Judge Guin, pretrials, Apr. 1	Judge Hancock, pretrials, Apr. 1	Judge McFadden, jury and nonjury trials, Apr. 5–16		Judge Lynne, jury and nonjury trials, Apr. 5–23	Judge Hancock, pretrials, Apr. 14–15	Judge Pointer, jury and nonjury trials, Apr. 5–16
May 1976	Judge Guin, jury and nonjury trials, May 31–June 11	Judge Hancock, jury and nonjury trials, May 3–14	Judge Pointer, jury and nonjury trials, May 10–15	Judge Guin, jury and nonjury trials, May 3–14		Judge Hancock, jury and nonjury trials, May 17–27	
June 1976							

APPENDIX E

"WEIGHTING" CASES FILED IN VARIOUS DIVISIONS

We are aware of no district that has found an entirely equitable way to divide the case load assigned to the various divisions—except the two districts we visited in which all judges live in the same city. In those two districts the problem is simple: in New Mexico, all cases are assigned randomly, and in Northern Alabama, judges have rotating assignments to the outlying divisions. In Northern Alabama, a judge assigned to a less burdensome division will eventually find his way to the more burdensome ones.

Southern Florida uses a rough application of the case weight system in an attempt to equalize the distribution of difficult cases. Patent, trademark, antitrust, securities, and school desegregation cases are separately assigned to judges at random, without regard to the division of origin. Other cases are assigned to the judge responsible for a particular location, with one remarkable exception to be discussed below. While this system may equalize the distribution of cases in certain highly visible case types, of course it does nothing for the majority of cases. Substantial inequity among the judges may well appear, in spite of this assignment system, and this possibility is a likely source of contention in any district.

Theoretically, it would be possible to establish a system that equalizes the case load assigned to each judge, based on weighted filings. This could work approximately the way Southern Florida handles assignments to the judge in West Palm Beach. At the end of each year, the court determines whether his assignments were equal to the others', and in the new year, an adjustment is made based on any discrepancy between his total case load and that of Miami judges. Of course, this has twin disadvantages: the adjustment is made well after the imbalance on which it is based, and it is only as equitable as the assumed equivalence of each West Palm Beach filing to each Miami filing. Using case weights for this calculation would be complex and time-consuming for the clerk's office, and would partially remedy the second fault but not the first. It would refine the determination of case equivalence to the degree that the case weights reflect differences in average burden in the two cities involved. Since the case weights were not designed for this purpose, probably little could be accomplished that would justify the time and expense involved in carrying out the necessary calculations.

There is one exception to Southern Florida's practice of assigning cases to a judge who is responsible for a particular division. Fort Lauderdale cases are assigned at random to Fort Lauderdale and Miami judges, without special preference to the Fort Lauderdale courthouse, judge, or clerk's office. Since there are more Miami cases than Fort Lauderdale cases, a Fort Lauderdale case is likely to be assigned to a Miami judge. Since the distance between the two is less than thirty miles, there is no great inconvenience involved. The fact that this assignment is even conceivable, however, suggests the obvious: there is no evident justification for a separate facility in Fort Lauderdale, Florida.

TABLE 43

Overall Disposition Times (supplemental)

	All cases		Complex personal tort		Property tort		Commercial complex		Administrative appeal		Other	
	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)	Median (days)	Number (cases)
FL/S	120	2,390	481	33	101	63	189	8	98	10	122	128
CA/C	210	3,786	175	6	216	27	293	31	115	29	159	105
MD	270	1,528	493	12	263	26	311	16	247	24	172	55
LA/E	300	3,391	366	64	350	68	715	3	220	13	218	36
PA/E	360	3,589	481	33	307	18	459	13	253	12	253	39
MA	570	3,568	841	14	436	33	821	16	303	14	322	84
Average	305	3,042	472.8	27	278.8	39.2	464.7	14.5	206	17	207.7	74.5

NOTE: The Administrative Office of the United States Courts, disposition time data on "all cases" exclude land condemnation, prisoner petitions, and deportation reviews. All data in this table concerning separate case types are from this project. The case types used are defined in appendix G.

TABLE 44

Filing of Counterclaims

	Median days after complaint answered	Percentage filed same day	Number filed
FL/S	0	82	54
CA/C	0	87	55
MD	0	96	24
LA/E	0	79	24
PA/E	0	88	42
MA	0	91	33
Average	0	87.2	38.7

TABLE 45

Filing of Cross Claims

	Median days after complaint answered	Percentage filed same day	Number filed
FL/S	0	72	29
CA/C	363	26	89
MD	1	50	16
LA/E	0	83	69
PA/E	0	69	74
MA	12	80	10
Average	62.7	63.3	47.8

TABLE 46

Other Pleadings, Motions to Intervene

	Filing third-party complaints		Filing motions to intervene		Filing amendments to pleadings	
	Median (days) after complaint answered	Number filed	Median (days) after complaint answered	Number filed	Median (days) after pleading answered	Number filed
FL/S	36	34	46	12	89	178
CA/C	3	11	448	2	151	103
MD	24	21	33	10	171	53
LA/E	0	81	225	33	115	80
PA/E	10	94	85	8	222	47
MA	25	27	82	8	228	52
Average	16.3	44.7	153.2	12.2	162.7	85.5

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TABLE 47

Overall Time—First Third-Party Claim, Counterclaim, or Cross Claim Until Last Related Pleading

	Median, all (days)	Number of cases	Median, adjusted (days)	Number of cases
FL/S	19	84	44	63
CA/C	28	70	30	60
MD	24	46	29	38
LA/E	35	99	67	76
PA/E	55	114	71	94
MA	23	57	45	47
Average	30.7	78.3	47.7	63.0

TABLE 48

Time from Service Until Answer

	Initial complaint		Amendments		Third-Party complaints	
	Median (days)	Number of answers	Median (days)	Number of answers	Median (days)	Number of answers
FL/S	30	332	28	25	58	19
CA/C	50	244	43	24	27	6
MD	37	281	32	7	25	13
LA/E	52	452	26	33	60	57
PA/E	35	415	12	10	34	65
MA	29	283	21	7	35	21
Average	38.8	334.5	27	17.7	39.8	30.2

TABLE 49

Overall Discovery Time (supplemental)

	First discovery request until last discovery activity				First discovery request until last discovery request				Discovery events per case
	Median, all cases (days)	Number, all (cases)	Median, adjusted (days)	Number, adjusted (cases)	Median, all cases (days)	Number, all (cases)	Median, adjusted (days)	Number, adjusted (cases)	
FL/S	72	298	90	245	46	297	81	204	5.47
CA/C	124	193	150	170	70	192	175	133	5.11
MD	125	190	148	170	88	188	151	137	4.27
LA/E	142	281	173	249	64	281	227	173	3.78
PA/E	162	319	302	293	110	318	201	242	5.05
MA	226	221	252	208	146	217	283	166	4.57
Average	141.8	250.3	169.3	222.5	87.3	248.8	186.3	175.8	4.71

TABLE 50

When Are Motions Filed? (supplemental)

	Filing until each motion filed by plaintiff		Filing until each motion filed by defendant	
	Median (days)	Number of motions	Median (days)	Number of motions
FL/S	77	407	69	567
CA/C	56	156	99	297
MD	61	199	69	323
LA/E	160	113	163	161
PA/E	95	155	153	241
MA	94	244	101	294
Average	90.5	212.3	109	313.8

TABLE 51

Discovery Cutoff Dates (supplemental)

	First cutoff set until date set for		First cutoff date until last discovery request filed		Last cutoff set until last discovery request filed	
	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases
FL/S	50	228	−15	187	−21	187
CA/C	68	190	46	151	−80	155
MD	98	49	−21	43	−36	44
LA/E	112	148	−20	123	−32	123
PA/E	72	130	−7	119	−35	119
MA	93	74	92	64	−11	66
Average	82.2	136.5	12.5	114.5	−35.8	115.7

TABLE 52

Frequency of Pleadings Recorded

	Complaints	Counter-claims	Third-party complaints	Cross claims	Amendments	Motions to intervene
FL/S:						
598 cases	742	63	38	34	202	12
500 cases	621	52	32	28	169	10
CA/C:						
544 cases	686	59	12	106	108	3
500 cases	630	54	11	97	100	3
MD:						
503 cases	569	29	21	21	62	10
500 cases	566	29	21	21	62	10
LA/E:						
499 cases	677	27	86	80	92	33
500 cases	678	27	86	80	92	33
PA/E:						
497 cases	623	60	97	106	60	8
500 cases	627	60	98	107	60	8
MA:						
468 cases	655	37	27	10	59	8
500 cases	701	40	29	11	63	9
Average (500 cases)	637	44	46	57	91	12

NOTE: For each court, the first line snows the number of pleadings recorded. The second line is "normalized" to 500 cases: it is the number expected if exactly 500 cases had been recorded.

TABLE 53

Frequency of Discovery Filings Recorded

	Depositions	Interrogatories	Requests for production of documents	Requests for admission	Motion for physical or mental examination	Subpoena duces tecum	Notice of written questions	LTDP [a]	Motion for protective order	Motion to quash	TLED [b]	Motion for order re expenses	Miscellaneous
FL/S:													
598 cases.....	705	387	362	142	14	17	2	2	63	11	11	1	23
500 cases.....	590	324	303	119	12	14	2	2	53	9	9	1	19
CA/C:													
544 cases.....	471	339	99	67	0	5	6	0	21	2	2	0	3
500 cases.....	433	312	91	62	0	5	6	0	19	2	2	0	3
MD:													
503 cases.....	286	366	110	40	0	7	3	0	13	4	0	2	3
500 cases.....	284	364	109	40	0	7	3	0	13	4	0	2	3
LA/E:													
499 cases.....	502	396	112	41	7	3	1	0	6	4	2	0	3
500 cases.....	503	397	112	41	7	3	1	0	5	4	2	0	3
PA/E:													
497 cases.....	669	661	195	75	7	2	1	0	26	3	2	0	12
500 cases.....	673	665	196	75	7	2	1	0	26	3	2	0	12
MA:													
468 cases.....	424	375	154	34	18	5	0	0	28	9	0	0	6
500 cases.....	454	401	165	36	19	5	0	0	30	10	0	0	6
Average (500 cases)...	489.5	410.5	162.6	62.2	7.5	6	2.2	.33	24.3	5.3	2.5	.5	7.7

NOTE: For each court, the first line shows the number of pleadings recorded. The second line is "normalized" to 500 cases: it is the number expected if exactly 500 cases had been recorded.

[a] Motion for Leave to Take Deposition of Person Departing the District

[b] Motion to Terminate or Limit Examination on Deposition.

TABLE 54

Frequency of Substantive Motions Filed and Recorded

	Summary judgment	Temporary restraining order	Preliminary injunction	Default judgment	Dismiss for failure to prosecute	Lack of subject matter jurisdiction	Lack of personal jurisdiction	Improper venue	Insufficient service of process	Failure to state a claim	Failure to join a party	Judgment on pleadings	More definite statement	Strike	Miscellaneous
FL/S:															
598 cases	202	23	26	199	42	91	22	4	16	174	6	12	37	89	33
500 cases	169	19	22	167	35	76	18	3	13	146	5	10	31	74	20
CA/C:															
514 cases	111	32	38	50	35	72	12	0	8	132	1	4	12	29	9
500 cases	102	29	35	46	32	66	12	0	7	121	1	4	12	27	8
MD:															
500 cases	160	30	29	39	23	32	13	2	4	111	2	10	14	9	7
500 cases	159	30	29	39	23	32	13	2	4	110	2	10	14	9	7
LA/E:															
499 cases	101	9	13	24	215	24	8	4	0	34	1	2	2	5	13
500 cases	101	9	13	24	215	24	8	4	0	34	1	2	2	5	13
PA/E:															
497 cases	120	22	21	41	23	38	6	5	6	51	0	3	4	9	13
500 cases	121	22	21	41	23	38	6	6	6	51	0	3	4	9	13
MA:															
468 cases	100	54	34	60	39	38	14	8	5	90	1	2	4	27	18
500 cases	107	58	36	64	42	41	15	9	5	96	1	2	4	29	19
Average (500 cases)	153	27.8	26	60.5	61.5	46.2	12	3.8	5.8	93	1.7	5.2	11.2	25.5	14.7

NOTE: For each court, the first line shows the number of pleadings recorded. The second line is "normalized" to 500 cases: it is the number expected if exactly 500 cases had been recorded.

TABLE 55

Frequency of Procedural Motions Filed and Recorded

	Class action	Consolidation	Change of venue	Join parties	Sever parties or causes	Leave to file amended pleading	Removal petition	Transfer in	Transfer out	Certifications interlocutory appeal	Stay	Miscellaneous
FL/S:												
598 cases....	5	29	4	17	7	120	29	1	8	5	27	29
500 cases....	4	24	3	14	6	100	24	1	7	4	23	24
CA/C:												
544 cases....	4	14	2	5	6	40	39	13	5	3	20	22
500 cases....	4	13	2	5	6	37	36	12	5	3	18	20
MD:												
503 cases....	9	17	0	9	5	50	18	0	6	4	21	12
500 cases....	9	17	0	9	5	50	18	0	6	4	21	12
LA/E:												
499 cases....	2	32	0	10	3	59	9	2	6	1	7	11
500 cases....	2	32	0	10	3	59	9	2	6	1	7	11
PA/E:												
497 cases....	16	21	1	26	6	45	15	2	12	2	28	10
500 cases....	16	21	1	26	6	45	15	2	12	2	28	10
MA:												
468 cases....	6	14	1	24	4	73	29	1	4	4	21	27
500 cases....	6	15	1	26	4	78	31	1	4	4	22	29
Average (500 cases)	6.8	20.3	1.2	15	5	61.5	22.2	3	6.7	3	19.8	17.7

NOTE: For each court, the first line shows the number of pleadings recorded. The second line is "normalized" to 500 cases: it is the number expected if exactly 500 cases had been recorded.

TABLE 56

Frequency of Posttrial and Other Motions Filed and Recorded

	Arrest judgment pending appeal	Amend judgment; relief from judgment	New trial	Reconsider	Miscellaneous
FL/S:					
598 cases	4	22	15	35	9
500 cases	3	18	13	29	8
CA/C:					
544 cases	0	5	3	26	4
500 cases	0	5	3	24	4
MD:					
503 cases	0	3	4	18	0
500 cases	0	3	4	18	0
LA/E:					
499 cases	0	3	8	30	1
500 cases	0	3	8	30	1
PA/E:					
497 cases	3	5	11	26	4
500 cases	3	5	11	26	4
MA:					
468 cases	3	8	6	35	1
500 cases	3	9	6	27	1
Average (500 cases)	1.5	7.2	7.5	27.3	3

APPENDIX F

DATA COLLECTED: METHOD, SAMPLE, RATIONALE

Most of the data presented in chapter three draw upon a large-scale subproject to gather extensive data on the flow of civil cases from each court studied. These data are presented at various points elsewhere in the report as well. The data were collected on the "Federal Judicial Center Civil Case Coding Sheet" shown below. This extensive, four-page form provided a format and an opportunity to show the timing and the history of virtually everything that happened in the civil cases that were coded. The form is complex and involves a significant number of judgmental items; training and supervision were essential, as was recruitment of highly skilled individuals for this task. Nearly all of the coders were lawyers; most were or had been law clerk to federal district judges.

The cases were chosen from a list, prepared by the Administrative Office, of all civil cases terminated during fiscal 1975. The cases are listed in docket number order, which is also the order in which they were filed. Every *n*th case was selected; the number was chosen to result in approximately 500 cases from each court. Terminations are a useful starting point because a data base consisting only of cases terminated is limited to cases whose entire history is known. A data base that uses filings will produce a number of open cases unless the year chosen is far in the past, producing a high proportion of old data. The present data base also includes some old data, of course, because in cases that were pending for several years, the early events all occurred several years ago. Since all but one court sampled had a median disposition time of less than one year, the proportion of old data is small. The method used is also attractive for other reasons. It assures minimal bias from seasonal variation or from a concentration in one division, and assures that the case type mix is roughly that of the entire docket.

The following guide lays out some common characteristics of tables 5–23, all of which are based on the civil data project. These comments should assist the reader in understanding what is included in the tables, in drawing conclusions from the tables, and in understanding the degree of confidence to be attached to the data.

Guide to Tables

Order. In tables 5–23, the courts are presented in order of their overall time for disposition of civil cases. Presenting the tables in this fashion permits the reader to scan any column and determine at a glance to what degree a relationship exists between the variable displayed and the overall disposition times. With only six units (courts) involved, this device seems more useful than available alternatives. Conducting statistical analysis on each table would have added greatly to the bulk of the report, introduced substantial new methodological questions, and added relatively little to the sum of information imparted by the tables.

Number of Data Elements. Nearly every calculation displayed shows the number of data elements on which it is based, because the numbers vary widely on different calculations, which often has powerful effects on the results. Any data describing a particular time interval reflect only those cases for which information was re-

corded on both the starting date and the finish date. The discussion in connection with table 21 demonstrates this problem; the central point to keep in mind is that the tables often reflect intervals which cannot be added to produce a sum representing a more inclusive interval. Since a different population of cases is included in each calculation, addition would be misleading, as the results show in several instances. Of course, medians, unlike means, cannot properly be added in any case. We mention the further problem here because discrepancies in these data between sums of medians and separate calculations of a more inclusive interval are so great that they might cause some alert readers to doubt the accuracy of data presented.

Confidence Limits. Confidence limits were calculated on all medians to determine whether the medians were sufficiently different that it could be stated at a 95 percent level of confidence that the full populations sampled would also have different medians. The confidence limits were not included in the tables because they would have cluttered them to an extraordinary degree. They appear only in a few instances, such as in table 16, where the numbers involved were so small that there were no differences significant at the 95 percent level; that is indicated in that table and one or two others by parentheses. The confidence limits were used to inform the discussion of each table. Conclusions are highlighted in the text only if they are supported by differences known to be significant at the 95 percent level or better. The reader will note numerous references in the text to groups of courts with more or less similar medians. That type of language was used to describe courts whose medians overlapped at the 95 percent level.

Adjustments. Some tables include a column or columns with the word "adjusted." In each case, this indicates that all values for which the duration of zero is shown were excluded from the calculation. In variables that indicate the total time consumed by some process, a duration of zero normally indicates that there was only one event involved. The "adjusted" column excludes the perverse effects of this type of case.

Medians. The tables in this report, like the tables used by the Administrative Office of the United States Courts and most researchers who employ court data, in most instances use medians, rather than means, or "averages," as the preferred measure of central tendency. This is because in court data, the medium—the instance case in the middle, of which it is true that there are as many items lower as there are higher—generally is more expressive of the behavior of the "typical" case, or judge, or whatever is being referred to. Typically, court data are highly skewed, meaning that there are many relatively low values, and a few that are extremely high. To consider cases terminated in a year as an example, most cases in any court will be terminated relatively quickly, but a few will be on the docket for a few or even for many years. The effect of using a median is to exclude the extraordinary impact of a small number of very large values. In this way, the median better represents a subjective sense of the experience of a typical case.

"*Averages*". The bottom line in tables 5–23 is an average, or mean, of the numbers shown in each column. Because many columns present medians, many of the resulting figures are an average of a column of medians. This is a different figure—almost always lower numerically—than would be the average of all the cases represented in the column. It was determined, for purposes of these tables, that the figures displayed would be most useful. If a mean of the entire data base summarized in the column were to be displayed at the bottom, it might be higher than all of the values summarized; in almost every case it would be higher than most of them. This would not serve the intended purpose of the bottom line of the tables, to provide a summary measure of each column.

FEDERAL JUDICIAL CENTER
CIVIL CASE CODING SHEET

Serial No.*(1)* _____
Type*(6)*HEAD Ref. No.*(10)*01
Form*(12)*:____ of*(13)*___forms

Disregard*(14)*[ ]

Collector's Initials _____
(Code*(15)*____)

A. COURT/DIV.: _____ COURT CODE*(16)*: _____

B. DOCKET NO.*(20)*: _____ JUDGE: _____ JUDGE CODE*(26)*: _____

C. PLAINTIFFS: P1: _____ P. ATTY. CODE *(30)*: _____
P2: _____ P. ATTY. CODE *(40)*: _____
P3: _____ P. ATTY. CODE *(50)*: _____

D. DEFENDANTS: D1: _____ D. ATTY. CODE *(60)*: _____
D2: _____ D. ATTY. CODE *(70)*: _____
D3: _____ D. ATTY. CODE *(80)*: _____

E. THIRD PARTY DEFENDANTS: T1: _____ T. ATTY. CODE *(90)*: _____
T2: _____ T. ATTY. CODE*(100)*: _____

F. INTERVENORS: I1: _____ I. ATTY. CODE*(110)*: _____
I2: _____ I. ATTY. CODE*(120)*: _____

G. AMOUNT IN CONTROVERSY*(130)*: _____ H. CASE TYPE: _____ CODE*(137)*: ____

I. FACTS (ISSUES AND COMMENTS): _____

_____

J. DATE CONTROVERSY AROSE*(140-145)*: _____

K. DATE SUBSTANTIAL COMPLETION OF DISCOVERY*(146-151)*: _____

II. PLEADINGS

TYPES: CCLM - Counter Claim
COMP - Complaint
CRCL - Cross Claim
TPCP - Third Party Complaint

CODES: By: P1, P2, D1, D2, etc.
Versus: P1, P2, D1, D2, etc.
Compulsory: Y-Yes, N-No
Informative: 1-10
Germane: 1-10

Service by Marshal: Y-Yes, N-No
Service Type: M-Mail, C-Constructive, P-Personal, N-Newspaper

TYPE	REF. NO.	DATE	BY	VERSUS	COMPULSORY (CCLM only)	INFORMATIVE (COMP or TPCP)	SERVICE OF PROCESS				ANSWER	
							SERVICE					
							FIRST ATTEMPT DATE	COMPLETED DATE	BY MARSHAL	TYPE	DATE	GERMANE (COMP, TPCP)
6-9	*10-11*	*12-17*	*18-19*	*20-21*	*22*	*23-24*	*25-30*	*31-36*	*37*	*38*	*39-44*	*45-46*

III. AMENDMENTS

CODES: By: P1, P2, D1, D2, etc.
Versus: P1, P2, D1, D2, etc.
Service Type: M-Mail, P-Personal, C-Constructive, N-Newspaper (publication)
Answer Needed: Y-Yes, N-No
Service by Marshal Y-Yes, N-No

TYPE	REF. NO.	CROSS REFERENCE		DATE	BY	VERSUS	SERVICE OF PROCESS				ANSWER NEEDED	ANSWER DATE
		TYPE	REF.NO.				SERVICE					
							FIRST ATTEMPT DATE	COMPLETED DATE	BY MARSHAL	TYPE		
6-9	*10-11*	*12-15*	*16-17*	*18-23*	*24-25*	*26-27*	*28-33*	*34-38*	*39*	*41*	*43*	*43-48*
AMEN												
AMEN												
AMEN												
AMEN												
AMEN												

IV DISCOVERY

TYPES: DEPO - Deposition
INTR - Interrogatories
LTDP - Motion for Leave to Take Deposition of Person Departing District
CPED - Motion for Order Regarding Expenses of Deposition
PMEX - Motion for Physical or Mental Examination
MSDM - Miscellaneous Discovery Motions
PROP - Motion for Protective Order
QUAS - Quash
RPDC - Request for Production of Documents
RQAD - Request for Admission
SPDT - Subpoena Duces Tecum
TLED - Motion to Terminate or Limit Examination on Deposition
WQST - Written Questions

CODES: By: P1, D1, JO-Judge, MG-Magistrate
To: P1, D1, etc.
Off: J-Unknown, W-Witness, E-Expert Witness, C-Custodian of Records, P-Party, D-Doctor
Brief: No. of Briefs
Germane: Rating 1-10

TYPE	REF. NO.	MOTIONS						OF	GERMANE	DENIAL DATE	DATE NOTICED FOR	DATE TAKEN	DATE OF FILING TRANSCRIPT OR ANSWERS	SERVICE DATE	CROSS QUESTIONS DATE	CROSS QUESTIONS ANSWER DATE	MOTION TO COMPEL (Excluding LTDP)				DATE OF COMPELLED ANSWER	MOTION FOR SANCTIONS			
		DATE	BRIEF	BY	TO	ANSWER													ANSWER			DATE	BRIEF	ANSWER	
						DATE	BRIEF										DATE	BRIEF	DATE	BRIEF				DATE	BRIEF
8-9	10-11	13-17	18-19	20-21	22-23 INTR PMEX RPDC RQAD SPDT	24-29 EXCLUDING DEPO MSDM RQAD WQST	30-31 LTDP ORED PMEX PROR TLED	32 DEPO LTDP ORED PMEX PROR TLED	33-34 INTR	35-40 RQAD	41-47 DEPC RPDC	48-53 DEPO WQST	54-55 DEPO WQST	56-66 WQST	67-71 WQST	72-77 WQST	78-83	84-85	86-91	92-93	94-99	100-105	106-107	108-113	114-115

V. SUBSTANTIVE MOTIONS

TYPES: DEJO - Default Judgment
DEJP - Dismiss for Failure to Join a Party
DFSC - Dismiss for Failure to State Claim
DIMV - Dismiss for Improper Venue
DLPJ - Dismiss for Lack of Personal Jurisdiction
DLSM - Dismiss for Lack of Subject Matter Jurisdiction
DSPR - Dismiss for Insufficient Service of Process
FPRO - Failure to Prosecute
JDPL - Judgment on Pleadings
MDST - More Definite Statement
MSSM - Miscellaneous Substantive Motions
PRNJ - Preliminary Injunction
STRK - Strike
SUJD - Summary Judgment
TMRO - Temporary Restraining Order

CODES: By: P1, P2, JD-Judge, MG-Magistrate
Versus: D1, D2, etc.
Brief (1-10)
What: C-Complaint, A-Answer, I-Answer to Interrogatory; V-Affidavits, O-Other

TYPE	REF. NO.	MOTION						WHAT STRK only	MOTION TO DISSOLVE (TMRO and PRNJ only)						DESCRIPTION MSSM only
		DATE	BY	VERSUS	BRIEF Excluding STRK	ANSWER DATE	ANSWER BRIEF		DATE	BY	VERSUS	BRIEF	ANSWER DATE	ANSWER BRIEF	
8-9	10-11	12-17	18-19	20-21	22-23	24-29	30-31	32	33-38	39-40	41-42	43-44	45-50	51-52	

VI. JUDICIAL RESPONSES

CODES: Action: G-Granted, D-Denied, P-Partial W-Withdrawn
Subtype: O-Original, C-Compel, S-Sanctions
O-Dissolve,

TYPE	REF. NO.	CROSS REFERENCE (Except CONT, EMLG, EXTN-see VIII)			NOTICE OF HEARING		DATE HEARING HELD	RULING			NO. OF PAGES OF MEMO ORDER	DATE OF ORDER TO VACATE
		TYPE	REF. NO.	SUBTYPE	DATE	DATE SET		DATE	ACTION	DATE SET FOR ANSWER		
8-9	10-11	13-16	16-17	18	19-24	25-30	31-36	37-42	43	44-49	50-51	52-57
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												
JUDR												

VII. PROCEDURAL MOTIONS

TYPES: CCON - Another Case Consolidated with This One
CHVN - Change of Venue
CLAC - Class Actions
INAP - Suggestion of Certification or for Interlocutory Appeal
INTV - Intervention
JOPT - Join Parties
LFAM - Leave to File Amended Pleading
MSPM - Miscellaneous Procedural Motions
RMPT - Removal Petition
SPCA - Sever Parties or Causes of Action
STAY - Stay
TRAD - Transferred from Another District
TRAN - Transfer

CODES: By: P1, P2, D1, D2, JD-Judge, MG-Magistrate
Versus: P1, P2, D1, D2, etc.
Brief: No. of Briefs
Special Discovery: Y-Yes or N-No
From: District Court Code

TYPE	REF. NO.	MOTION						DATE OF ORIGINAL COMPLAINT	NO. OF CASES CONSOL.	DOCKET NOS. (2 Cases Maximum)	FROM	NO. OF PARTIES SEVERED OUT	NO. OF PARTIES ADDED	CLASS ACTIONS					DESCRIPTION AND COMMENTS
		DATE	BY	VERSUS	[illegible]	ANSWER DATE	ANSWER BRIEF							NOTICE OF CLASS DATE	SPEC DISCOVERY	NOTICE MAILING DATE	SIZE OF CLASS	OPTING OUT DATE	
8-9	10-11	12-17	18-19	20-21	22	24-29	30-31	32-37	38	39-44	56-58	59	60	61-66	67	68-73	74	75-80	

TRAD
RMPT
CCON
SPCA
JOPT
INTV
JOPT
MSPM
SPCA only
INTV
JOPT
MSPM
SPCA only
INTV
JOPT
MSPM
RMPT
SPCA only
INTV
JOPT
MSPM
RMPT
SPCA only

VIII. CONTINUANCES

TYPES: CONT - Continuances of JUDR, PTCN, TRIL only
ENLG - Enlargements of time to answer motions, pleadings, discovery, and the discovery cutoff date
EXTN - Extension of time to file all motions, pleadings, and discovery

CODES: Movant: Pl, Dl, etc.
Action: G-Granted, D-Denied
By Whom: J-Judge, P-Parties, C-Clerk, U-Unknown
Subtype: C-Compel, O-Original, S-Sanctions

TYPE	REF. NO.	CROSS REFERENCE			MOTION			RULING			ORIGINAL DATE SET	NEW DATE SET
		TYPE	REF. NO.	SUBTYPE	DATE	MOVANT	ANSWER DATE	DATE	ACTION	BY WHOM		
6-9	10-11	12-15	16-17	18	19-24	25-26	27-32	33-38	39	40	41-46	47-52

IX. TIMING CONTROLS

A. PRETRIAL CONFERENCE (PTCN)

CODES:
By: J-Judge, C-Clerk, M-Magistrate, O-Other
Length: L-Long, S-Short

TYPE	REF. NO.	DISCOVERY CUTOFF			SCHEDULING PTCN			PRETRIAL CONFERENCE			PRETRIAL ORDER	
		DATE	DATE SET FOR	BY	DATE OF SCHEDULING	DATE SET FOR	BY	DATE	NO. OF PARTIES ABSENT	BY	DATE	LENGTH OF DOCUMENTATION
6-9	10-13	13-17	18-23	24	25-30	31-36	37	38-43	44-45	46	47-52	53-55
PTCN												
PTCN												
PTCN												
PTCN												
PTCN												
PTCN												
PTCN												
PTCN												

B. TRIAL

CODES:
Nonjury: Y-Yes, N-No
Pretrial Brief: Y-Yes, N-No
Under Advisement - Y-Yes, N-No

TYPE	RET. NO.	SCHEDULING		TRIAL				UNDER ADVISEMENT	BRIEFING DATES		OPINION RENDERED	
		DATE OF SETTING	DATE SET FOR	DATE HELD	NO. OF DAYS	NONJURY	PRETRIAL BRIEFS		PLAINTIFF	DEFENDANT	DATE	PAGES
6-9	10-11	18-23	18-23	24-29	30-31	32	33	34	36-40	41-46	47-52	53-55
TRIL												
TRIL												
TRIL												

C. DISPOSITION

CODES: Type: S-Settlement, T-Trial, M-Motion, F-Transfer, C-Consolidation, V-Voluntary Dismissal, O-Other
Prejudice: Y-Yes or N-No
Partial/Final: P or F

TYPE	REF. NO.	DATE	DISP. TYPE	SETTLEMENT NOTICE DATE	PREJUDICE	PARTIAL/ FINAL	NO. OF PARTIES OUT	EXECUTION OF JUDGEMENT DATE
6-9	10-11	18-23	24	25-30	31	32	33-34	35-40
DISP								
DISP								
DISP								
DISP								

D. POST TRIAL

TYPES: AJPA - Motion to Arrest Judgment Pending Appeal
AMNJ - Motion to Amend Judgment or Relief from Judgment
MSPT - Miscellaneous Post Trial Motions
NTRI - Motion for New Trial
RCON - Motion to Reconsider

CODES: Filed by: Pl, Dl, JO-Judge, MS-Magistrate
Brief: 1-10
Subtype: C-Compel, O-Original, S-Sanctions

TYPE	REF. NO.	CROSS REFERENCE			DATE	FILED BY	BRIEF	ANSWER		DESCRIPTION
		TYPE	REF. NO.	SUBTYPE				DATE	BRIEF	MSPT only
6-9	10-11	12-15	16-17	18	19-24	25-28	27-28	29-34	35-36	

APPENDIX G

CASE TYPES USED IN CIVIL DATA COLLECTED

The cases coded were categorized by the coders, rather than by reliance on the JS–44 form filled out by the attorney at filing. (The data base also includes the case category assigned from that form, which is the case category used in published tables of the Administrative Office.) This process was more useful for research purposes because it permitted cases to be categorized based on a substantive judgment concerning what the case actually involved, in contrast to the published data, which reflect what is essentially an attorney's prediction, at filing, concerning the issues a newly filed case would present. Also, attorneys occasionally categorize a case in ways that seem to reflect strategic considerations. If a case is shaky on jurisdiction, a lawyer may categorize it as antitrust, or patent, or some other federal question jurisdiction, when in reality it is an ordinary diversity case involving personal injury or a contract dispute.

The case categories used in table 5 and elsewhere are aggregations of our case categories, as follows:

Routine Tort

Federal Employers' Liability Act
Federal Tort Claims Act
Jones Act
Slip and Fall
Marine (nonseaman, personal injury)
Automobile
Other
Air Crash

Complex Tort

Ship Collision
Product Liability

Property Tort

Legal and Medical Malpractice
Ship Cargo Damage
Admiralty Tort
Ship Cargo Loss
ICC Cargo Damage or Loss
Copyright
Trademark
Fraud (other than securities or bankruptcy)

Complex Contract

Ship Service, Repair and Wage Claims
Ship Mortgage and Charter
Warranty
Promissory Note
Construction
Suretyship (Miller Act, Small Business Administration, and Federal Housing Administration loans)
Franchise
Securities (10(b)(5) and other)
Insurance

Simple Contract

Realty
Two-Party
Employment
Transportation
Services
Hours and Wages (labor)
Collective Bargaining

Constitutional Law

42 U.S.C. § 1983
Injunction Attacking a State Law (three-judge court)
All Other Types of Discrimination
EEOC
Other
Federal Constitutional Law

Commercial Complex
Corporate Bankruptcy
Patent
Justice Department, Antitrust
Federal Trade Commission Act
Price Fixing
Monopoly
Robinson-Patman Act
Unfair Competition (not trademark)

Prisoner Petitions
Federal Habeas Corpus
State Habeas Corpus
Federal Civil Rights
State Civil Rights

Administrative Appeals
Freedom of Information Act
Agency Appeals
Social Security Appeals
Other Administrative Law
Black Lung Disability
Coal Health and Safety Act
Penalty (admiralty)
Civil Service
OSHA
Penalty (ICC)
Deportation (naturalization)
Other Appeals (naturalization)

All Other

APPENDIX H

CENTRAL DISTRICT OF CALIFORNIA: ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE DISMISSED; LOCAL RULE 3 (MOTIONS); LOCAL RULE 9 (PRE-TRIAL PROCEEDINGS)

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

_____, Plaintiff(s) v. _____, Defendant(s)	Civil No. _____ ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE DISMISSED

In accordance with the authority vested in this court pursuant to *Link v. Wabash R.R.*, 370 U.S. 626 (1962); *Ballew v. Southern Pacific Co.*, 428 F.2d 787 (9th Cir. 1970); *States Steamship Co. v. Philippine Air Lines*, 426 F.2d 803 (9th Cir. 1970); *West v. Gilbert*, 361 F.2d 314 (2nd Cir. 1966); *Boling v. United States*, 231 F.2d 926 (9th Cir. 1956), the plaintiff(s) is (are) ordered to show cause on _____, at _____ M., in Courtroom No. ____ of the above-entitled court, why the complaint should not be dismissed for failure to prosecute the action.

IT IS FURTHER ORDERED that all affidavits, documents and memoranda in opposition to or in support of the order to show cause shall be filed no later than _____.

IT IS FURTHER ORDERED, pursuant to Rule 43(e) of the Federal Rules of Civil Procedure, that the matter will be heard wholly on affidavits and facts appearing in the record, and the court will not receive oral testimony.

IT IS FURTHER ORDERED that the clerk of this court shall serve a copy of this order by United States mail upon counsel for all the parties appearing in the action.

Dated this ____ day of _____, 197__.

_____

United States District Judge

RULE 3. MOTIONS AND MATTERS OTHER THAN TRIALS ON THE MERITS

(a) Rule Applicable:

The provisions of this Rule 3 shall apply to motions, applications, orders to show cause, and all other proceedings except a trial on the merits, unless otherwise ordered by a Judge of this Court and unless contrary to statute or the F.R. Civ. P., e.g., see F.R. Civ. P. 54, Costs, and 59, New Trials.

(b) Motion Days:

Mondays, while the Court is in session, shall be "Motion Days" on which all law and motion calendars will be called and on which all motions, orders to show cause, and other law matters will be heard unless set for a particular day by order of the Court. When notice to the adverse party is required to be given, such notice shall be for a Monday unless the Court, for good cause shown, shall direct otherwise. If Monday be a national holiday, the succeeding Tuesday shall be the motion day for that week and all matters noted for such Monday shall stand for hearing on Tuesday without special order or notice.

(c) Computation of Time:

1. All legal holidays and computations of time shall be as provided in Rule 6, F.R. Civ. P.

2. The time within which any document or paper is required to be filed pursuant to this rule may be enlarged by order of Court either before or after the expiration of the time provided unless contrary to statute or F.R. Civ. P., e.g., see F.R. Civ. P. 50(b), 52(b).

3. A party filing any document in support of or in opposition to any motion noticed for hearing as above provided after the time for filing the same shall have expired, shall be subject to the sanctions of Local Rule 28 and F.R. Civ. P.

(d) Motions Submitted:

Motions, in general, shall be submitted and determined upon the motion papers herein referred to. Except in the event of a motion to retax costs under Rule 15(e) hereof, oral arguments may be allowed only by the judge before whom the motion is pending.

(e) Motions—Service, Filing, and Time for Hearing:

1. Time for Hearing:

When there has been an adverse appearance, a written notice of motion shall be necessary, unless otherwise provided by rule or Court order. No oral motions will be recognized, except in open Court with the consent of the Judge presiding.

Any notice of motion or other matter shall be served upon the adverse party, or his attorney, and filed with the Clerk of this Court not later than seventeen (17) days before the day designated in the motion as the hearing date, unless the Court or one of the Judges thereof shall, for good cause by special order prescribe a shorter time. All motions or other matters belonging upon the Motion Day calendar shall be placed by the Clerk upon the calendar for hearing upon the day noticed therein. Unless otherwise specially ordered, the Clerk shall refuse to file any notice of motion presented for filing which sets a matter

for hearing other than upon a regular motion day as above provided. (For computation of time, see Rule 6, F.R. Civ. P. Said rule provides in part as follows:

"(a) Computation. In computing any period of time prescribed or allowed by the rules, by the local rules of any district court, or by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), 'Legal holiday' includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.")

2. Content of Papers Filed:

There shall be served and filed with the notice of motion or other application and as a part thereof (a) copies of all photographs and documentary evidence which the moving party intends to submit in support of the motion or other application, in addition to the affidavits required or permitted by Rule 6(d), F.R. Civ. P. and (b) a brief, but complete written statements of all reasons in support thereof, together with a memorandum of the points and authorities upon which the moving party will rely.

3. Reply Memorandum:

If the moving party so desires, he may within two (2) days after the service upon him of the points and authorities of the adverse party file a reply memorandum.

4. Failure to File Required Papers:

Failure by the moving party to file any instruments or memorandum of points and authorities provided to be filed under this rule shall be deemed a waiver by the moving party of the pleading or motion.

(f) Opposition to Motions, Papers Required—Service and Filing:

1. Content of Papers Filed:

Each party opposing the motion or other application shall not later than seven (7) days after service of the notice thereof upon him, serve upon the adverse party, or his attorney, and file with the Clerk either (a) a brief, but complete written statement of all reasons in opposition thereto, an answering memorandum of points and authorities and copies of all photographs and documentary evidence upon which he intends to rely; or (b) a written statement that he will not oppose the motion.

2. Failure to File Required Papers:

In the event an adverse party fails to file the instruments and memorandum of points and authorities provided to be filed under this rule, such failure shall be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application.

3. Notice of Lack of Opposition or Motion for Continuance:

Any party either proposing or opposing a motion or other application who does not intend to urge or oppose the same or who intends to move for a continuance shall, not later than noon on the Wednesday preceding the Monday hearing, and not less than three (3) days in advance of any other day than Monday which may be fixed for the hearing, notify (1) opposing counsel, (2) the Clerk of the Judge before whom the matter is pending, in order that the Court and counsel may not be required to devote time to an immediate consideration of a matter which will not be presented.

(g) Motions for Summary Judgment:

1. There shall be served and lodged with each motion for summary judgment pursuant to Rule 56 of the F.R. Civ. P. proposed findings of fact and conclusions of law and proposed summary judgment. Such proposed findings shall state the material facts as to which the moving party contends there is no genuine issue.

2. Any party who opposes the motion shall, not later than five (5) days after service of the notice of motion upon him, serve and file a concise "statement of genuine issues" setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

3. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy except as and to the extent that such facts are controverted by affidavit filed in opposition to the motion.

(h) Failure of Appearance:

Upon presenting a notice of motion or other application, and points and authorities, with proof of due service thereof, and all copies of papers upon which the motion or other application is based, if no one appears to oppose it, the moving party shall, if requested by the Judge presiding, state the material elements of the same. Thereupon the Court may render its decision. When no counsel appears on Motion Day in support of a motion to dismiss or a motion for a new trial, such motion may be denied without examination of the record.

(i) Penalties:

The presentation to the Court of unnecessary motions, and the unwarranted opposition of motions, which in either case unduly delays the course of an action or proceeding through the Courts, or failure to comply fully with this rule, subjects the offender, at the discretion of the Court to appropriate discipline, including the imposition of costs and attorney's fees to opposing counsel or the sanctions of Local Rule 28.

(j) Ex Parte Applications:

Except for good cause shown, all applications for ex parte orders shall be heard in open Court at the opening of the sessions at 10:00 o'clock A.M. or 2:00 o'clock P.M., or, if Court is not to be in session, in chambers at or shortly prior to the hours last specified. All such applications shall be accompanied by a memorandum containing the title and number of the cause, the nature of the motion and the name of counsel for the opposite party, if known. An ex parte order presented in writing shall bear the signature of the attorney presenting it, preceded by the words, "Presented by" on the left side of the last page.

(k) Applications Previously Refused:

Whenever any motion or any application or petition for any order or other relief has been made to any Judge and has been refused in whole or in part, or has been granted conditionally or on terms, and a subsequent motion or application or petition is made for the same relief in whole or in part upon the same or any alleged different state of facts, it shall be the continuing duty of each party and attorney seeking such relief to present to the Judge to whom any subsequent application is made an affidavit of a party or witness or certified statement of an attorney setting forth the material facts and circumstances surrounding each prior application, including inter alia: (1) when and to what Judge the application was made, (2) what ruling or decision or order was made thereon, and (3) what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application; and for failure to comply with the foregoing requirements of this rule, any ruling or decision or order made on such subsequent application may be set aside sua sponte or on ex parte motion, and the offending party or attorney may be subject to the sanctions of Local Rule 28 or F.R. Civ. P.

(l) Motions Relating to Discovery:

With respect to all motions and objections relating to discovery, pursuant to Rules 20 through 37, F.R. Civ. P., counsel for the parties shall meet and confer in advance of the hearing at a mutually convenient time and place in a good faith effort to eliminate objections as to the form of interrogatories and requests for admissions, disagreements as to terminology or nomenclature, and other disputes. The conference shall be held at a time in advance of the hearing such as will enable the parties to narrow the areas of disagreement to the greatest extent practicable. It shall be the responsibility of the counsel for the moving or objecting party or parties to arrange for the conference.

It shall be the responsibility of all parties appearing to formulate and file with the clerk not later than the Wednesday prior to the hearing a written stipulation specifying with particularity the issues remaining to be determined upon the hearing and the contentions of each party as to each such issue.

(m) Continuances of Motions:

The entry of an order continuing the hearing of a motion where opposition to the motion has not already been filed shall operate ipso facto to extend the time for filing opposition to seven days preceding the new hearing date, unless otherwise ordered.

(n) Requests for Reporter's Transcript:

A party desiring a reporter's transcript of any part of any proceedings in this court shall file with the clerk of the court an original and two copies of a notice designating the portion of the proceedings desired to be transcribed. One copy of such notice shall be for the judge and the other for the reporter. Except in cases where the transcript is being prepared for an appellate court, the district judge before whom the matter is pending shall be supplied with the original of the transcript. The district judge may waive this requirement and the reporter shall ascertain whether the requirement is to be waived before preparing the requested transcript.

RULE 9. PRE-TRIAL PROCEEDINGS.

ALL CASES SHALL BE PRETRIED UNLESS WAIVED BY ORDER OF THE COURT.

(a) Notice: After a civil action or proceeding, including admiralty, is at issue, unless the court or the judge in charge of the case otherwise directs, the clerk will place the cause on calendar for pre-trial conference on the Monday nearest 60 days thereafter and will thereupon serve all parties appearing in the cause by United States mail a "Notice of Pre-Trial Conference" in the form prescribed by the judge to whom the case is assigned or in the form substantially as follows:

"(Title of Court and Cause) No.: _____

Notice of Pre-Trial Conference

"This case has been placed on calendar for pre-trial conference in Courtroom No. ____ of this court at ____ o'clock on _____, 19__, pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this court; and unless excused for good cause, each party appearing in the action shall be represented at pre-trial conference and at all pre-trial meetings of counsel, by the attorney who is to have charge of the conduct of the trial on behalf of such party.

"The proposed pre-trial conference order must be lodged with the clerk not later than 5:00 p.m. on the Wednesday preceding the conference date.

_____, 19__

JOHN A. CHILDRESS, Clerk

By _____, Deputy"

(b) Procedure: Upon receiving notice of a pre-trial conference:

(1) it shall be the duty of each party and counsel appearing to comply with all requirements of this rule, unless the court otherwise directs;

(2) applications to be relieved of compliance may be made in the manner hereinafter provided in subdivisions (h) and (i) of this rule;

(3) all documents, other than exhibits, called for by this rule shall be filed in duplicate and in the form required by local Rule 4.

(c) Discovery Procedures: As soon as issue is joined, discovery proceedings, including requests for admissions, should begin and all discovery proceedings shall be completed, if possible, prior to the pre-trial conference.

(d) Meetings of Counsel: Not later than 40 days in advance of pre-trial conference, the attorneys for the parties shall meet together at a convenient time and place for the purpose of arriving at stipulations and agreements all for the purpose of simplifying the issues to be tried. At this conference between counsel, all exhibits other than those to be used for impeachment shall be exchanged and examined and counsel shall also exchange a list of the names and addresses of witnesses to be called at the trial including expert witnesses; each photograph, map, drawing and the like shall bear, upon the face or the reverse side thereof, a concise legend stating the relevant matters of fact as to what is claimed to be fairly depicted thereby, and as of what date. Each attorney shall also then make known to opposing counsel his contentions regarding the applicable facts by law.

FAILURE TO DISPLAY EXHIBITS TO OPPOSING COUNSEL AS REQUIRED BY THESE RULES SHALL AUTHORIZE THE COURT TO REFUSE TO ADMIT THE SAME INTO EVIDENCE.

(e) Memorandum of Contentions of Fact and Law: Not later than 15 days in advance of pre-trial conference, each party appearing shall serve and file with the clerk a "MEMORANDUM OF CONTENTIONS OF FACT AND LAW" containing a concise statement of the material facts involved as claimed by such party, including:

(1) With respect to negligence cases, the plaintiff shall set forth:
acts of negligence claimed,
specific laws and regulations alleged to have been violated,
a statement as to whether the doctrine of res ipsa loquitur is relied upon, and the basis for such reliance,
a detailed list of personal injuries claimed,
a detailed list of permanent personal injuries claimed, including the nature and extent thereof.
the age of the plaintiff,
the life and work expectancy of the plaintiff, if permanent injury is claimed,
an itemized statement of all special damages to date, such as medical, hospital, nursing, etc., expenses, with the amount and to whom paid,
a detailed statement of loss of earnings claimed,
a detailed list of any property damage.
In wrongful death actions, the further information as follows:
decedent's date of birth, marital status, including age of surviving spouse, employment for five years before date of death, work expectancy, reasonable probability of promotion, rate of earnings for five years before date of death, life expectancy under the mortality tables, general physical condition immediately prior to date of death,
the names, dates of birth, and relationship of decendent's dependents,
the amounts of monetary contributions or their equivalent made to each of such dependents by decedent for a five-year period prior to date of death. A statement of the decedent's personal expenses and a fair allocation of the usual family expenses for decedent's living for a period of at least three years prior to the date of death; amount claimed for care, advice, nurture, guidance, training, etc., by the deceased, if a parent, during the minority of any dependent.

The defendant shall set forth any acts of contributory negligence claimed, in addition to any other defenses he intends to interpose.

(2) In contract cases, the parties shall set forth:
whether the contract relied on was oral or in writing, specifying the writing,
the date thereof and the parties thereto,
the terms of the contract which are relied on by the party,
any collateral oral agreement, if claimed, and the terms thereof,
any specific breach of contract claimed,
any misrepresentation of fact alleged,

an itemized statement of damages claimed to have resulted from any alleged breach, the source of such information, how computed, and any books or records available to sustain such damage claim,

whether modification of the contract or waiver of covenant is claimed, and if so, what modification or waiver and how accomplished.

(3) In the event this case does not fall within the above enumerated categories, counsel shall, nevertheless, set forth their positions with as much detail as possible.

(4) In eminent domain proceedings, additional pre-trial disclosure shall be made as follows:

(A) Not later than 30 days in advance of pre-trial conference, each party appearing shall serve and file a summary "STATEMENT OF COMPARABLE TRANSACTIONS" containing the relevant facts as to each sale or other transaction to be relied upon as comparable to the taking, including the alleged date of such transaction, the names of the parties thereto, and the consideration therefor; together with the date of recordation and the book and page or other identification of any record of such transaction; and such statements shall be in form and content suitable to be presented to the jury as a summary of evidence on the subject;

(B) At least 20 days prior to trial each party appearing shall serve and file a "STATEMENT AS TO JUST COMPENSATION" setting forth a brief schedule of contentions as to the following: (1) the fair market value in cash, at the time of taking of the estate or interest taken; (2) the maximum amount of any benefit proximately resulting from the taking; and (3) the amount of any claimed damage proximately resulting from severence.

(5) In patent cases, the parties and attorneys shall comply with the following:

(A) The party contending for validity shall set forth a short specific statement of the party's contentions as to the advance in the art covered by the claims in suit and all other contentions in support of validity, and the party contending for invalidity shall set forth a short specific statement of its contentions as to the absence of advances in the art, and all other contentions adversely affecting validity;

(B) The party contending for the infringement of the patent shall set forth a short specific statement of plaintiff's contentions as to how the patent or patents are infringed;

(C) The party contesting the infringement of the patent shall set forth a short specific statement of defendant's contentions as to why the patent or patents are not infringed.

ATTORNEYS SHOULD PREPARE THE CONTENTIONS RESPECTING PATENT CLAIMS WITH METICULOUS CARE SINCE THE COURT WILL EXPECT THE PARTIES TO BE BOUND BY THE INTERPRETATIONS SET FORTH IN COMPLIANCE WITH THE ABOVE REQUIREMENTS:

(6) Each party shall set forth a brief statement of the points of law and a citation of the authorities in support of each point upon which such party intends to rely at the trial, which will serve to satisfy the requirements of local Rule 12.

(7) Each party shall set forth a statement of any issues in the pleadings which have been abandoned.

(8) Each party shall set forth a list of all exhibits such party expects to offer at the trial other than those to be used for impeachment with a description of each exhibit sufficient for identification, the list being substantially in the following form:

Case Title: _____ Case No. _____

LIST OF _____ EXHIBITS

NUMBER	DATE MARKED	DATE ADMITTED	DESCRIPTION

INSTRUCTIONS:

Place case caption at the top as shown, and show "Plaintiff's" or "Defendant's" before the word "Exhibits," and, below that, only the spaces labeled "Number" and "Description" are required to be filled in prior to trial.

Plaintiff shall number exhibits numerically and defendant by alphabetic letters, as follows: A to Z; thence AA to AZ; then BA to BZ, etc.

Consult the judge's clerk concerning problems as to the numbering of exhibits.

(9) Each party shall set forth the names and addresses of all prospective witnesses and, in the case of expert witnesses, a narrative statement of the qualifications of such witness and the substances of the testimony which such witness is expected to give. Only witnesses so listed will be permitted to testify at the trial except for good cause shown.

(f) Conduct of Conference: At pre-trial conference, the court will consider:

(1) .the pleadings, papers, and exhibits then on file, including the stipulations, statements, and memorandums filed pursuant to this order and all matters referred to in F.R. Civ. P., Rule 16;

(2) all motions and other proceedings then pending, including a motion to dismiss pursuant to F.R. Civ. P., Rule 41(b), "for failure . . . to comply with these rules or any order of court"; or to impose attorney's fees and costs or other penalties pursuant to F.R. Civ. P., Rule 37, for failure of a party to comply with the rules as to discovery; or to impose personal liability upon counsel for excessive costs pursuant to 28 U.S.C. § 1927 or Local Rule 28;

(3) any other matters which may be presented relative to parties, process, pleading or proof, with a view to simplifying the issues and bringing about a just, speedy, and inexpensive determination of the case; and

(4) upon conclusion of pre-trial conference, the court will set the case for trial and enter such further orders as the status of the case may require.

(g) Pre-Trial Conference Order. Not later than 5:00 p.m., on the Wednesday prior to the pre-trial conference, plaintiff shall serve and lodge

with the clerk a proposed Pre-Trial Conference Order, approved as to form and substance by the attorneys for all parties appearing in the case, and in form substantially as follows:

"(Title of Court and Cause)

No._____PRE-TRIAL CONFERENCE ORDER

"Following pre-trial proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court, IT IS ORDERED:

I This is an action for: (Here state nature of action, designate the parties and list the pleadings which raise the issues);

II Federal jurisdiction and venue are invoked upon the ground: (Here list a concise statement of the facts requisite to confer federal jurisdiction and venue);

III The following facts are admitted and require no proof: (Here list each admitted fact, including jurisdictional facts);

IV The reservations as to the facts cited in paragraph III above are as follows: (Here set forth any objection reserved by any party as to the admissibility in evidence of any admitted fact and, if desired by any party, limiting the effect of any issue of fact as provided by F.R. Civ. P., Rule 36(b), or Admiralty Rule 32B(b), as the case may be);

V The following facts, though not admitted, are not to be contested at the trial by evidence to the contrary: (Here list each);

VI The following issues of fact, and no others, remained to be litigated upon the trial: (Here specify each; a mere general statement will not suffice);

VII The exhibits to be offered at the trial, together with a statement of all admissions by and all issues between the parties with respect thereto, are as follows: (Here list all documents and things intended to be offered at the trial by each party, other than those to be used for impeachment, in the sequence proposed to be offered, with a description of each sufficient for identification, and a statement of all admissions by and all issues between any of the parties as to the genuineness thereof, the due execution thereof, and the truth of relevant matters of fact set forth therein or in any legend affixed thereto, together with a statement of any objection reserved as to the admissibility in evidence thereof);

VIII The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each);

IX The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

_____, 19__.

_____
United States District Judge

Approved as to form and content:

_____
Attorney for Plaintiff

_____
Attorney for Defendant

(h) Postponement of Hearing: If additional time is required to comply with this rule, the parties may submit a timely stipulation signed by all counsel, setting forth the reasons and requesting an order of court for continuance to a stated Monday calendar. Pre-trial conference will usually be postponed (1) to await completion of all intended discovery procedures, if such procedures have been pursued with due diligence; (2) to await determination of a motion for summary judgment pursuant to F.R. Civ. P., Rule 56; (3) to await determination of a motion to dismiss for lack of jurisdiction pursuant to F.R. Civ. P., Rule 12; or (4) to permit the parties time to exhaust the possibilities of settlement. Entry of an order postponing the date for pretrial conference shall operate ipso facto to extend the various time periods fixed by this rule, so that compliances shall be sufficient if made within the periods of time specified when computed from the later date so fixed for pretrial conference.

(i) Motions Prior to Conference: In the event of inability to obtain the stipulation of counsel is provided in subdivision (h), motions to postpone, or to be relieved from compliance with, any of the requirements of this rule may be presented at the call of any Monday calendar of the court upon giving five-days' written notice.

APPENDIX I

STATISTICAL ANALYSIS OF THE IMPACT OF DISCOVERY CONTROLS

The six courts we visited differ greatly in the time consumed by discovery in the typical civil case. The obvious next question is: to what extent are the differences in discovery time associated with different degrees of control by the court? Using a statistical technique called analysis of variance, we examine here the extent to which some of the time differences are associated with court-imposed discovery controls.

It seems best to address the seemingly straightforward question of the impact of discovery controls by separating it into several component questions, each to be the subject of separate calculations. Specifically, we examine the impact of strong procedures to impose an early discovery cutoff date on the following (the numbers and letters correspond to those on tables 58, 59, and 60 below):

1. Total discovery time, as measured by:
   a. The total time interval from the first discovery request by any party to the last discovery activity in a case, and
   b. the time interval from the filing of the initial complaint until "substantial completion of discovery," and
   c. the time from the first discovery request by any party until "substantial completion of discovery."
2. The number of discovery events per case, measured by a count of all discovery initiatives (interrogatories, depositions, requests for production of documents, and requests for admission), divided by the total number of cases that had at least one discovery event.
3. Disposition time, measured from filing to disposition, excluding the time from settlement until statistical closing of the case. Certain case types in which discovery is rare are excluded. Disposition time is examined for tried cases, for settled cases, and for both together.

The "independent variable," the factor whose impact we are measuring, is use of strong controls on discovery time. It has been clear throughout this project that the concept of "strong control" is complex and elusive. In this section, the determination of which cases have been the subject of strong controls is made by comparing the experience of cases before judges with strong controls to the experience of cases before other judges. We categorized the judges (see table 57) through a two-step process that involved both "soft" and "hard" data: observations and discussions from the phase one court visits, supplemented by data gathered later. It should be emphasized that the classification is a somewhat subjective one because the data are not sufficiently detailed and uniform to permit precise classification of such a complex, multifaceted question. Briefly, a judge appears in the "strong controls" column in table 57 only if we established that his procedures assure that firm and tight discovery cutoff dates are set early in all or nearly all appropriate cases.

The classification of courts in table 57 is closely related to the classification of judges, though the correspondence is not complete.

The three court categories are as follows:

Strongest Controls—All judges assert some control. At least 50 percent of the active judges are in the "strong" controls group.

Moderate Controls—All judges assert some control; less than 50 percent are in the "strong" controls group.

Least Controls —Some judges do not control discovery at all.

TABLE 57

Discovery Controls: Judges

Court	Strong controls	Limited controls or no controls	Not classified (borderline or limited information)
FL/S	7	0	0
CA/C	9	5	2
MD	2	3	2
LA/E	2	5	2
PA/E	6	10	2
MA	0	5	1
Total	26	28	9

Discovery Controls: Courts

Strongest controls	Moderate controls	Least controls
FL/S	MD	PA/E
CA/C	LA/E	MA

Tables 58 and 59 show powerful effects of discovery controls. In summary, these effects are:

1. Discovery time is much faster in cases subject to strong controls
2. Disposition time is much faster in cases subject to strong controls
3. These savings are achieved without any arbitrary limitation on the amount of discovery completed. Indeed, there is somewhat more discovery before the "strong control" judges (and courts) than the others

Table 58 shows figures for two classifications of judges in the six courts. Lines 1a, 1b, and 1c show wide differences in the time consumed by discovery, whether defined as the total time from first to last activity (line 1a), or in either of two other ways. The succeeding lines show corresponding figures for the other variables used. Table 59 shows corresponding figures for the whole courts. An analysis of variance was run to determine the strength of these relationships. The results appear in Table 60. All of the relationships are extremely strong. Most of the effects could have occurred by chance not more often than one time in one thousand. Thus, the efficacy of discovery controls is demonstrated with regard to both discovery time and disposition time.

TABLE 58

Effects of Judicial Controls: Judges

	Strong controls	Limited or no controls
1. Discovery time (days):		
(a) total	195	311
(b) filing to completion of discovery	302	423
(c) first discovery to completion of discovery	219	318
2. Discovery events per case	5.21	3.84
3. Disposition time (days):		
(a) settled cases	281	486
(b) tried cases	447	803
(c) settled or tried cases	304	519

TABLE 59

Effects of Judicial Controls: Courts

	Strongest controls	Moderate controls	Least controls
1. Discovery time (days):			
(a) total	181	241	328
(b) filing to completion of discovery	285	364	429
(c) first discovery to completion of discovery	211	256	329
2. Discovery events per case	5.39	3.93	4.14
3. Disposition time (days):			
(a) settled cases	262	380	501
(b) tried cases	394	597	919
(c) settled or tried cases	283	402	543

TABLE 60

Effects of Judicial Controls: Probabilities of Observed Effects Occuring by Chance

	Judge effect	Court effect
1. Discovery time:		
(a) Total (1,334)*	0.001	0.001
(b) Filing to completion of discovery (897)	.001	.004
(c) First discovery to completion of discovery (886)	.001	.005
2. Discovery events per case (1,580)	.004	.046
3. Disposition time:		
(a) Settled cases (1,680)	.001	.001
(b) Tried cases (230)	.017	.001
(c) Settled and tried cases (1,910)	.001	.001

*The number in parentheses is the number of cases in which the named activity was observed.

APPENDIX J

SAMPLE SCHEDULING ORDERS AND STANDING ORDERS REGARDING PRETRIAL PREPARATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

NO. _____

ORDER FOR PRETRIAL CONFERENCE
AND
NOTICE OF TRIAL

Pretrial Conference to be held at_____

_____, _____, 197____

_____ Trial to be held at 10 : 00 a.m.

_____, 197_____.

before
JUDGE C. CLYDE ATKINS
Calendar Call will be at 1 : 45 p.m.

Thursday, _____, 197_____.

TIME SCHEDULE

TEN days prior to P–T Conf.	—Attorneys must meet.
SEVEN days prior to P–T Conf.	—Resume of experts' reports must be exchanged.
FIVE days prior to P–T Conf.	—ALL discovery must be completed.
FIVE days prior to P–T Conf.	—ALL motions must be heard.
FIVE days prior to P–T Conf.	—Any memo of law to be filed.
FIVE days prior to P–T Conf.	—Pre-Trial Stipulation *must be* filed.
FIVE days prior to P–T Conf.	—Unilateral pre-trial stipulation *must be* filed.

TRIAL DATE—Parties must be ready for trial any time after P–T Conf.

COUNSEL ARE REFERRED TO THE ATTACHED COPY OF
LOCAL GENERAL RULE 14

LOCAL GENERAL RULE 14—PRETRIAL PROCEDURE IN CIVIL ACTIONS

A. *PRETRIAL CONFERENCE MANDATORY.* Pretrial conferences pursuant to Rule 16, Fed. R. Civ. P., shall be held in every civil action unless the court specifically orders otherwise. Each party shall be represented at the pretrial conference and at meetings held pursuant to paragraph B hereof by the attorney who will conduct the trial, except for good cause shown a party may be represented by another attorney who has complete information about the action and is authorized to bind the party.

B. *COUNSEL MUST MEET.* No later than thirty days prior to the date of the pretrial conference, counsel shall meet at a mutually convenient time and place and:

1. Discuss settlement.

2. Prepare a pretrial stipulation in accordance with paragraph C of this rule.

3. Simplify the issues and stipulate to as many facts and issues as possible.

4. Examine all trial exhibits, except that impeachment exhibits need not be revealed.

5. Furnish opposing counsel names and addresses of trial witnesses, except that impeachment witnesses need not be revealed.

6. Exchange any additional information as may expedite the trial.

C. *PRETRIAL STIPULATION MUST BE FILED.* It shall be the duty of counsel for the plantiff to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than ten days prior to pretrial conference. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

1. The nature of the action.

2. The basis of federal jurisdiction.

3. The pleadings raising the issues.

4. A list of all undisposed of motions or other matters requiring action by the Court.

5. A concise statement of stipulated facts which will require no proof at trial, with reservations, if any.

6. A concise statement of facts which, though not admitted, are not to be contested at the trial.

7. A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (a) As to negligence or contributory negligence, the specific acts or omission relied upon; (b) As to damages, the precise nature and extent of damages claimed; (c) As to unseaworthiness or unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (d) As to breach of contract, the specific acts or omission relied upon.

8. A concise statement of issues of law on which there is agreement.

9. A concise statement of issues of law which remain for determination by the Court.

10. Each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of objections. The list of exhibits shall be on separate schedules attached to the stipulation.

11. Each party's numbered list of trial witnesses, with their addresses. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.

12. Estimated trial time.

13. Where attorney's fees may be awarded to the prevailing party, an estimate of each party as to the maximum amount properly allowable.

D. *UNILATERAL FILING OF PRETRIAL STIPULATION WHERE COUNSEL DO NOT AGREE.* If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations not later than seven days prior to the pretrial conference, with a statement of reasons no agreement was reached thereon.

E. *RECORD OF PRETRIAL CONFERENCE IS PART OF TRIAL RECORD.* Upon the conclusion of the pretrial conference, the Court will enter further orders as may be appro-

priate. Thereafter the pretrial stipulation as so modified will control the course of the trial, and may be thereafter amended by the Court only to prevent manifest injustice. The record made upon the pretrial conference shall be deemed a part of the trial record. Provided, however, any statement made concerning possible compromise settlement of any claim shall not be a part of the trial record, unless consented to by all parties appearing.

F. *DISCOVERY PROCEEDINGS.* All discovery proceedings must be completed no later than fifteen days prior to the date of the pretrial conference, unless further time is allowed by order of the Court for good cause shown.

G. *NEWLY DISCOVERED EVIDENCE OR WITNESSES.* If new evidence or witnesses be discovered after the pretrial conference, the party desiring their use shall immediately furnish complete details thereof and the reason for late discovery to the Court and to opposing counsel. Use may be allowed by the Court in furtherance of the ends of justice.

H. *MEMORANDA OF LAW.* Counsel shall serve and file memoranda treating any unusual questions of law involved in the trial no later than ten days prior to the pretrial conference.

I. *EXCHANGE REPORTS OF EXPERT WITNESSES.* Where expert opinion evidence is to be offered at trial, a resumé of oral or written reports of the experts shall be exchanged by the parties no later than ten days prior to pretrial conference, with copies attached to the pretrial stipulation. Resumés must disclose the expert opinion and its basis on all subjects on which the witness will be called upon to testify.

J. *PROPOSED JURY INSTRUCTIONS.* At the beginning of the trial, counsel shall submit proposed jury instructions to the Court, with copies to all other counsel. Additional instructions covering matters occurring at the trial which could not reasonably be anticipated, shall be submitted prior to the conclusion of the testimony.

K. *PENALTY FOR FAILURE TO COMPLY.* Failure to comply with the requirements of this rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal of the cause, or the striking of defenses and entry of judgment.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Plaintiff.	Civil No. _____
v.	NOTICE OF PRE-TRIAL CONFERENCE AND ORDER RE UNSERVED PARTIES
_____ Defendant.	

TO:

This case has been placed on calendar for PRE-TRIAL CONFERENCE in Courtroom No. 17 of this Court at _____. M. on _____, 19____, pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 9 of this Court. Unless excused for good cause, each party appearing in the action shall be represented at the Pre-Trial Conference, and at all Pre-Trial meetings of counsel, by the attorney who will be in charge of the conduct of the trial on behalf of such party. The Court expects a carefully prepared proposed Pre-Trial Order and Memorandum of Contentions of Fact and Law which documents shall be in full compliance with Local Rule 9 and the ADDITIONAL REQUIREMENTS set forth on the following pages.

If any Defendant [or Third-Party Defendant] has not yet been served, Plaintiff [or Third-Party Plaintiff] shall immediately furnish instructions to the Marshal for service of such Defendant or file a dismissal of such Defendant without prejudice. Thirty days from this date, any unserved Defendant [or Third-Party Defendant] will be dismissed without prejudice on the Court's own motion, unless Plaintiff shows cause to the Court in writing why such dismissal should not be made and obtains an Order of the Court extending the time for service to be made on such party.

DATED: _____.

_____

Harry Pregerson, Judge

SPECIAL REQUIREMENTS FOR PRE-TRIAL IN JUDGE PREGERSON'S COURT

(The requirements of Local Rule 9 shall be observed. However, where these Special Requirements and Local Rule 9 are in conflict, these Requirements shall govern.)

1. The proposed Pre-Trial Order must be in the Court's hands *at least one full week before* the Pre-Trial Hearing.

2. It is assumed that counsel at their meeting for the purpose of preparing the proposed Pre-Trial Order have considered the following:

A. Jurisdiction. Plaintiff particularly should be absolutely certain of jurisdiction since statutes of limitations may bar a new action if the case is dismissed for lack of jurisdiction.

B. Propriety of parties, correctness of identity of legal entities, necessity for appointment of guardian ad litem, guardian, administrator, etc., and validity of appointment if already made, correctness of designation of party as partnership, corporation or individual d/b/a trade name.

C. Questions of misjoinder or nonjoinder of parties.

3. *Settlement.* At the Pre-Trial Conference counsel should expect to discuss settlement possibilities with the Court. *If there is even a remote possibility of settlement*, counsel are urged to discuss it with each other thoroughly *before* undertaking the extensive labor of preparing the proposed Pre-Trial Order. Save your time, the Court's time, and the client's time.

4. *The proposed Pre-Trial Order shall contain:*

A. A comprehensive written statement of all uncontested facts.

B. *An estimate of the number of trial days required.* Where counsel cannot agree, the estimate of each side should be given.

C. A statement indicating whether the case is a *jury* or *non-jury* case. If a jury case, whether the jury trial is applicable to all aspects of the case or only to certain issues, which shall be specified. *In jury cases*, add the following provision: "Proposed jury instructions and any special questions that the Court is asked to put to prospective jurors on voir dire, shall be delivered to the Court and opposing counsel not later than one week prior to the trial date."

> The Court has prepared a set of general instructions which are applicable in most cases. You may obtain a copy from the courtroom deputy clerk in order to eliminate duplication of effort in preparing such general instructions.

In non-jury cases, add the following provision: "Suggested findings of fact and suggested conclusions of law separately stated in separately numbered paragraphs shall be delivered to the Court and opposing counsel not later than one week prior to the trial date."

D. A statement that *discovery is complete.* Except for good cause, all discovery shall be completed before the Pre-Trial Order is signed by the Court. If discovery has not been completed, the proposed Pre-Trial Order shall state what discovery is yet to be done by each side, when it is scheduled, when it will be completed, and whether any problems, such as objections or motions, are likely with respect to the uncompleted discovery.

E. A list and description of any law or motion matters pending or contemplated. If the Court at any prior hearing has indicated that it would decide certain matters at the time of Pre-Trial, a brief summary of those matters and the position of each party with respect thereto should be included in the Pre-Trial Order.

F. A list of all deposition testimony to be offered in evidence and a statement of any objections to the receipt in evidence of any such deposition testimony identifying the objecting party, the portions objected to, and grounds therefor. All irrelevant and redundant matter and all colloquy between counsel at the deposition must be eliminated when the deposition is read.

G. Rule 9(e)(9) requires a list of the names and addresses of all prospective witnesses and, as to experts, a narrative statement of the qualifications of the witness and the substance of his testimony. These requirements must be obeyed in all cases. Additionally, in cases estimated to take more than four trial days, the general area and nature of the testimony should be given for each witness. The elimination of cumulative witnesses will be appreciated.

5. In diversity damage suits, there is authority for dismissing the action, either before or *after* trial, where it appears that the damages could not reasonably come within the $10,000 jurisdictional limitation. (273 F. 2d 72; 242 F. 2d 414; 9 F. 2d 637; 213 F. Supp. 564; 82 F. Supp. 607; 35 F. Supp. 910.) Therefore, the proposed Pre-Trial Order in such cases shall contain either a stipulation that $10,000 is involved or evidence supporting the claim that such sum could reasonably be awarded.

6. In complying with Local Rule 9(e)(8), for each party, the list of exhibits should first list those which are to be admitted without objection, and then those to which there will be objection, noting by whom the objection is made (if there are multiple adverse parties), the nature of the objection and the authority supporting the objection. Markers should be attached to all exhibits at the time they are shown to opposing counsel during preparation of the Pre-Trial Order [Local Rule 9(d)]. A supply of marking tags for exhibits may be obtained from the courtroom deputy clerk. They should be attached to the upper left-hand corner wherever possible.

7. Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the Pre-Trial Order, with the exception of exhibits to be used solely for the purpose of impeachment; with respect to expert witnesses, impeachment exhibits must also be listed or they will not be permitted to be used at the trial.

8. The trial will be expedited if, in addition to the formal exhibit, copies are made for opposing counsel and a bench book of exhibits prepared and delivered to the Court at the start of the trial.

9. There shall be submitted in writing, with the proposed Pre-Trial Order, any proposed amendments of the pleadings. See Local Rule 4(k).

10. Note that Local Rule 9(e) requires the filing by each side of a separate *memorandum of contentions of fact and law.* The requirement that such memoranda be submitted 15 days in advance of the Pre-Trial Conference is waived. They may be submitted with the proposed Pre-Trial Order, but not later. The memorandum of each side should contain a full exposition of the theory of the case and a statement, in narrative form, of what the party expects to prove. Please include in these memoranda a discussion of any difficult or unusual problem of law or evidence which is likely to arise during the trial together with a statement of your contentions thereon and the more important authorities. *It is assumed that this memorandum will be the trial memorandum for each side.* The practice of submitting a perfunctory memorandum with the Pre-Trial Order, followed by a comprehensive memorandum at the time of trial, is not appreciated in this Court. In addition to the above-stated requirements concerning the memoranda, please observe the requirements of Local Rule 9(e). Read Rule 9(e) carefully.

11. In addition to the requirements of Local Rule 9(e), the memorandum of contentions of fact and law should contain the following:

A. Whenever there is in issue the seaworthiness of a vessel or her equipment or appliances, or an alleged unsafe condition of property, the material facts and circumstances relied upon to establish the claimed unseaworthy or unsafe condition shall be specified with particularity.

B. Whenever the alleged breach of a contractual obligation is in issue, the act or omissions relied upon as constituting the claimed breach shall be specified with particularity.

C. Whenever the meaning of a contract or other writing is in issue, all facts and circumstances surrounding execution and subsequent to execution, both those admitted and those in issue, which each party contends serve to aid interpretation, shall be specified with particularity.

D. Whenever duress or fraud or mistake is in issue, the facts and circumstances relied upon as constituting the claimed duress or fraud or mistake (See Fed. R. Civ. P. 9(b)) shall be specified with particularity.

12. If either side has any requests for the trial of certain issues first, or any other suggestion for possibly shortening the trial, these should be included in the proposed Pre-Trial Order.

13. Should a party or his counsel fail to appear at the Pre-Trial Conference or to comply with the directions set out above, an ex parte hearing may be held and judgment of dismissal or default or other appropriate judgment entered or sanctions imposed.

14. Bear in mind that the Pre-Trial Order may be amended at any time on motion to avoid manifest injustice.

PRETRIAL ORDER OUTLINE

HONORABLE ROBERT J. WARD

1. Stipulated facts
2. Plaintiff's contentions
3. Defendant's contentions
4. List of plaintiff's exhibits and defendant's objections
5. List of defendant's exhibits and plaintiff's objections
6. List of plaintiff's witnesses
7. List of defendant's witnesses
8. Time each party requires for trial
9. Issues to be tried

(Southern District of New York)

APPENDIX K
TABLES ON CRIMINAL TIMES

EXPLANATION OF TABLE SHOWING NUMBER OF DAYS FROM FILING TO DISMISSAL, GUILTY PLEA, OR COMMENCEMENT OF TRIAL

Table 61 summarizes data that has previously been furnished on a district-by-district basis to the planning groups established under the Speedy Trial Act of 1974. It is intended to provide a rough comparative picture of the performance of the various district courts in relation to the time limits provided by the Speedy Trial Act. For the United States as a whole, for example, it can be read as saying that 51.9 percent of the defendants were brought to trial (or otherwise disposed of) within the 70-day period that will be permissible in 1979, and that 78.8 percent were brought to trial in the 190-day period that was permissible in 1976. The performance of individual districts can be compared with those national figures. The data are subject to several qualifications and limitations, however, and should be used with considerable caution.

The table is based on computation of the elapsed time between the filing of an indictment or information and the commencement of trial or nontrial disposition through dismissal or guilty plea. This approximates the total period that is the subject of the time limits imposed by 18 U.S.C. § 3161(c), as added by the Speedy Trial Act of 1974. There are, however, several important respects in which the interval of time on which the table is based is different from the relevant interval under the Speedy Trial Act. These are as follows:

1. The Speedy Trial Act provides that the permissible time to arraignment—and hence the total permissible time from filing to trial—runs from the later of the filing of the indictment or information, on the one hand, or the defendant's first appearance before a judicial officer in the district of prosecution, on the other. The table is based entirely on the first of these alternatives. In that respect, it tends to produce an unduly pessimistic picture of the district courts' performance. Indeed, included in the table are defendants who were never apprehended, and to whom the Speedy Trial time limits would therefore not have applied at all; such defendants may account for a substantial number of the cases with very long disposition times.

2. The Speedy Trial Act provides, in 18 U.S.C. § 3161(h), a number of grounds on which time may be excluded from computations under the act. The times shown in the table, by contrast, are gross times, without any allowance for excludable time. In that respect, too, the table presents an unduly pessimistic picture of the courts' current performance.

3. If a defendant is charged with an offense in an information or indictment, and is subsequently charged with the same offense in a complaint, information, or indictment, the Speedy Trial Act generally requires that the time limits on the subsequent charge be calculated as if they were on the original charge. The data in the table, by contrast, are based on counting each indictment or information as a separate unit. In that respect, the table presents an unduly optimistic view of the district courts' performance. In particular, some of the cases with short disposition times in the table may represent superseding indictments or informations.

4. Cases transferred from one district to another have been assigned in the table to the transferee district, and are not included in the figures for the transferor district. In computing the time from filing to commencement of trial or other disposition, the filing date used was the date the case was opened in the transferee district. That is not, of course, the relevant date under the Speedy Trial Act. In that respect, the table tends to produce an overly optimistic view of the courts' performance.

5. In some cases, the month and year of filing were available but the day was not. Such cases were treated as having been filed on the fifteenth day of the month. For the most part, that convention should not affect the data significantly. But in some cases, the convention produced a negative interval—as when a guilty plea was entered on the fourteenth day of the same month in which the case was filed. In those cases, the interval between the filing and plea (or other disposition) was assumed to be zero, or "same day". That of course produces an inflation of the numbers in the "same day" column of the table; the figures in that column should be given relatively little credence.

In addition to the above, certain classes of cases are not included in the table. The principal excluded category consists of cases tried before United States magistrates. To the extent that the regular statistical system of the Administrative Office carries information about these cases, they are included. But for the most part, they are excluded because they are not reported to Washington on a case-by-case basis. The Speedy Trial Act does apply to magistrates' cases other than those for petty offenses.

TABLE 61

Number of Days from Filing to Dismissal, Guilty Plea, or Commencement of Trial—Criminal Defendants Terminated in Calendar 1974

Circuit and District	Cumulative percentages *											Numbers of defendants		
	Same day	40 days and under	70 days and under	90 days and under	130 days and under	160 days and under	190 days and under	220 days and under	250 days and under	310 days and under	370 days and under	With data	Without data	Total
Total	9.9	36.6	51.9	59.2	70.0	75.1	78.8	81.5	83.6	86.7	89.0	49,426	2,983	52,409
District of Columbia	12.8	34.2	49.8	56.9	65.7	71.8	74.6	76.6	78.6	82.9	86.6	1,175	49	1,224
First Circuit	7.1	23.2	32.9	39.3	49.4	53.7	60.1	64.5	68.2	74.6	77.7	1,016	98	1,114
Maine	11.2	23.6	46.1	53.9	67.4	73.0	78.7	79.8	79.8	88.8	89.8	89	9	98
Massachusetts	4.3	14.6	19.3	22.8	32.0	36.3	43.7	50.2	55.9	64.6	68.7	460	69	529
New Hampshire	0	16.9	31.0	38.0	63.4	74.6	78.9	80.3	85.9	91.5	93.0	71	1	72
Rhode Island	3.3	33.9	54.5	66.1	79.3	81.8	86.0	92.6	94.2	95.9	97.5	121	8	129
Puerto Rico	13.8	34.5	42.2	50.5	56.0	58.9	65.5	66.9	69.1	73.1	76.0	275	11	286
Second Circuit	12.9	27.5	35.7	40.1	48.1	53.3	58.4	62.2	65.2	71.2	75.6	4,680	281	4,961
Connecticut	13.5	21.5	27.1	31.1	37.5	43.9	48.4	53.2	60.7	71.2	79.1	483	24	507
New York:														
Northern	12.1	28.0	39.8	48.1	55.7	64.4	70.8	76.5	80.7	84.1	86.4	264	3	267
Eastern	13.3	30.1	36.6	39.6	47.4	51.4	56.3	59.2	62.8	68.3	73.3	1,431	103	1,534
Southern	14.6	29.3	39.4	43.9	52.9	58.3	64.1	67.9	69.3	74.9	79.0	1,903	134	2,037
Western	7.7	16.2	20.5	23.2	27.1	29.5	33.3	36.7	39.1	46.1	48.3	414	13	427
Vermont	2.2	29.7	42.7	55.7	68.6	78.9	80.5	87.0	89.7	93.5	94.6	185	4	189
Third Circuit	4.7	18.7	32.2	40.2	55.1	61.3	65.0	68.3	71.0	74.7	77.9	3,371	156	3,527
Delaware	5.5	22.1	29.1	33.2	42.7	46.2	47.7	49.7	51.8	53.3	54.8	199	11	210
New Jersey	9.0	14.6	17.8	19.5	27.1	31.4	34.4	38.1	41.3	45.8	51.9	1,016	36	1,052
Pennsylvania:														
Eastern	.9	20.9	43.3	59.7	80.0	87.4	90.8	93.3	95.0	96.8	97.9	1,030	38	1,068
Middle	4.5	27.5	41.5	50.9	61.5	66.4	69.4	74.7	77.4	81.5	82.6	265	44	309
Western	4.5	13.9	26.7	37.3	59.5	69.5	76.3	80.2	83.8	89.6	91.7	531	23	554
Virgin Islands	3.3	23.3	35.2	43.6	59.1	64.2	67.0	70.0	73.6	77.9	83.3	330	4	334

TABLE 61—*Continued*

Circuit and District	Cumulative percentages [a]											Numbers of defendants		
	Same day	40 days and under	70 days and under	90 days and under	130 days and under	160 days and under	190 days and under	220 days and under	250 days and under	310 days and under	370 days and under	With data	Without data	Total
Fourth Circuit	8.4	40.9	60.1	67.8	79.9	84.2	87.3	89.6	90.8	92.6	93.6	4,272	251	4,523
Maryland	3.4	26.1	46.0	56.4	69.0	74.2	78.3	81.2	83.8	86.1	87.7	1,067	55	1,123
North Carolina:														
Eastern	6.0	29.2	47.4	56.1	73.7	80.0	84.4	86.2	87.1	88.6	90.0	449	20	469
Middle	1.8	55.2	68.1	74.6	87.3	89.9	91.2	93.5	94.3	95.3	97.4	386	9	395
Western	7.9	35.7	45.0	51.8	76.2	77.7	86.3	92.7	93.0	97.6	97.9	328	9	337
South Carolina	3.4	41.6	63.9	68.0	82.6	88.4	90.3	92.5	94.5	96.3	96.8	493	16	509
Virginia:														
Eastern	12.2	46.1	73.6	81.8	87.6	90.7	92.7	93.1	93.5	94.4	95.1	943	124	1,067
Western	31.1	75.9	88.0	94.3	96.7	98.0	98.0	98.0	98.3	98.3	98.7	299	5	304
West Virginia:														
Northern	39.1	59.4	62.3	69.6	75.4	84.1	89.9	94.2	94.2	94.2	94.2	69	2	71
Southern	4.6	42.2	57.1	63.0	78.2	84.0	87.4	91.2	92.0	95.0	95.8	238	10	248
Fifth Circuit	7.5	44.3	60.6	68.2	78.2	82.6	85.3	87.5	88.9	90.9	92.5	10,039	858	10,897
Alabama:														
Northern	4.9	59.3	87.3	89.2	93.0	94.2	95.7	96.0	97.1	98.2	98.4	445	87	532
Middle	8.7	54.2	90.3	92.1	92.8	93.9	94.6	95.3	96.8	97.8	98.6	277	12	289
Southern	11.0	31.7	49.7	70.3	76.6	83.4	84.1	84.8	90.3	92.4	92.4	145	31	176
Florida:														
Northern	11.3	42.5	66.5	74.5	85.8	90.2	93.1	95.6	96.0	96.7	97.1	275	28	303
Middle	4.5	23.6	36.5	48.5	65.6	71.3	74.3	77.7	80.0	81.9	85.8	839	100	939
Southern	5.6	33.1	52.9	65.9	78.4	85.7	87.8	90.4	91.0	92.4	93.6	910	147	1,057
Georgia:														
Northern	5.0	33.9	47.1	58.5	71.4	78.8	85.6	88.2	90.1	92.7	94.3	756	118	874
Middle	5.8	51.2	63.9	68.7	79.7	86.9	89.7	92.1	92.1	93.5	94.2	291	34	325
Southern	26.9	71.0	78.3	81.7	87.4	91.0	91.9	94.0	94.8	97.4	97.6	420	22	442
Louisiana:														
Eastern	5.9	40.8	57.7	64.7	74.0	77.5	81.8	83.4	84.7	86.1	86.9	763	72	835
Middle	3.0	53.8	58.3	60.6	73.5	74.2	78.0	79.5	82.6	88.6	91.7	132	16	148
Western	14.4	34.4	44.0	55.7	69.8	78.7	81.4	87.3	90.7	91.4	95.2	291	15	306

Mississippi:														
Northern	3.4	39.6	64.4	73.8	90.6	95.3	95.3	98.0	98.7	99.3	100.0	149	7	156
Southern	4.2	36.4	51.7	54.5	68.5	73.4	77.6	86.7	90.9	94.4	94.4	143	0	143
Texas:														
Northern	7.2	47.5	66.3	74.6	83.2	87.0	89.1	91.3	92.0	94.0	95.1	733	34	767
Eastern	15.7	48.0	56.6	66.7	74.2	81.3	83.3	87.4	89.4	91.9	92.9	198	5	203
Southern	7.9	35.3	52.8	59.5	69.3	73.6	75.9	77.7	79.8	83.4	86.8	1,542	67	1,609
Western	6.6	57.7	71.4	76.0	84.6	86.8	89.6	91.0	92.0	93.3	94.1	1,354	58	1,412
Canal Zone	1.1	80.9	91.2	93.4	94.9	95.7	95.7	96.0	96.0	96.5	96.5	376	5	381
Sixth Circuit	14.2	38.0	47.7	53.8	63.7	70.0	74.8	78.4	80.9	84.7	88.2	5,285	389	5,674
Kentucky:														
Eastern	3.6	26.6	38.5	48.2	56.8	64.4	70.4	74.7	78.2	84.2	88.7	533	12	545
Western	22.6	70.5	84.8	86.6	91.2	93.2	94.9	96.0	97.6	98.2	99.3	455	22	477
Michigan:														
Eastern	18.4	29.3	34.5	39.2	49.1	56.7	63.4	68.8	72.5	77.7	81.8	1,846	233	2,079
Western	33.6	45.2	50.5	56.5	64.8	69.1	72.4	74.8	76.7	79.4	81.4	301	16	317
Ohio														
Northern	7.7	38.7	53.1	62.3	71.8	78.7	82.2	84.7	86.9	89.9	91.5	878	48	926
Southern	21.9	43.5	54.1	58.1	69.3	73.9	79.0	82.1	83.9	87.2	89.7	329	20	349
Tennessee:														
Eastern	13.5	64.1	75.3	79.9	82.9	91.1	94.7	96.7	96.7	97.7	98.7	304	16	320
Middle	1.1	47.2	64.2	72.2	84.1	89.8	92.0	93.8	94.9	96.9	97.4	352	12	364
Western	.3	7.7	15.3	22.3	48.8	53.3	57.1	60.6	62.7	67.6	84.3	287	10	297
Seventh Circuit	3.6	22.5	38.0	48.0	63.7	70.5	74.8	78.3	82.2	87.2	90.1	3,076	203	3,279
Illinois:														
Northern	.7	22.3	38.0	46.3	62.5	69.8	74.8	78.9	83.3	87.8	90.6	1,324	81	1,405
Eastern	9.1	22.7	37.2	48.3	67.8	72.3	74.4	75.6	76.4	81.8	81.8	242	10	252
Southern	6.7	22.3	34.8	46.9	64.3	6916	73.7	75.9	81.7	88.8	93.3	224	32	256
Indiana:														
Northern	7.1	21.2	37.9	46.8	64.8	71.0	75.3	78.5	83.6	88.6	91.1	438	33	471
Southern	1.6	25.1	43.8	62.9	77.1	85.1	87.1	91.3	93.1	94.9	96.9	450	30	480
Wisconsin:														
Eastern	6.7	20.8	34.8	37.7	45.4	51.1	57.0	59.2	63.4	74.6	81.3	284	15	299
Western	7.9	24.6	32.5	42.1	55.3	64.9	72.8	78.1	80.7	84.2	87.7	114	2	116

TABLE 61—*Continued*

Circuit and District	Cumulative percentages [a]											Numbers of defendants		
	Same day	40 days and under	70 days and under	90 days and under	130 days and under	160 days and under	190 days and under	220 days and under	250 days and under	310 days and under	370 days and under	With data	Without data	Total
Eighth Circuit	8.1	41.7	59.5	66.4	76.8	81.6	85.7	88.4	91.0	93.2	94.9	3,313	155	3,463
Arkansas:														
Eastern	10.8	28.1	49.3	57.6	68.8	76.4	85.8	88.9	91.7	93.4	95.1	288	9	297
Western	4.2	33.3	60.4	67.7	83.3	86.5	89.6	89.6	92.7	94.8	95.8	96	11	107
Iowa:														
Northern	15.0	38.3	60.7	78.5	90.7	93.5	95.3	97.2	97.2	97.2	99.1	107	5	112
Southern	7.5	41.2	57.3	67.8	78.9	83.4	87.9	88.9	91.5	92.5	94.5	199	2	201
Minnesota	12.5	36.5	57.3	64.9	78.3	84.3	88.9	91.0	91.9	94.2	94.9	433	13	446
Missouri:														
Eastern	4.9	43.1	68.1	73.9	79.0	85.9	90.8	92.0	93.7	96.3	96.8	348	30	378
Western	3.9	55.1	71.0	75.9	84.7	87.7	90.2	92.3	93.9	95.9	97.1	1,157	48	1,205
Nebraska	10.7	30.7	39.1	46.5	65.1	71.6	75.8	78.6	83.3	85.1	87.9	215	25	240
North Dakota	11.6	30.5	49.4	60.4	65.9	67.7	70.1	76.8	90.9	95.7	97.6	164	3	167
South Dakota	14.7	27.5	38.9	44.1	55.9	62.4	67.3	74.8	77.8	81.0	85.6	306	9	315
Ninth Circuit	12.3	39.5	57.1	64.9	75.4	80.3	83.4	85.8	87.4	89.9	91.4	11,006	454	11,460
Alaska	11.2	46.8	60.5	67.3	75.1	81.0	83.9	85.4	89.3	90.7	92.2	205	27	232
Arizona	4.8	37.7	64.2	70.0	80.0	82.7	84.8	85.9	86.5	87.8	88.6	1,593	46	1,639

California:														
Northern	10.8	28.2	41.3	51.1	64.8	70.5	73.3	75.5	77.1	80.1	82.1	1,051	39	1,090
Eastern	17.3	54.9	65.2	70.8	78.5	81.5	84.8	87.5	89.8	92.5	94.1	1,004	87	1,091
Central	4.7	37.4	60.3	71.1	80.5	84.8	88.0	89.8	90.8	93.4	94.8	2,229	35	2,264
Southern	22.7	41.8	56.7	63.3	73.8	79.0	81.9	85.2	87.7	90.4	91.9	3,068	134	3,202
Hawaii	9.2	25.9	28.5	32.0	41.2	50.9	56.6	61.0	62.7	67.5	73.7	228	7	235
Idaho	7.2	37.6	58.4	64.0	70.4	80.8	84.0	87.2	88.0	93.6	96.0	125	6	131
Montana	17.7	49.6	62.4	70.9	81.6	83.0	85.8	90.1	90.8	95.0	95.0	141	4	145
Nevada	4.7	29.0	43.6	56.1	71.7	81.3	89.4	92.5	93.1	95.6	96.9	321	22	343
Oregon	11.8	43.2	60.6	67.9	78.0	82.9	86.8	90.2	91.3	92.3	94.4	287	10	297
Washington:														
Eastern	15.7	33.6	50.0	56.7	72.4	77.6	82.8	83.6	86.6	89.6	89.6	134	4	138
Western	8.0	44.4	64.3	72.5	83.6	90.9	92.4	93.9	95.4	97.8	97.8	588	22	560
Guam	0	11.0	13.4	31.7	51.2	61.0	70.7	72.0	72.0	72.0	78.0	82	11	93
Tenth Circuit	15.4	42.3	62.0	70.5	80.7	85.6	89.1	91.0	92.3	94.2	95.3	2,193	89	2,282
Colorado	3.0	32.6	59.7	73.1	88.0	92.3	95.0	96.1	96.5	97.0	97.5	635	15	650
Kansas	12.7	34.2	50.8	57.6	69.9	77.0	84.0	87.7	90.2	94.9	96.1	512	20	532
New Mexico	25.2	48.9	64.0	72.3	78.6	84.9	87.9	90.2	91.4	92.2	93.5	397	8	405
Oklahoma:														
Northern	20.4	52.1	67.6	74.6	76.8	80.3	81.0	81.0	83.1	84.5	87.3	142	17	159
Eastern	10.6	64.7	76.5	80.0	84.7	90.6	91.8	92.9	94.1	94.1	94.1	85	5	90
Western	17.6	46.0	75.6	80.4	87.2	88.0	91.2	92.8	93.6	94.0	94.8	250	11	261
Utah	16.0	37.0	44.4	48.1	64.2	72.8	74.1	75.3	77.8	88.9	95.1	81	12	93
Wyoming	64.8	85.7	87.9	93.4	98.9	100.0	100.0	100.0	100.0	100.0	100.0	91	1	92

* The percentages are based on the number of defendants for whom data was available. There is no reason to assume that the defendants for whom data was not available would be similarly distributed. In most districts, however, the number without data is small enough so that this is not a substantial concern.

The data in this table are subject to several important limitations and qualifications, which are set forth in the accompanying explanation.

APPENDIX L

LOCAL RULE 25 (B), SOUTHERN DISTRICT OF FLORIDA

B. ARRAIGNMENTS IN CRIMINAL FELONY CASES

(1) Not guilty pleas. All United States Magistrates in this District are authorized to accept not guilty pleas, assign trial dates and enter the standard discovery order of this Court.

(2) Guilty or nolo contendere pleas. Before a plea of guilty or nolo contendere is tendered to any felony charge, the defendant and his counsel shall file a written petition to enter such a plea. The petition shall be presented to a United States Magistrate in open court. The United States Magistrate shall review the petition and determine whether it is presented freely, voluntarily and with full understanding of its contents. Upon such a determination, the United States Magistrate shall recommend to the District Court that the defendant appear before a District Judge for acceptance of the plea of guilty or nolo contendere pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

The United States Magistrate may also obtain written authorization from the defendant allowing a presentence investigation and report to be presented to a District Judge prior to the acceptance of the guilty plea. If a District Judge has had access to a presentence investigation report but does not accept the plea of guilty or nolo contendere, the case may be transferred to another District Judge for trial.

A form entitled Petition to Enter Plea of Guilty/Nolo Contendere Plea has been prepared by the Court. This form will be supplied by any United States Magistrate or the Clerk of the Court. All petitions to enter a plea of guilty or nolo contendere shall be on the official form.

Notwithstanding any provision of this rule, a District Judge may order the requirements of this rule waived and accept a guilty or nolo contendere plea in any case without a written petition.

TABLE 62

Trials Completed as a Percentage of Case Terminations

	1976	1975	1974	1973	1972	1971
MA	5.4	4.5	5.4	6.5	7.9	9.6
LA/E	11.1	12.1	12.7	11.6	11.4	12.0
FL/S	11.1	15.9	16.2	16.8	13.6	12.7
CA/C	11.1	10.2	12.5	16.0	16.8	19.7
MD	11.8	14.5	17.8	14.2	10.1	9.5
PA/E	15.0	14.4	14.1	13.9	14.1	13.0
KY/E	10.3	10.8	12.4	17.6	16.0	18.6
AL/N	14.2	19.8	19.3	18.6	22.1	20.9
NM	22.1	20.7	22.8	22.7	25.4	29.7
WI/E	8.9	8.2	8.9	9.6	7.7	8.8
All districts	12.7	12.9	13.2	13.8	13.1	13.9

TABLE 63

Distribution of Long Trials (20 Days or More) Among United States District Courts

District	Number of judges	Number of trials	Number of long trials	Long trials per 1,000 trials	Total long trial days	Average length of long trials	Impact per judgeship			Impact per judge[a]		
							Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge	Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge
First Circuit:												
Maine	1	219	0	4.2	0	.....						
Massachusetts	6	944	4	.....	96	24.0	.67	3.2	90	.71	3.42	84.2
New Hampshire	1	367	0	.....	.....	.....						
Rhode Island	2	248	5	20.2	214	42.8	2.5	21.4	20.2	2.5	21.4	24.0
Puerto Rico	3	760	2	2.6	51	25.5	.67	3.4	2.6	.76	3.9	79.1
Second Circuit:												
Connecticut	4	911	6	6.6	193	32.2	1.50	9.6	6.6	1.53	9.9	39.1
Northern New York	2	350	0	.....	0	.....						
Eastern New York	9	2,021	15	7.4	439	29.3	1.67	9.7	7.4	1.84	10.8	32.5
Southern New York	27	3,799	44	11.6	1,354	30.8	1.63	10.0	11.6	1.91	11.8	31.4
Western New York	3	573	2	.....	73	36.5	.67	4.9	3.5	.71	5.2	84.6
Vermont	2	521	0	.....	0	.....						
Third Circuit:												
Delaware	3	271	0	.....	0	.....						
New Jersey	9	1,604	15	9.3	476	31.7	1.67	10.6	.36	1.86	11.8	32.2
Eastern Pennsylvania	19	3,232	19	5.9	569	29.9	1.00	6.0	60	1.09	6.5	55.2
Middle Pennsylvania	4	1,200	1	8.3	54	54.0	.25	2.7	240	.25	2.7	235.8
Western Pennsylvania	10	2,101	10	4.7	326	32.6	1.00	6.5	60	1.03	6.7	57.9
Virgin Islands	2	703	0	.....	0	.....						

Fourth Circuit:												
Maryland	7	1,599	14	8.7	482	34.4	2.00	13.8	.30	2.14	14.7	28.1
Eastern North Carolina	3	390	0		0							
Middle North Carolina	2	498	0		0							
Western North Carolina	2	708	0		0							
South Carolina	5	1,127	0		0							
Eastern Virginia	6	2,227	0		0							
Western Virginia	2	279	0		0							
Northern West Virginia	1½	327	0		0							
Southern West Virginia	2½	610	0		0							
Fifth Circuit:												
Northern Alabama	4	1,660	3	1.8	118	39.3	.75	5.9	.80	.78	6.2	76.4
Middle Alabama	2	567	0		0							
Southern Alabama	2	572	3	5.2	84	28.0	1.50	8.4	.40	1.51	8.5	39.6
Northern Florida	2	473	1	2.1	22	22.0	.50	2.2	120	.56	2.5	106.1
Middle Florida	6	1,843	14	7.6	586	41.8	2.33	19.5	25.7	2.39	20.0	25.1
Southern Florida	7	2,428	5	2.0	215	43.0	.71	6.1	84	.74	6.4	81.1
Northern Georgia	6	2,279	5	2.2	133	26.6	.83	4.4	72	.88	4.7	68.0
Middle Georgia	2	577	1	1.7	21	21.0	.50	2.1	120	.50	2.1	120.0
Southern Georgia	2	591	0		0							
Eastern Louisiana	9	2,538	1	.4	24	24.0	.11	.5	540	.12	.5	515.1
Middle Louisiana	1	185	0		0							
Western Louisiana	4	795	0		0							
Northern Mississippi	2	677	0		0							
Southern Mississippi	3	735	1	1.4	22	22.0	.33	1.5	180	.33	1.5	180.0
Northern Texas	6	1,542	2	1.3	50	29.0	.33	1.9	180	.35	2.0	172.7
Eastern Texas	3	902	1	1.1	26	26.0	.33	1.7	180	.34	1.8	174.1
Southern Texas	8	2,195	8	3.6	214	26.7	1.00	5.3	60	1.03	5.5	58.2
Western Texas	5	1,155	2	1.7	57	28.5	.40	2.3	150	.42	2.4	143.0
Canal Zone	1	761	1	1.3	21	21.0	.01	4.2	60	.01	4.2	60.0

TABLE 63—Continued

District	Number of judges	Number of trials	Number of long trials	Long trials per 1,000 trials	Total long trial days	Average length of long trials	Impact per judgeship			Impact per judge[a]		
							Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge	Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge
Sixth Circuit:												
Eastern Kentucky	2½	789	2	2.5	59	29.5	.80	4.7	75	.95	5.6	60.3
Western Kentucky	3½	515	1	1.9	39	39.0	.28	2.2	210	.32	2.5	106.4
Eastern Michigan	10	2,406	31	12.9	1,058	34.1	3.10	21.2	19.3	3.35	22.9	17.9
Western Michigan	2	439	3	6.8	77	25.7	1.5	7.7	40	1.56	8.0	38.4
Northern Ohio	8	2,593	10	3.8	288	28.8	1.25	7.2	48	1.28	7.4	45.8
Southern Ohio	5	834	1	1.2	36	36.0	.2	1.4	300	.23	1.7	259.8
Eastern Tennessee	3	1,094	1	.9	28	28.0	.33	1.9	100	.33	1.1	100.0
Middle Tennessee	2	838	1	1.2	22	22.0	.5	2.2	120	.52	2.3	116.2
Western Tennessee	3	1,061	3	2.8	85	28.3	.01	5.7	60	1.04	5.9	57.9
Seventh Circuit:												
Northern Illinois	13	1,823	29	15.9	976	33.6	2.23	15.0	26.9	2.41	16.2	24.8
Eastern Illinois	2	630	0		0							
Southern Illinois	2	280	1	3.6	26	26.0	.5	2.6	120	.5	2.6	120.0
Northern Indiana	3	773	1	1.3	29	29.0	.33	1.9	100	.37	2.2	160.7
Eastern Indiana	4	1,049	4	3.8	128	32.0	.01	6.4	60	.01	6.4	60.0
Eastern Wisconsin	3	378	4	10.6	113	28.2	1.33	7.5	45	1.70	9.6	35.2
Western Wisconsin	1	178	1	5.6	32	32.0	.01	6.4	60	.01	6.4	60.0
Eighth Circuit:												
Eastern Arkansas	2	732	4	5.5	102	25.5	.02	10.2	30	2.05	10.4	29.2
Western Arkansas	2	357	0		0							
Northern Iowa	1½	223	2	9.0	138	69.0	1.33	18.4	45	1.33	18.4	45.0
Southern Iowa	1½	569	0		0							
Minnesota	4	1,137	12	10.5	761	63.4	3.0	38.0	20	3.15	39.9	19.1
Eastern Missouri	4	1,117	1	.9	20	20.0	.25	.1	240	.26	1.0	233.2
Western Missouri	4	1,085	1	.9	33	33.0	.25	1.6	240	.25	1.6	240.0
Nebraska	3	654	3	4.6	68	22.7	.01	4.5	60	1.08	4.9	55.3
Northern Dakota	2	327	2	6.1	60	30	.01	6	60	1	6.0	60.0
Southern Dakota	2	463	1	2.1	122	122.0	.5	12.2	120	.5	12.2	120.0

North Circuit:												
Alaska	2	147	0	.....	0	.....						
Arizona	5	2,169	4	1.8	107	26.7	.8	4.3	75	.81	4.3	73.7
Northern California	11	2,373	32	13.5	974	30.4	2.9	17.7	20.6	3.15	19.2	19.0
Eastern California	3	649	9	13.9	276	30.7	3.0	18.4	20	.03	18.4	20.0
Central California	16	3,482	29	8.3	1,107	38.2	1.8	13.8	33.1	1.90	14.5	31.5
Southern California	5	1,388	7	5.3	248	35.4	1.4	9.9	42.8	1.49	10.6	40.1
Hawaii	2	187	4	21.4	92	23.0	2.0	9.2	30	2.17	10.0	27.6
Idaho	2	183	1	5.5	70	70.0	.5	7	120	.50	7.0	119.5
Montana	2	329	1	3.0	21	21.0	.5	2.1	120	.5	2.1	120.0
Nevada	2	439	2	4.5	43	21.5	.1	4.3	60	1	4.3	60.0
Oregon	3	1,089	2	1.8	54	27.0	.67	3.6	90	.73	3.9	82.3
Eastern Washington	1½	280	0	.....	0	.....						
Western Washington	3½	872	1	1.1	20	20.0	.28	1.1	210	.31	1.2	192.5
Guam	28	.....	0	.....								
Tenth Circuit:												
Colorado	4	1,521	1	.6	20	20.0	.2	.1	240	.27	1.1	225.3
Kansas	4	882	6	6.8	163	27.2	1.5	8.1	40	1.58	8.6	37.9
New Mexico	3	1,137	1	.9	32	32.0	.33	2.1	180	.34	2.18	176.0
Oklahoma	6[b]	1,372	2	1.4	65	32.5	.33	2.2	180	.34	2.24	173.9
Utah	2	413	1	2.4	44	44.0	.5	4.4	120	.50	4.4	120.0
Wyoming	1	243	0	.....	0	.....						
District of Columbia	15	3,406	11	.....	377	34.3	.73	5.0	81.8	0.74	5.0	81.4

[a]Adjusted for vacancies during five-year period. [b]All three districts—shared judges.

TABLE 64

Distribution of Long Trials (20 Days or More) by Circuit

Circuit	Number of trials	Number of long trials	Long trials per 1,000 trials	Total long trial days	Average length of long trials	Impact per judgeship			Impact per judge*		
						Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge	Number of long trials per judge (5 years)	Days spent on long trials per judge per year	Interval (months) between long trials for each judge
First	2,538	11	.43	362	32.9	.85	5.57	70.9	.90	5.9	66.8
Second	8,175	67	.81	2,059	30.73	1.42	8.76	42.1	1.61	9.9	37.3
Third	9,106	47	.51	1,478	31.45	1.00	6.29	60.0	1.07	6.7	56.0
Fourth	7,765	14	.18	482	34.42	.45	3.11	133	.48	3.3	125.8
Fifth	22,648	50	.22	1,601	32.02	.67	4.27	90	.69	4.4	86.4
Sixth	10,559	53	.50	1,692	31.92	1.36	8.68	44.1	1.46	9.3	41.1
Seventh	5,341	40	.75	1,304	32.6	1.43	9.31	42	1.54	10.0	39.0
Eighth	6,764	26	.38	1,304	50.15	1.00	10.03	60	1.02	10.3	58.4
Ninth	13,884	91	.65	3,013	33.11	1.54	10.21	38.9	1.63	10.8	36.7
Tenth	5,568	11	.20	324	29.45	.55	3.24	109.1	.57	3.36	105.1
All courts	95,624	419	.44	13,829	33.00	1.05	6.91	57.3	1.11	7.34	53.9

*Adjusted for vacancies during five-year period.

APPENDIX M

NOTES ON COUNTING OPINIONS PREPARED AND PUBLISHED

Tables 28 and 29 and figure 4 are based on a tabulation of all opinions published in *Federal Supplement* and *Federal Rules Decisions* during the period January, 1973–June, 1974. We tabulated opinions this way because the only basis on which opinion writing could be measured was from published sources. Although differences among judges in the proportion of opinions published may be great, casting some doubt on the usefulness of the figures in these tables, we feel that the tables show important findings. The differences shown among courts' publication rates are so great that they seem likely to be significant. There is also a positive reason for interest in the number of published opinions, as opposed to opinions prepared and not published. It would appear logical that preparation of an opinion for publication would normally take longer than preparation for the parties only.

There are several reasons to think that these figures roughly represent relative rates of opinion preparation in a satisfactory way. First, judges are under some pressure from attorneys and West Publishing Company to publish all of their written opinions. Second, differences shown among courts are supported by our observations in the various districts. Third, the attempt to control publication policy represented by table 29 does not show substantially different results from those in table 28.

Findings of fact and conclusions of law are probably the tasks represented most poorly. They are prepared in some form in all nonjury cases, though in some courts the judge may deliver findings and conclusions orally. Judges may differ more widely in their publications habits regarding findings and conclusions than in other types of work. We can show, however, that the courts with high publication rates do not appear so simply because more findings and conclusions are published. For example, only 39 of the 447 published opinions in Eastern Pennsylvania concerned final judgment in nonjury cases, compared to a larger portion in other places.

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