# Assessment of Caseload Burden in the U.S. Court of Appeals for the D.C. Circuit

*Report to the Subcommittee on Judicial Statistics of the Committee on Judicial Resources of the Judicial Conference of the United States*

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FEDERAL JUDICIAL CENTER

1999

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# Executive Summary

The mix of cases in the U.S. Court of Appeals for the District of Columbia Circuit differs markedly from the case mix of other U.S. courts of appeals. The implications of this difference for judicial workload and judgeship needs, however, have been unclear. At the request of the Subcommittee on Judicial Statistics of the Judicial Conference Committee on Judicial Resources, we conducted this study to assist the subcommittee in assessing judgeship needs in the D.C. Circuit.[1] For all circuits but the D.C. and Federal Circuits, the Judicial Conference uses 500 original filings per three-judge panel (with pro se cases weighted 1/3) as a guideline for judicial staffing on the courts of appeals. The subcommittee has requested information to help determine whether this formula should apply to the D.C. Circuit. Our study indicates that exempting the D.C. Circuit from this formula is justified. Because we have no information on judges' actual time expenditures, however, we have no empirical basis on which to suggest a specific alternative formula for assessing the circuit's judgeship needs.

We begin by describing the caseloads of the twelve regional courts of appeals for fiscal years 1996 and 1997. The case mix in D.C. differs substantially from that of the other courts of appeals in two key ways. The caseload has disproportionately more appeals from federal agencies—particularly the Federal Communications Commission (FCC), the Federal Energy Regulatory Commission (FERC), and the Environmental Protection Agency (EPA). Correspondingly, the D.C. Circuit's caseload has relatively fewer cases of those types that make up the bulk of the dockets of other courts.

We then report on interviews with appellate judges in four circuits (the Second, Fifth, Tenth, and D.C. Circuits), in which we asked judges what factors, if any, correlate with the amount of time they spend on a case. These interviews provided detailed information on what makes some appeals especially time-consuming. Several of the factors the judges identified are not susceptible to objective quantification, which limits their applicability in a formula-based approach for assessing judgeship needs. For example, judges indicated that time-consuming appeals often involve: (1) complicated or novel fact patterns; (2) issues of first impression or an area of unsettled law; (3) complex statutory and regulatory schemes; (4) complex technical or scientific material; or (5) elevated levels of public scrutiny. A majority of judges within the D.C. Circuit cited EPA, FERC and FCC cases as highly burdensome, for reasons consistent with these factors.

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1. Throughout this report, we use the common shorthand of using the name of a circuit to refer to its court of appeals.

Judges outside the D.C. Circuit generally concurred in the view that these cases are often very demanding.

Judges identified a number of case characteristics that serve as indicators of case burden and that are quantifiable. These include: (1) the number of participants in the appeal (i.e., parties, amici, intervenors), (2) the number of briefs, (3) the number of cross appeals, (4) the grant of oral argument, (5) opinion publication, (6) opinion length, (7) the existence of separate opinions (i.e., concurrences or dissents), (8) reversal and/or remand, and (9) the length of trial in cases appealed from a trial verdict. We gathered data on these characteristics from a sample of nearly 4,000 cases in nine of the twelve circuits. We also computed the length of opinions published in these cases from eighty volumes of the Federal Reporter. These data enabled us to compare the D.C. Circuit to the other circuits with respect to these potential indicators of burden.

The D.C. Circuit differs from the other circuits on several of the quantifiable dimensions we evaluated; a number of the differences are attributable to the circuit's administrative agency appeals. In contrast, the D.C. Circuit's non-agency caseload is generally not distinguishable from the caseloads of the other circuits, either in terms of its composition or on the workload indicators we derived. For that reason, it may be most useful to think of the D.C. Circuit's caseload as having two parts: (1) administrative agency appeals and (2) all other cases.

The data generally support this distinction. Comparing agency appeals in the D.C. Circuit to the balance of the caseload in the D.C. Circuit and to caseloads in other circuits, we find that D.C. agency cases differ in several ways. On average, agency appeals:

- Have more independently represented participants per case;
- Have more briefs filed per case; and
- Result in longer published opinions.

These facts, together with the qualitative information offered by the interviewed judges, create a cogent picture of agency appeals in D.C.: they are more likely to attract multiple participants with multiple objectives, involve the application of complex statutory and regulatory law, require the mastery of technical and scientific information, and have significant policy implications. In short, many of the D.C. Circuit's agency appeals are hard cases.

We recognize that all circuits hear hard cases. The D.C. Circuit, however, has a uniquely large block of highly demanding cases. Approximately 30% of the filings on the D.C. Circuit docket are agency appeals involving FCC, EPA and FERC; these agency appeals occur almost exclusively in the D.C. Circuit.

## *Conclusions*

The data justify the continued exemption of the D.C. Circuit from the current formula followed by the Judicial Conference for assessing judgeship needs. That formula recognizes only the distinction between counseled and pro se appeals, reflecting the consensus view of the circuit chief judges that an appeal filed by an unrepresented party consumes substantially less judge time on average than an appeal filed by a represented party. Our results indicate that another distinction is warranted, namely, that appeals from agency action in the D.C. Circuit are different enough from the general caseload elsewhere to warrant continued exemption from the 500 formula.

Several alternatives seem to be reasonable accommodations to the differences in the D.C. Circuit. The 500 formula might be revised to give greater weight to agency appeals, or might be revised to give greater weight to appeals from the EPA, FCC, and FERC. Alternatively, the 500-filing benchmark could be reduced for the D.C. Circuit's overall caseload.

The subcommittee may wish to consider the impact of consolidations and dispositions without judicial action if it determines that application of an adjusted formula to D.C. Circuit filings is warranted. Although the average D.C. Circuit agency appeal appears to demand more judge time than other case types, agency appeals in D.C. are also disposed of without judicial action more often and are consolidated (decided in groups) more often than other cases in D.C. or elsewhere.

Evaluating the impact of these factors may not be straightforward, however. Consolidation, for example, is undertaken to enhance efficiency, so one might assume that two consolidated cases take less judge time than two appeals decided separately. However, a plausible argument can be made that cases suitable for consolidation are innately more demanding on average than non-consolidated cases. Complicating the picture is the absence of information about the specific characteristics of D.C. agency cases that makes a large proportion of them eligible for termination without judicial action. We have no data to help resolve the uncertainty surrounding these issues.

The only way to evaluate the relationship between case consolidation and judicial workload and, more generally, to devise a data-based alternative to the 500 formula for assessing D.C. Circuit agency appeals, is with information about the actual time judges spend on cases. Indeed, our research is based on information that correlates with judge time demands, but that does not measure time *directly*. Hence, although it suggests some rather clear conclusions, they are necessarily limited to relative rather than absolute statements: certain types of cases require more judge time than others, but we cannot say how much more. The

subcommittee did not request a study of actual time expenditures, but only such a study would provide the basis for making such specific assessments of time demands.

# Introduction

In 1996, the Judicial Conference approved a new method for evaluating judgeship needs in the U.S. courts of appeals. An important, but not determinative, part of the method is a formula that sets a threshold for when the Judicial Conference's Committee on Judicial Resources will consider a court's request for an additional judgeship. That formula is 500 filings per panel (with reinstated cases removed and pro se cases weighted as one-third of a case). Because each court's situation is unique, the Judicial Conference applies this formula flexibly and considers local circumstances that may affect the judgeship needs within the circuit.

The Conference has long recognized that the Court of Appeals for the District of Columbia Circuit has a case mix substantially different from that of the other courts of appeals. Thus, when the new assessment method was adopted, the Judicial Conference exempted the D.C. Circuit pending further consideration of how the case mix difference affects the number of judges the court needs.[2] The Subcommittee on Judicial Statistics asked the Federal Judicial Center (FJC) to study the caseload of the D.C. Circuit and compare it to the caseloads in other circuits, to help the subcommittee decide whether the "500 formula" should be applied to the D.C. Circuit. This undertaking requires evaluation of the relative time commitment and judicial workload associated with cases in D.C. and in the other circuits.

The Judicial Conference has observed that "[d]efining appellate workload is a complex matter. . . .The relatively small number of appellate courts and judges, combined with the varying nature of appellate cases and practices, make it difficult to define a general measure of workload."[3] Because of the complexity inherent in evaluating appellate court workload, we used several approaches to assess the burden imposed by appeals. In Part I, we compare the D.C. Circuit's docket with that of the other circuits using case type information reported by the courts to the Administrative Office of the U.S. Courts. In Part II, we present the results of interviews with eighteen judges from the Second, Fifth, Tenth and D.C. Circuits. These interviews provided information about the relationship between appeal types, case characteristics, and judicial workload, and from them we were able to identify a number of measurable workload indicators that the judges thought correlated with particularly burdensome appeals. In Part III, we present quanti-

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2. The U.S. Court of Appeals for the Federal Circuit is also exempt from application of the formula. Throughout this report, references to the courts of appeals do not include the Federal Circuit.

3. Report to the Congress on the Optimal Utilization of Judicial Resources 22 (Judicial Conference Report 1996).

tative data on these workload indicators, derived from a sample of approximately 4,000 cases from nine circuits. These data shed light on the relative burden imposed by appeals in the D.C. Circuit.

First, however, we summarize major findings of two previous FJC studies involving the D.C. Circuit and appellate court workload. Although dated, they provide a touchstone for the current assessment of workload burden in the D.C. Circuit.

## Existing Research on Appellate Court Workload

The FJC first reported on efforts to develop measures of workload in the courts of appeals in 1977.[4] After interviewing judges in three circuits (the D.C., Sixth and Eighth Circuits), the researchers created a three-part taxonomy of circuit caseload, identifying high burden, medium burden, and low burden categories of appeals based on case type. The study found the distribution of high, medium and low burden cases remarkably similar among the numbered circuits, but substantially different in the D.C. Circuit. Seventeen percent of the D.C. Circuit's docket fell into the high burden category, compared to six percent as the largest proportion of such cases in the other circuits. Among the high burden cases identified by judges in the D.C. Circuit were agency appeals involving power, transportation, communications, and the environment.

A later study conducted by the Center in 1982 focused exclusively on appeals in the D.C. Circuit.[5] In this study, the researchers identified a representative sample of one hundred cases terminated in fiscal 1980 and from them measured items thought indicative of case burden.[6] The study conceptualized case burden in two forms: input burdens, referring to material coming into the court for judicial consideration, and output burdens, referring to the court's response to that input. The researchers assumed that input burdens are the product of the parties to the appeal, and thus are less easily subject to judicial control than are output burdens. For example, the court has more control over the lengths of its own opinions than over the number of parties involved in an appeal. Thus, indicators of input burden included the number of briefs and the length of the record; indicators of output (or "process") burden included publication status and opinion length. The study posited a number of quantitative indicators relating either to input or output burden, which are listed in Table 1.

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4. Appellate Courts Caseweights Project (Federal Judicial Center 1977).

5. The Cases of the United States Court of Appeals for the District of Columbia Circuit (Federal Judicial Center 1982).

6. Throughout this report, we use the term "case burden" as a convenient synonym for the time commitment required by individual appeals.

Table 1
Indicators of Case Burden in 1982 Study of the D.C. Circuit

I. Indicators of Input Burden
      1. Number of lawyers
      2. Number of briefs
      3. Aggregate length of briefs
      4. Number of issues in briefs
      5. Number of case citations in briefs
      6. Form of record on appeal
      7. Aggregate length of record on appeal
      8. Duration of case
      9. Duration of postdisposition period
      10. Number of postdisposition motions
      11. Presence of United States government as a party
II. Indicators of Output Burden
      1. Form of opinions (published, signed, per curiam, etc.)
      2. Number of opinions (i.e., dissents, concurrences)
      3. Aggregate length of opinions
      4. Number of citations in opinions

*Source:* 1982 D.C. Circuit Study (FJC), Table 7.

The study evaluated the demands placed on judge time for four types of cases—U.S. civil appeals,[7] private civil appeals, criminal appeals, and agency appeals. On nearly every measure of input burden, the research found that agency cases, and to a lesser extent, U.S. civil cases, imposed the greatest burden on the D.C. Circuit's docket. On measures of output burden, the differences between agency cases and other types of cases were less dramatic. Indeed, the researchers detected no reliable connection between indicators of input burden and indicators of output burden. Their report observed that the court "may take on the issues arising in a criminal case forwarded with relatively few input materials . . . and expose it to laborious judicial scrutiny, including full en banc review with separate

7. "U.S. civil" is the label used by the Administrative Office to identify civil cases in which the federal government is a party; the category does not include direct appeals from federal agencies to the courts of appeals. It may, however, include appeals from agencies that proceed through the district courts.

concurrences and dissents." Conversely, cases with large quantities of input materials occasionally resulted in a succinctly stated, unanimous disposition.[8]

These studies are consistent with the propositions that: (1) the case mix in the D.C. Circuit is different from the other circuits, and (2) the most time-consuming appeals on the D.C. Circuit's docket are those that arise from federal administrative agencies. Neither study, however, determined whether appeals arising in D.C. were more time-consuming, on average, than appeals decided in the other circuits.

8. For a recent study of judicial workload based essentially on output indicators, see Richard A. Posner, The Federal Courts: Challenge and Reform (1996).

# Part I
## Docket Composition in the U.S. Courts of Appeals

The D.C. Circuit's location at the seat of the federal government and its exclusive jurisdiction over cases arising under a number of federal statutes contribute to its distinctive caseload. Figure 1 depicts agency appeals filed, by circuit, for fiscal years 1996 and 1997. Direct appeals from federal administrative agencies make up more than 40% of the D.C. Circuit's caseload. Most of these appeals arise from three agencies—FCC, EPA, and FERC—which together make up almost 30% of the D.C. Circuit case filings overall, compared with less than 2% in any other circuit. While appeals from the Immigration and Naturalization Service (INS) and the Benefits Review Board (BRB) constitute the bulk of agency appeals in most other circuits, they are almost nonexistent in D.C. The D.C. Circuit's caseload is thus distinctive both because it is comprised of a large proportion of agency appeals, and because its agency cases draw heavily from agencies with little appellate litigation in other courts.

Figure 1
Percentage of Case Filings Accounted for by Agency Cases, by Circuit, FY96-97
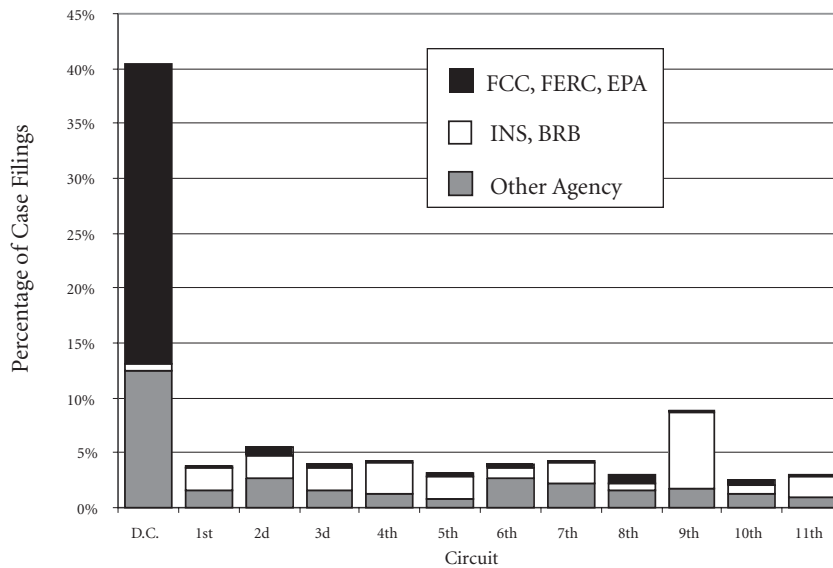
When agency cases are removed from the total caseload, the portion of the D.C. circuit caseload remaining is similar to the corresponding caseloads of the other circuits. Figure 2 depicts the courts' non-agency caseloads. The category represented as "pro se" subsumes a number of different case types; all other case types shown in the graph are counseled appeals. The similar composition of the vertical bars reflects the similarities between D.C. and the other circuits when agency appeals are removed from consideration. In its non-agency caseload, D. C. stands out from the other circuits only in the greater proportion of cases it has that are classified as U.S. civil cases.

Figure 2
Composition of Case Filings Other Than Agency Cases, by Circuit, FY96-97
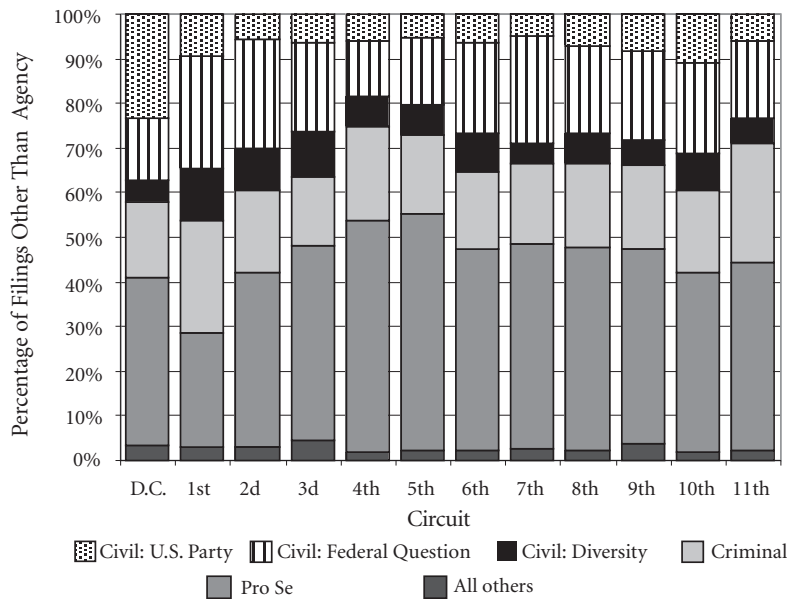


Analysis of case mix alone, however, is insufficient to assess whether the D.C. Circuit should be exempt from the judgeship formula developed by the Judicial Conference. To obtain additional information concerning the workload imposed by D.C. Circuit's cases, we therefore turned to the experts themselves: federal appeals court judges.

# Part II
## Interviews with Circuit Judges

We interviewed appellate court judges both to gain an understanding of what makes some appeals more time-consuming than others, and to assist us in identifying objective factors that might systematically signal a burdensome case. For the purpose of interviewing, we defined a "burdensome" case as one that requires "a lot of judge time, relative to other cases." Because we were focusing on judge time, we asked judges not to consider staff time, including law clerk time, in their assessment of case burden.

Interviews were conducted with six judges of the D.C. Circuit, and four judges each of the Second, Fifth, and Tenth Circuits. A description of the interview process appears in Appendix A. We selected judges at the recommendation of members of the subcommittee or by recommendation of the chief judges of their circuits based on scheduling availability. Although eighteen is a relatively small number of judges, we found this number ample for our purpose, which was to obtain guidance in identifying factors that might correlate with case burden rather than to quantify judges' views.

All interviews followed a standard set of interview questions, a "protocol" organized into three parts (see Appendix B). The first set of questions explored whether the type of case, such as antitrust, capital habeas corpus, or tax, is a good indicator of the amount of judge time it is likely to take. The second portion of the interview explored whether events that may or may not occur during the appellate process, such as oral argument, reliably signal increased time demands. In the final part of the interview, we gave the judges lists of other case characteristics, such as the presence of multiple parties, intervenors, and cross appeals, and asked them to tell us which characteristics might indicate that a case was likely to be more or less burdensome than average.

## A. Case Type and Case Burden

To determine the implications of the D.C. Circuit's case mix for judicial workload, we first sought to explore whether any consensus existed among the interviewed judges regarding the relationship between case type and the expenditure of judge time. We asked our interviewees which case types they found most time-consuming, what made them time consuming, and to what extent the time they required exceeded the time required in the average case.[9] We requested the judges to consider only counseled appeals.

9. Asking judges to assess the magnitude of burden associated with different case types compared to some theoretical "average" case type proved problematic for a number of reasons. Some judges

We asked two kinds of interview questions: (1) uncued queries, where judges responded to open-ended questions, and (2) cued queries, where judges reviewed a list of specific case types and indicated the burden associated with each type. One cued query listed case types that might be considered standard fare for the federal courts of appeals. Another listed administrative agency case types that are much more common in the D.C. Circuit than elsewhere.

The lead interview question was open-ended, and asked judges to state what types of cases they found most time-consuming. Within the D.C. Circuit, there was a high degree of accord. Five of the six judges cited appeals arising from EPA and FERC as highly burdensome. Three judges also cited FCC appeals as high burden cases, but with the qualification by one judge that burdensome FCC appeals are those arising from the telecommunications industry. Although there was a high level of consensus among the D.C. Circuit judges we interviewed, one judge disavowed any connection between burden and FERC cases and stated that generalizing about FCC and EPA cases collectively was not useful because individual cases impose widely differing burdens. Only a few other case types were nominated as burdensome by D.C. Circuit judges; none was named by more than one judge.[10]

Outside the D.C. Circuit, questions about the association between case type and case burden elicited a broader range of responses. Judges we interviewed nominated more than fifteen burdensome case types in response to the lead question; none of these garnered the consensus levels obtained for EPA, FERC, and (to a somewhat lesser extent) FCC cases in the D.C. Circuit. Nevertheless, appeals involving environmental law or the EPA were volunteered as particularly time-consuming by five of the twelve non-D.C. judges. Death penalty appeals were cited as burdensome by five of the eight judges in circuits where such cases have been heard. Securities and antitrust appeals were each cited by four of the outside judges and bankruptcy appeals by three of the outside judges.

resisted the suggestion that they attach numerical values to burden. Values, where offered, were not indexed to a common baseline, as the "average" case differed from judge to judge. For these reasons, we do not consider the data on magnitude reliable and consequently do not report them.

10. The narrow range and high degree of accord in responses from judges in the D.C. Circuit was atypical when compared to responses to the same question in the other circuits. These interview results (from the D.C. Circuit) should be interpreted with some caution. The circuit's caseload has been the subject of on-going, visible analysis within and outside the court for several years. As a consequence, judges on the D.C. Circuit have been exposed to commentary on the nature and burden of the circuit's caseload. We note these events as potentially confounding factors that might contribute to the degree of consensus seen in responses by D.C. Circuit judges. Of course, the consensus may simply reflect the nature of the circuit's caseload.

Judges in the Second, Fifth, and Tenth Circuits sometimes responded to our lead question by referring to a class of cases with certain features as being particularly burdensome, instead of referring to specific categories based on substantive law. The most frequent response of this type referred to cases arising in areas governed by complex statutory or regulatory schemes, which were described as burdensome by six of the twelve judges outside of the D.C. Circuit. Less frequently cited, but still referenced, were appeals arising from mass torts, complex civil commercial litigation, and multi-defendant criminal trials. Each of these was cited by three of the twelve judges in the Second, Fifth, and Tenth Circuits.

The judges also reviewed a list of administrative agencies and indicated whether the typical direct appeal from a listed agency demanded a high, average, or minimal amount of judge time to resolve on the merits. Judges often chose not to respond about specific agencies, citing lack of experience. Table 2 summarizes the results for all judges, with responses by D.C. Circuit judges shown separately. Two judges in D.C. who had not volunteered FCC cases as burdensome in response to the open-ended question nonetheless described them as above average in burden upon reviewing the list. The table reflects the consensus among our interviewees that average appeals from EPA, FERC, FCC, and the Securities and Exchange Commission (SEC), are perceived as the most time-consuming agency matters. In contrast, appeals from the Immigration and Naturalization Service (INS) were viewed as the least time-consuming on average. Cases appealed from the National Labor Relations Board (NLRB) were generally viewed as average, and cases from the Benefits Review Board (BRB) were viewed as presenting average to below average burdens.

Table 2
Distribution of Case Burden Assessments for Direct Appeals from Selected Administrative Agencies

|  | EPA | FERC | FCC | SEC | NLRB | BRB | INS | FTC |
|---|---|---|---|---|---|---|---|---|
| **D.C. Circuit Judges** | | | | | | | | |
| Above average | 5 | 5 | 5 | 2 | 1 | 0 | 0 | 0 |
| Average | 1 | 1 | 1 | 2 | 2 | 1 | 1 | 1 |
| Below average | 0 | 0 | 0 | 0 | 3 | 4 | 4 | 0 |
| No response | 0 | 0 | 0 | 2 | 0 | 1 | 1 | 5 |
| **Other Circuit Judges** | | | | | | | | |
| Above average | 7 | 6 | 5 | 5 | 5 | 0 | 1 | 2 |
| Average | 0 | 0 | 0 | 0 | 7 | 3 | 3 | 0 |
| Below average | 0 | 0 | 0 | 0 | 0 | 3 | 7 | 0 |
| No response | 5 | 6 | 7 | 7 | 0 | 6 | 1 | 10 |

Finally, we asked judges whether appeals in cases arising from rule-making processes present different workload burdens than appeals that follow agency adjudications. Eight judges indicated that rule-making cases take more time than adjudications; three judges indicated that there was no difference; seven judges expressed no opinion. Although it is likely that appeals from rule makings are more commonplace in the D.C. Circuit than in other circuits, we have no straight-forward means to distinguish rule making from adjudication based on the data available to us through the Administrative Office or through docket sheets.

## B. Factors Associated with High-Burden Case Types

We asked judges what factors contributed to the time required by the high-burden case types they had identified. Their answers tended to fall into two general (but not mutually exclusive) categories. First, they often focused on cases with voluminous records, and multiple briefs and parties. Cases of this type were demanding because they involved substantial quantities of material to process. Second, judges often described time-consuming cases in terms of the cognitive demands they imposed. These were "hard" cases that involved technical issues, questions of first impression, or complex statutes and regulations. The judges interviewed also described as demanding cases that involve substantial public scrutiny or cases that are likely to have broad policy implications that the court must take into account.

### CASE CHARACTERISTICS

When asked what makes appeals burdensome, judges responded most often by identifying case characteristics. In particular, time-consuming cases were those presenting some combination of multiple parties or defendants, intervenors, multiple issues, scientific or technical issues or subject matter, complicated or novel fact patterns, voluminous records, or voluminous briefs.

These open-ended responses were confirmed when judges were asked to tell us which of a list of more than forty case characteristics serve as markers of increased case burden. Some consensus emerged regarding a number of input factors indicative of high burden: the presence of multiple parties, multiple briefs, numerous issues raised in the briefs, technical or scientific matters, issues of first impression, intervenors, amicus curiae filings, cross-appeals, a lengthy trial in the district court (reflecting lengthy records on appeal), and a complex procedural history (e.g., multiple appeals and remands). There were few surprises regarding output indicators. Judges generally agreed that the publication of the opinion, a reversal or remand, a lengthy opinion, and an en banc decision are all strong indicators that the case was more time-consuming than the average appeal. Table 3 reproduces all of the case characteristics considered by the judges; if 70% or

Table 3

Positive Responses to Case Characteristics as Indicators of Case Burden
(D.C. Judges, Non-D.C. Judges)

## Party Characteristics
* Multiple parties (6, 12)[a]
* Amicus curiae filings (4, 9)
* Intervenors/ third parties (6, 9)
  Federal government as party (as appellant or appellee) (3, 4)[b]
  State government as party (1, 3)
  Involvement of businesses as litigants, intervenors (2, 2)

## Procedural History
* Lengthy trial (5, 9)
* Complex procedural history (multiple appeals and remand) (5, 8)
* Cross-appeals (6, 9)
  Summary judgment (1, 0)
  Directed verdict (0, 1)
  Jury trial (1, 1)
  Bench trial(1, 3)
  Consolidations (6, 4)
  Existence of published opinion in the district court (2, 2)
  Multiple predisposition motions on appeal (5, 3)

## Records and Briefs
* Briefs from multiple parties (6, 11)
* Large record from below (4, 9)
* Large number of issues raised in briefs (6, 9)
  Large variety of legal sources cited (5, 3)
  Source of record (agency or district court) (4, 1)[c]

## Substantive Content
* Existence of an issue of first impression (6, 11)
* Presence of technical or scientific issues or questions (6, 8)
* Matters of national importance or visibility (6, 8)
  Application of state or international law (5, 4)[d]
  Statutory interpretation (2, 5)
  Presence of constitutional issue (5, 7)
  Presence of regulatory issue (4, 4)

## Standard of Review
Clearly erroneous (0, 2)
Abuse of discretion (1, 0)
Arbitrary and capricious (2, 0)
Substantial evidence (1, 0)
De novo (3, 8)
Sufficiency of evidence (1, 2)

## Outcome Characteristics
* Publication of an opinion (5, 11)
* Existence of separate opinions (dissent or concurrence) (5, 10)
* Grant of petition for en banc hearing (6, 9)
* Lengthy opinion (6, 7)
* Reversal or remand (5, 8)
  Large number of citations in opinion (1, 2)
  Petition for reconsideration(1, 0)
  Grant of petition for reconsideration (5, 5)
  Petition for en banc hearing (1, 0)
  Multiple other post-disposition motions (3, 4)

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* Identified as an indicator of burden by at least 70% of the respondents.

[a] Two D.C. judges stated the indicator was only valid if there were separate briefs.

[b] Two D.C. judges and one non-D.C. judge stated the indicator was only valid if the U.S. was appellant.

[c] Two D.C. judges and one non-D.C. judge stated that agency records were strong indicators.

[d] Three D.C. judges stated the indicator was only valid for international law.

more of our interviewed judges said a characteristic is associated with burden, we have noted that with an asterisk (*). The table also reports the number of judges in D.C. and outside D.C. who responded to the characteristic as indicative of case burden.

COGNITIVE DEMANDS

The individual case characteristics identified by judges helped us to develop empirical indicators of case burden, as discussed below in Part III. In addition, however, the interviewed judges identified qualitative or subjective characteristics of high-burden cases. Among these qualities, judges noted that cases are often burdensome when they: (1) involve a complicated or novel fact pattern; (2) involve an issue of first impression or arise in an area where the law is unsettled; (3) arise in areas governed by complex statutory and regulatory schemes; or (4) require the judge to understand complex technical information. Technical information in this context includes scientific evidence, accounting formulas, and "systems" information relating to specific industries, including the operations, economic structure, and technology of the industry. Several judges volunteered that even technical information of only moderate complexity is burdensome if the judge encounters it infrequently, since the associated learning curve is steep. Judges also suggested that technical information can change rapidly, presenting additional challenges.

The common thread in these explanations of burden is that a case is time-consuming if it requires judges to master unfamiliar territory. One of our interviewees noted that because appellate judges are generalists rather than specialists, cases requiring mastery of a new area are challenging and time consuming. Judges also spoke of a different kind of intellectual demand imposed by cases likely to have broad policy implications, and by cases that are highly visible or politically charged (including, for many, death penalty appeals).

Many of these qualities are subjective. They cannot be known at filing and are not recorded on docket sheets. Although theoretically they could be measured, collecting data sufficient to warrant confidence in the results would require judges (or other experts) to invest many hours reviewing case records. Even after such effort, we would likely find specific cognitive demands elusive because the demands will constantly change. Some of the cutting edge technologies of today will, for example, be obsolete in as little as a year; areas of law currently considered unsettled will present reduced challenges in the future; the agencies involved in the high burden cases of today may be involved in litigation less in the future whereas other regulatory areas may become more active. Although qualitative factors surely affect the amount of judge time that cases require, we believe that

the objective factors we have analyzed for this report present a useful description of comparative case burden.

## C. Appellate Processing Indicators of Burden

The interviews also included questions intended to explore whether burdensome appeals can be distinguished by their association with particular "process" markers. Such markers might include, for example, whether a case was orally argued, the amount of argument time allotted, whether a party asked the court to allow longer briefs or additional argument time, or whether such requests were granted. We also asked judges whether elapsed time between oral hearing (or submission) and the issuance of an order or opinion is related to case burden in their circuit.

The judges' responses indicate that these process elements are not likely to be useful burden indicators. In particular, judges told us that too many extraneous factors influence the time between argument and judgment to allow for meaningful analysis of disposition time as an indicator of case burden. For one process factor, oral argument, our assumption about its relationship to case burden was generally confirmed. The judges disagreed, however, on whether the amount of time allocated for oral argument signals burden. Eight said that allocated time bears no relation to likely burden; seven said that there was reasonable correspondence between allocated time and likely burden; two said that only a significant upward departure from the standard amount of time allocated to oral argument would signal a burdensome case. Nor were requests for longer briefs considered probative indicators of case burden.

## D. Interview Results and the D.C. Circuit

The interviews cast useful light on a number of issues relating to workload in the D.C. Circuit. Judges in the Second, Fifth and Tenth Circuits expressed views about case burden that were often consistent with those of the D.C. judges, and many were highly germane to the workload of the D.C. Circuit. In particular, judges generally agreed that cases require more than average judge time when they involve:

    (1)  complex statutory and regulatory schemes;

    (2)  complex technical, scientific or accounting matters;

    (3)  elevated levels of public scrutiny;

    (4)  mastery of information and terminology relevant to specific industries;

    (5)  environmental claims or EPA actions;

    (6)  FERC; or

    (7)  the FCC.

Although the D.C. Circuit's caseload includes many cases that fit into one or more of these categories, relying on these categories alone to assess case burden is problematic. First, we do not know—and therefore cannot compare—how frequently the circuits handle cases falling into the first four categories. Second, the types of agency appeals cited by the D.C. Circuit judges as highly burdensome are heard infrequently, or not at all, in the other circuits. As a consequence, few of the non-D.C. judges have had an opportunity to develop expertise with such cases and might be expected to find them especially burdensome. On the other hand, the frequency with which these appeals arise in D.C. may lead to greater familiarity or expertise and thus make these cases less time-consuming for judges there. When considering case burden, non-D.C. judges tended to cite case characteristics rather than case types, but when case types *were* volunteered, they were most often non-agency cases. This may be due to the infrequency of agency appeals outside D.C., so that open-ended questions tended to elicit other appeal types that are more numerous in these courts' dockets. Thus, non-D.C. judges were not optimally positioned to compare their burdensome cases with agency appeals of the type heard frequently in the D.C. Circuit. Third, judges as a whole were reluctant to offer a quantitative assessment of burden for different case types, and where they acceded to the request to place a value on their response, the estimates varied too much to be useful.

Considerably more helpful were the judges' responses regarding the relationship between case characteristics and time demand, and we conclude from examining all the data that burden may be better accounted for by case characteristics than by case type. If case characteristics that serve as indicators of high demand occur frequently within specific case types, those case types are likely to be more time-consuming on average than other case types. If cases with high demand indicators only rarely occur within a given case type, the case type will, on average, be less time-consuming. Many of the case characteristics in Table 3 that judges named as good indicators of burden are specific and measurable.

These important clues to what signals high demand cases, on which there was substantial agreement among judges, allowed us to conduct a large-scale analysis of terminated cases to see how prevalent the characteristics are in the D.C. Circuit's caseload and in the caseloads of other courts. A report of that analysis follows.

# Part III
# Comparative Data on Case Characteristics Associated with Time-Consuming Appeals

## A. Data Collection and Other Preliminary Matters

The occurrence of several case characteristics identified as good indicators of case burden during the interviews (and reported in Table 3) can be measured using various data sources. Table 4 presents those indicators for which we were able to generate reliable measures, and the data source for each. The variables are organized according to whether they constitute measures of input or output burden. Although case consolidation was not identified by a substantial majority of the judges we interviewed as a strong indicator of case burden, we nevertheless include it in Table 4 because of the consensus in D.C. that consolidations increase burden.

Table 4
Indicators of Workload Burden and Data Sources*

| Input Measures | Data Source |
| --- | --- |
| Number of Participants | Docket Sheets |
| Number of Intervenors | Docket Sheets |
| Number of Amici | Docket Sheets |
| Number of Briefs | Docket Sheets |
| Cross Appeals | Docket Sheets |
| Lengthy Trial in District Court | FJC Integrated Data Base |
| Case Consolidation | Docket Sheets |

| Output Measures | Data Source |
| --- | --- |
| Publication of Opinion | Court opinions |
| Existence of Separate Opinions | FJC Integrated Data Base |
| Reversal or Remand | Docket Sheets |
| Oral Argument | Docket Sheets |
| En Banc Hearing | Docket Sheets |
| Opinion Length | Court opinions |

  *Source note: The FJC Integrated Data Base compiles case information submitted by the courts to the Administrative Office. Court opinion information was obtained from WESTLAW.

## DOCKET SHEET ANALYSIS

To gather data on many of these variables, we selected a random sample of docket sheets from nine of the twelve courts of appeals. We were unable to obtain docket sheets for three of the circuits—the First, Sixth and the Eleventh—due to technical problems, and we have consequently excluded these circuits from all subsequent analyses.

The docket sheets were drawn from the population of counseled cases terminated on the merits or on procedural grounds after judicial action in fiscal years 1996 and 1997. The total sample includes approximately 4,000 terminated cases; all data analyses that follow are based exclusively upon this sample. We drew roughly equal samples of about 400 cases from each of the nine circuits, except that we oversampled to include twice as many cases in the D.C. Circuit as in the other circuits.[11] Data on consolidations, parties, intervenors, amici, cross appeals, briefs filed, en banc decisions, and reversals were then extracted from these docket sheets. Information about how we sampled and analyzed the docket sheets (including our computer program and an assessment of the data's accuracy) is provided in Appendix C.

## NATIONALLY REPORTED DATA AND WESTLAW

For the existence of a separate opinion and to identify district court trial length in our 4,000 case sample, we used the Federal Judicial Center's Integrated Data Base (IDB) (which compiles information routinely reported by the courts to the Administrative Office). To determine whether a case yielded a published opinion and, if so, the opinion's length, we did a WESTLAW search for all opinions published in volumes 60 through 149 of the Federal Reporter (Third), covering the period from approximately July 1995 to June 1998. After creating a complete list of citations for the period, we calculated opinion length using a computer algorithm in Microsoft Excel. Given the original source of the data (the Federal Reporter), this variable reflects the length of published opinions only. In addition, because the calculation was based on the first and last page of the WESTLAW report of the case, opinion length includes the majority and any separate dissenting and concurring opinions.[12] The data collection process is described more fully in Appendix D.

11. We recognize that the circuits vary considerably in the sizes of their caseloads, but equal samples of sufficient size are adequate to compare the distributions of case characteristics across the circuits—an exploration which is unrelated to the magnitude of each court's caseload.

12. We included separate opinions in our page count because they are generally thought to reflect a greater total investment of judge time.

CASE CONSOLIDATIONS

Any study of workload must address the question of how to treat case consolidations, as the impact of consolidation on judicial workload is unclear.[13] As shown in Figure 3, the percentage of case consolidations varies by circuit. The data for the figure are based on the random sample of docket sheets drawn from nine of the twelve circuits and hence reflect counseled cases terminated on the merits or terminated procedurally after judicial action.[14]

Figure 3 shows that a significant percentage of cases are consolidated in all nine of the circuits we examined, but the consolidation rate is greatest in the D. C. Circuit. Our interviews produced no strong consensus regarding the implications of consolidations for the analysis of workload. Although the purpose of consolidation is efficient case processing, two consolidated appeals likely require more judge time, on average, than a single appeal. For example, case consolidation may contribute to judicial workload if a consolidation requires the court to explain the different factual and procedural backgrounds of each case, or otherwise address differences between the lead and consolidated cases in the decision making process. Moreover, it is plausible that cases suitable for consolidation are on average more demanding than single cases. Every judge interviewed in the D.C. Circuit identified consolidations from the list of case characteristics we presented and stated that having other cases consolidated with an appeal signals that the judge time required to decide the entire group is greater than the time required for a single appeal. This view, however, was shared by only four of the judges outside the circuit. As a matter of judgment—not an empirical finding—we believe that cases in which multiple appeals have been consolidated are likely to

13. *See also* Posner, *supra* note 8, at 70 ("[T]he significance for workload of a change in the percentage of cases 'disposed of' by consolidation is ambiguous."). Perhaps to avoid overstating judicial workloads, the Administrative Office describes cases as "terminated through consolidation," even though the consolidated case continues to be processed along with its lead case.

14. Consolidations and several other factors we studied (cross-appeals, opinion publication, reversal or remand, oral argument, and en banc disposition) are identified in data that is routinely reported to the Administrative Office of the U.S. Courts and maintained in the Center's Integrated Database (IDB). We chose to rely on our own coding of this information from case dockets after we discovered that the routinely reported data were in error in at least some instances, and that the incidence of error varied across circuits. These observations suggested that at least some of the routinely reported data was collected using different standards in the different circuits and so could not be reliably compared across circuits. Our coding of case consolidations, for example, agreed well with the IDB consolidation information reported by four of the nine circuits included in the study, but differed significantly from that reported by the other five circuits. Because we were able to code this information directly from the case dockets and test the accuracy of the coding (see Appendix C), we chose to rely when we could on our data, rather than on that reported to the Administrative Office.

be more time consuming than single cases, but the additional time burdens are unknown.

Since a consolidated case is merged and decided in conjunction with a lead case, however, it would be misleading to count consolidated cases separately for purposes of many of the statistics reported here. For example, where a lead case with ten consolidations results in a published opinion, crediting the court for that opinion in each of the consolidated cases would obviously result in an overcount of opinions. To avoid inflating relevant statistics and because there is no clear relationship between consolidations and workload, we base our analyses of workload indicators only on lead cases in consolidated actions and on single cases (which together total 3,190 of the 4,000), unless otherwise noted.

Figure 3
Percentage Consolidated (Non-Lead) Cases
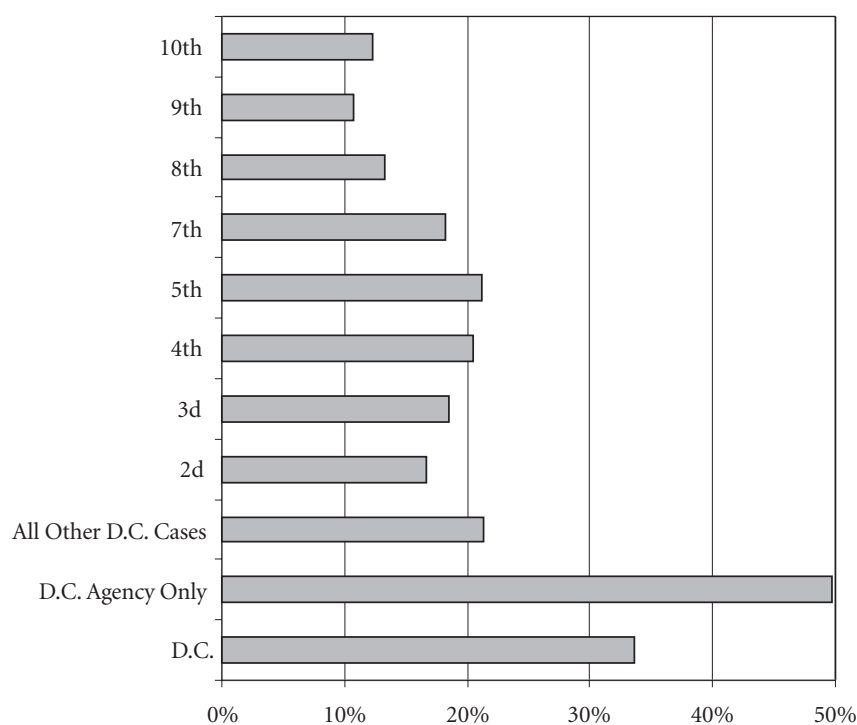
NON-JUDICIAL TERMINATIONS

Significant numbers of appeals, including those terminated by default or voluntarily dismissed, are disposed of by staff without judicial involvement. These non-judicial procedural terminations complicate the assessment of workload burden. Because this study evaluates the expenditure of judge time, we excluded procedural terminations by staff from our analyses of the empirical data and from discussion in the interviews. It is, however, important to note that the proportion of agency cases terminated without judicial involvement in the D.C. Circuit is higher than the proportion of cases terminated without judicial involvement in the circuits generally. Data from the IDB indicate that in the population of counseled appeals in the nine circuits from which our sample was drawn, about 26% of all cases were disposed of procedurally without judicial action, compared to about 50% of D.C. agency cases. Although the frequency with which cases are disposed of by staff has an obvious impact on judges' workload, evaluating workload based on case filings does not capture that impact.

We now turn to the analysis of objective indicators of case burden. We first present information relating to input indicators of high-demand cases, and follow that with a discussion of output indicators of high-demand cases.

## B. Indicators of Input Burden

We begin with statistics regarding the number of parties, intervenors, and amici curiae—collectively referred to herein as "participants." We counted participants only if they were independently represented by counsel. This approach is consistent with judges' statements during interviews that it is an increased number of *differing litigation positions*, rather than the simple number of parties, that actually elevates judicial workload. We assume that if parties are represented by the same counsel, they are likely presenting the same arguments, information, claims, and defenses and thus should be grouped together in any evaluation of case burden. Summary statistics for the sample data are shown in Table 5. Unless otherwise noted, for all subsequent tables presented in this report, the number of cases in each circuit is the same as shown in Table 5.

Table 5
Independently Represented Parties, Intervenors, and Amici Curiae

| Indicator of Input Burden | D.C. All | D.C. Agency | D.C. Non-Agency | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Mean No. Parties | 2.1 | 2.2 | 2.1 | 2.3 | 2.2 | 2.1 | 2.1 | 2.2 | 2.1 | 2.2 | 2.1 |
| % w/ Intervenors | 19% | 56% | 0% | 1% | 1% | 1% | 0% | 0% | 0% | 1% | 0% |
| % w/ Amici | 7% | 8% | 7% | 6% | 2% | 5% | 4% | 3% | 3% | 1% | 3% |
| Mean No. Participants | 2.92 | 4.25 | 2.27 | 2.43 | 2.22 | 2.18 | 2.18 | 2.24 | 2.18 | 2.19 | 2.24 |
| Number of Cases | 573 | 188 | 385 | 350 | 322 | 311 | 304 | 311 | 359 | 308 | 352 |

These statistics reveal that, with the exception of the number of independently represented parties, the D.C. Circuit, and especially the D.C. Circuit's agency cases, tend to fall at the high end of the distribution for most variables presented in the table. Nineteen percent of all D.C. cases involve intervenors directly in the appeals court, compared to less than 2% on average in the other circuits. This high percentage of intervenors in D.C. is solely attributable to agency cases, 56% of which have one or more intervenors. Similarly, the D.C. Circuit hears a relatively large percentage of cases that attract amicus participation: for all D.C. Circuit cases, 7% involve amicus filings, while amici participate in 8% of all D.C. agency cases. Only the Second and Fourth Circuits come close to matching the D.C. Circuit on this indicator of input burden. Finally, in terms of independently represented participants (parties, intervenors and amici), the D.C. Circuit's average is 2.92 participants, 20% higher than the second-ranking Second Circuit with an average of 2.43 participants. The D.C. Circuit's agency cases contribute heavily to the overall mean number of participants in the circuit. D.C.'s agency appeals have an average of 4.25 participants per case, compared to an average of 2.27 participants for the non-agency portion of the D.C. Circuit's caseload. Indeed, the non-agency portion is consistent with the averages in other circuits on this measure.

While means and percentages provide some basis for intercircuit comparisons, as summary statistics they tend to mask other relevant information about the distribution of values for a given variable. Figure 4 provides additional information on the number of independently represented participants. The bars in Figure 4 represent the percentage of all cases that fall within a category identified by the number of participants. This graph indicates that more than 40% of all agency appeals in D.C. have more than four independently represented participants, whereas 10% or fewer of all cases in the other circuits involve more than four participants.

Table 5 and Figure 4 signify that the D.C. Circuit decides an unusually large percentage of cases involving multiple litigation positions, which require judges

Figure 4
Number of Independently Represented Participants



| | 6 or more | 4 or 5 | 3 | 2 or fewer |
|---|---|---|---|---|
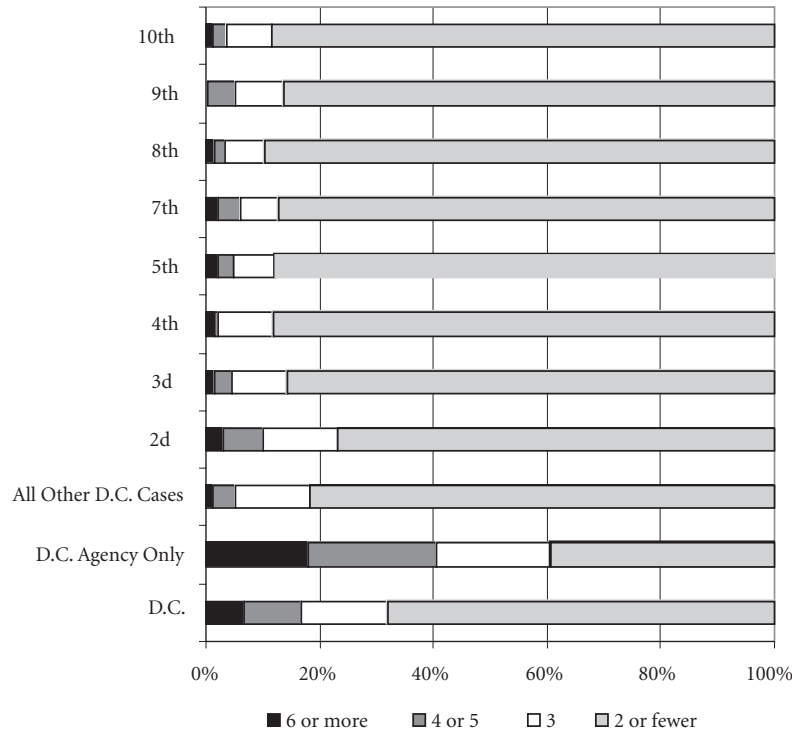
to organize and assess arguments along multiple dimensions instead of in accordance with the traditional appellant-appellee alignment. The magnitude of differences in the data, however, may exaggerate the actual impact of such cases on the workload in the D.C. Circuit. Cases in D.C. are characterized more often by the presence of intervenors and amici, and these parties may not always present additional or conflicting arguments on appeal. Intervenors in direct agency appeals, for example, may take positions consistent with petitioner or respondent, and thus may not elevate case complexity.

The number of participants gives an indication of the degree to which judges must assess multiple issues and positions on appeal. An even stronger measure of case burden, however, may be the number of briefs filed before submission or oral argument. We counted all briefs filed in a case, including those filed by the appellant and appellee, and any cross-appellants, amici or intervenors. Briefs filed following oral argument were counted separately. Although not explicitly addressed during the interviews, we assumed that post-argument briefing may occur most often in cases where complex issues raised at oral argument required

further elucidation by counsel or where pertinent intervening decisions were issued, either of which could increase judge time. Table 6 provides information concerning the mean number of briefs filed before argument or submission, as well as the percentage of cases in which post-argument briefs were filed.

Table 6
Mean Number of Briefs and Prevalence of Post-Argument Briefing

| Indicator of Input Burden | D.C. All | D.C. Agency | D.C. Non-Agency | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Mean Number of Briefs | 2.7 | 3.4 | 2.4 | 2.6 | 2.3 | 2.9 | 2.5 | 2.7 | 2.6 | 2.7 | 2.7 |
| % Cases with Post-Argument Briefing | 6% | 5% | 6% | 3% | 7% | 5% | 13% | 6% | 4% | 8% | 5% |

The statistics presented in Table 6 indicate that more briefs are filed on average in the D.C. Circuit's agency appeals than are filed in D.C.'s nonagency cases or in cases in other circuits. The D.C. Circuit does not differ from other circuits, however, with respect to the percentage of cases with post-argument briefing. This finding is true for both its agency and non-agency caseloads. Additional information on the distribution of the number of briefs (excluding briefs filed after oral argument) is provided in Figure 5. The percentage of cases involving three briefs is reported separately in the graph, since three briefs is the norm (appellant, appellee, and appellant's reply). Most notable is the different distribution of briefs in D.C.'s agency cases. Four or more briefs were filed in more than 40% of D.C.'s agency cases. The closest circuit to D.C. on this indicator is the Fourth Circuit, where approximately 25% of the cases in our sample had four or more briefs.

Finally, judges identified two additional input indicators of burden: cross appeals and lengthy trials in the district court. Conceptually, cross appeals are consistent with multiple participants and briefs, since cross appeals introduce an additional litigation position that judges must evaluate. The D.C. Circuit does not hear a disproportionately large number of cases involving cross appeals, however. In fact, the D.C. Circuit is at the low end of the distribution of cases involving cross appeals. This outcome results, in part, from the D.C. Circuit's large percentage of agency appeals, where cross appeals are nonexistent. Table 7 presents the percentage of cases involving cross appeals, by circuit.

Figure 5
Percentage of Cases with Indicated Number of Briefs
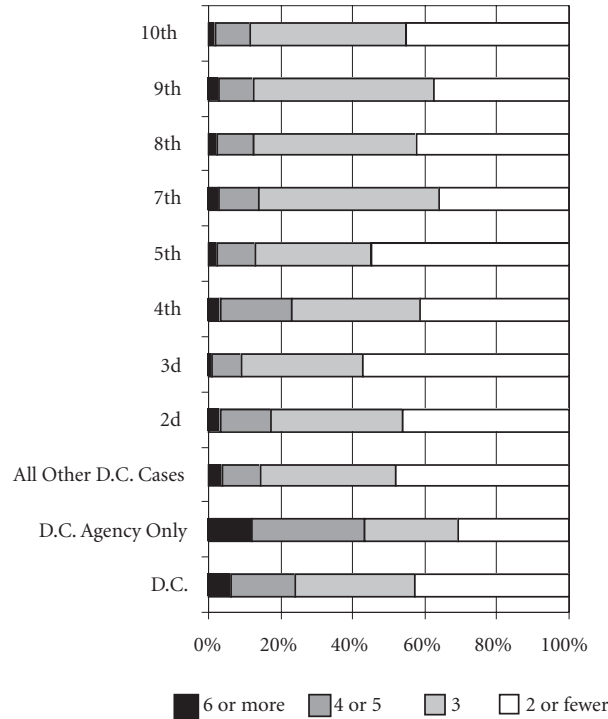


Table 7
Percentage of Cases Involving Cross Appeals

| Indicator of Input Burden | D.C. All | D.C. Agency | D.C. Non-Agency | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|
| % of Cases with Cross Appeal | 3% | 0% | 4% | 8% | 3% | 6% | 9% | 7% | 7% | 6% | 6% |

Judges also cited a lengthy trial in the district court as an indicator of case burden, since longer trials mean longer trial records, which may add to the amount of information that judges review on appeal. We show in Table 8 the mean length of trials for cases appealed from the district court and included in our sample of 4,000 cases.[15] Because agency appeals do not originate in the district court, these data are not relevant to those appeals.

15. We evaluated the distribution of this variable for the nine circuits to ensure that outlying values (i.e., exceptionally long or short trials) did not distort the mean. We concluded that the mean was a good reflection of the underlying distributions.

Table 8
Mean District Court Trial Length for Civil and Criminal Cases (in Hours)

| Indicator of Input Burden | D.C. | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|
| Mean Trial Hours in District Court | 36 | 31 | 31 | 17 | 19 | 27 | 24 | 35 | 26 |
| No. of Appeals from Trial Verdicts | 76 | 89 | 85 | 104 | 92 | 75 | 83 | 46 | 84 |

Table 8 indicates that the D.C. Circuit hears appeals in cases having longer district court trials on average than appeals from trials heard in other circuits. In fact, for the 4,000 cases we sampled, the average trial length in D.C. was higher than any other circuit. Only the Ninth Circuit has similarly long trials.

## C. Indicators of Output Burden

In addition to indicators of input burden, judges also agreed upon several indicators of output burden which we were able to measure objectively: oral argument,[16] opinion publication, opinion length, the existence of separate opinions, and reversal and remand. Although cases heard en banc were also uniformly identified as highly demanding in the interviews, we do not report statistics on en banc hearings because the percentage of cases heard en banc is minimal in all circuits (less than one percent of all appeals) and was thus very minute in our 4,000-case sample. Table 9 provides data on argument and opinions for the 4,000 cases in our study.

Table 9
Opinion and Argument Statistics

| Indicator of Output Burden | D.C. All | D.C. Agency | D.C. Non-Agency | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|
| % Orally Argued | 61 | 66 | 59 | 75 | 36 | 49 | 31 | 76 | 62 | 50 | 42 |
| % with Published Opinion | 45 | 47 | 44 | 37 | 16 | 20 | 22 | 65 | 58 | 26 | 35 |
| % w/ Separate Opinions[a] | 11 | 8 | 13 | 3 | 8 | 5 | 5 | 7 | 10 | 7 | 5 |
| Mean Opinion Length (pages)[b] | 8.7 | 9.8 | 8.1 | 7.2 | 9.6 | 8.0 | 7.1 | 7.6 | 5.4 | 6.0 | 7.5 |

[a] Separate opinions include dissenting or concurring opinions.
[b] Opinion length is for published opinions.

16. We include oral argument as an output measure because judges have control over the grant of argument.

Judges generally agreed that cases granted oral argument are more time-con-suming than non-argued cases, although it is difficult to quantify the magnitude of the difference because of the broad range of argument practices across the circuits. Nevertheless, we report the percentage of cases granted oral argument within our sample of 4,000 cases. The data indicate that the D.C. Circuit does not allow argument more frequently than all other circuits; it ranks fourth, behind the Second, Seventh, and Eighth Circuits. Similarly, the D.C. Circuit ranks third in the proportion of its cases that result in a published opinion. The Seventh and

Figure 6. Opinion Statistics
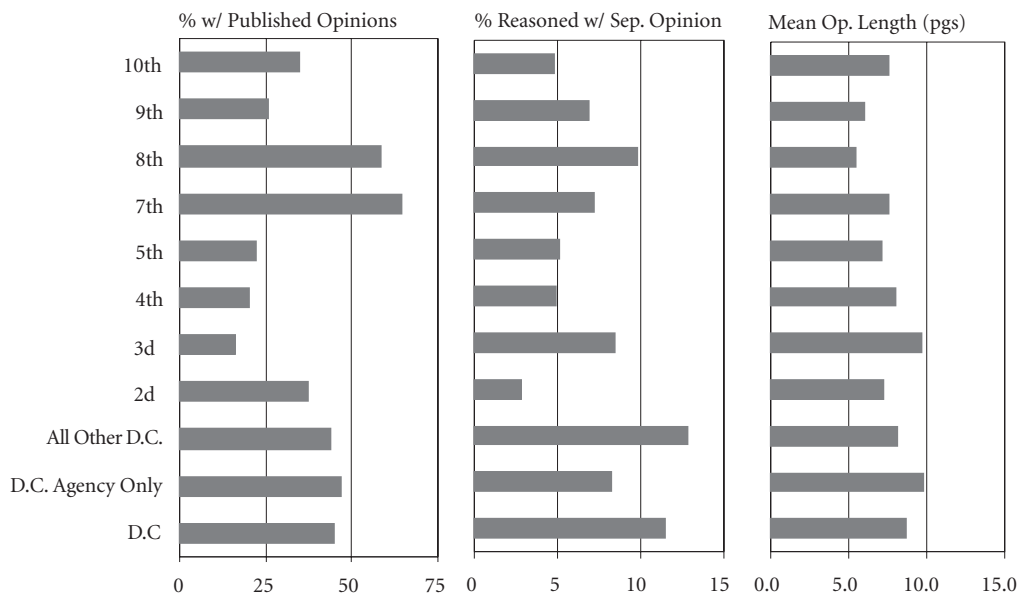


Eighth Circuits are both more likely to publish opinions than the D.C. Circuit. The D.C. Circuit is not exceptional on these measures of output burden.

The D.C. Circuit is more distinguishable in terms of the percentage of cases in which judges concur or dissent, but this difference is attributable to non-agency rather than agency cases. Overall, the D.C. Circuit ranks first among the circuits on this measure. Only the Eighth Circuit is similar to D.C. in the rate at which its cases result in separate concurrences and dissents.

As for opinion length, the D.C. Circuit writes long published opinions, ranking second among the circuits overall. Moreover, its opinions in agency cases are longer than opinions, on average, in any other circuit. Only judges in the Third Circuit write similarly long opinions. See Figure 6 for comparative opinion statistics presented in graphical form.

As a final output measure, we also considered reversal rates across the circuits. In interviews judges frequently stated that reversal requires more time than affirmance because a reversal often requires a more detailed explanation of the decision or instructions on remand. By examining descriptions of the judgments in the docket sheets, we identified whether a trial court decision was (in whole or in part) reversed, remanded, or vacated, or whether a petition for review was granted in an agency appeal; in the table we refer to all such actions broadly as "reversals." The percentage of cases resulting in reversal for each of the nine circuits is presented in Table 10.

Table 10
Rate of Reversal

| Indicator of Ouput Burden | D.C. All | D.C. Agency | D.C. Non-Agency | 2d | 3d | 4th | 5th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|
| % Reversed | 27% | 24% | 28% | 21% | 14% | 18% | * | 26% | 21% | 26% | 20% |

*Docket sheets in the Fifth Circuit did not reliably report reversals.

The D.C. Circuit "reverses" a slightly greater proportion of decisions than do the other circuits, but, again, the high reversal rate in D.C. is not attributable to agency cases, which result in reversal less frequently than non-agency cases in D.C.

## Summary of Results

The mix of cases filed in the D.C. Circuit is clearly very different from that of any other circuit. This is due primarily to the significant number of appeals arising from three agencies (EPA, FCC, and FERC), which together account for approximately 30% of the circuit's case filings in the period we studied (1996-1997). The mix of cases in the D.C. circuit's non-agency caseload, however, is very similar to that found in circuits nationwide.

Interviews with appeals court judges in four circuits support the notion that agency appeals of the type concentrated in the D.C. Circuit are more time-consuming than average. Judges told us that the most time-consuming cases involve

technical and scientific matters, generate high levels of public scrutiny, arise in areas governed by complex statutory and regulatory schemes, or have broad policy implications. According to judges inside and outside D.C., many agency appeals from EPA, FCC and FERC include one or more of these conditions, which supports the conclusion that agency appeals in D.C. are indeed more burdensome on average than cases found more commonly in other circuits.

We supplemented this qualitative information with analysis of other indicators of case burden that can be measured quantitatively. For analytical purposes, we separated these quantitative measures into two groups: those that measured input burdens and those measuring output burdens. The input/output distinction is theoretically and practically important. Input burdens are not subject to the control of the court but rather are created by parties to the appeal; they include, for example, the number of parties, intervenors, amici, briefs, and cross-appeals. Output burdens, on the other hand, are subject to somewhat greater control by judges; they include factors such as the existence of oral argument, and published and separate opinions. To the extent that judges are able to exercise control over output burdens, they may be less probative of case burden compared with input indicators. Nevertheless, while acknowledging some judicial control over output burdens, the judges we interviewed still endorsed them as good indicators of demanding appeals.

Data on both input and output indicators from a sample of 4,000 counseled cases terminated in 1996 and 1997 in nine circuits showed the D.C. Circuit ranked high on several input indicators of time-consuming appeals. Most importantly, D.C.'s cases had notably more participants (including parties, intervenors, and amici) than cases in other circuits. This result was driven almost entirely by D.C.'s agency appeals. In addition, D.C.'s agency appeals had a higher number of briefs on average than other appeals in D.C. or in the other circuits. The high average number of participants and briefs in D.C.'s agency appeals is strongly suggestive of increased workload, since it signals the presence of multiple litigation positions that must be separately considered in the decision-making process.

The D.C. Circuit was less distinguishable on most output indicators, although it often ranked high among the circuits. For example, the D.C. Circuit had a relatively high proportion of cases with separate opinions, it reversed the lower court or agency relatively frequently, and it tended to produce long opinions. Only in the case of opinion length, however, was the D.C. Circuit's high ranking attributable to its agency appeals. Thus, on input burdens, D.C. stood out because of its agency cases, while on output burdens, D.C. may rank high because of its general practices rather than because of its agency cases per se.

Nevertheless, because D.C.'s agency cases have more participants and briefs—which likely lead to more complex litigation alignments and multiple issues—they

are clearly distinguishable from other cases in D.C. and from most cases in other circuits. Indeed, the fact that agency cases in D.C. also result in the longest opinions is consistent with this finding. Longer opinions may be necessary to address the multiple arguments presented by the larger variety of participants. These data, together with the qualitative information offered by the interviewed judges, create a cogent picture of agency appeals in D.C.: they are more likely to attract multiple participants with multiple objectives, involve the application of complex statutory and regulatory law, require the comprehension of technical and scientific information, and have significant policy implications. In short, they are hard cases. This conclusion is not meant to suggest that the other circuits lack time-consuming appeals; the interviews indicated that quite the opposite is true. But D.C. has a significantly larger proportion of these cases in its caseload than do the other courts.

The balance of the D.C. Circuit's caseload looks much like the caseloads of other circuits, however, particularly on important input indicators. The average number of participants, briefs and cross appeals in D.C.'s non-agency cases is consistent with the averages in the other circuits. The circuit's non-agency caseload is distinguishable on only one input measure: the length of district court trials resulting in appeals. On this input measure, D.C. ranked first among all circuits, although the average trail length in the Ninth Circuit was nearly the same. Of course, it may be that the non-agency caseload of the D.C. Circuit differs from the caseloads of the other circuits in more ways than are revealed by our quantitative data. Factors that cannot be measured as a practical matter, such as questions of important public policy or issues of first impression, may occur more frequently in the D.C. Circuit's cases than in cases in the other circuits. This hypothesis is not susceptible to empirical verification using the types of indicators we rely on here.

## Conclusion

The data support treating the D.C. Circuit's docket of counseled appeals as having two parts: (1) agency appeals, and (2) all other appeals. D.C.'s agency appeals are of types that appear almost exclusively in that circuit, and they constitute a substantially larger part of its caseload than agency cases do in other circuits. Both the qualitative and quantitative data we gathered support the conclusion that these cases are more time-consuming on average than the large majority of other appeals in D.C. and elsewhere. Because agency cases make different demands on the court's resources than do other cases, these cases may appropriately be exempted from the 500 formula for assessing judgeship needs currently used by the Judicial Conference. The balance of the D.C. Circuit's caseload, however, ap-

pears to be very similar to the caseloads of the other circuits, and we thus have no basis to recommend exceptional treatment for the court's non-agency caseload.

Several alternatives seem to be reasonable accommodations for this circuit's distinctive caseload. The 500 formula might be revised to give greater weight to agency appeals, or might be revised to give greater weight to appeals from the EPA, FCC and FERC. Alternatively, the 500-filing benchmark could be reduced for the D.C. Circuit's overall caseload. At this time, we have no data that would imply a preference for one specific formula or weight, over another. Information regarding the time demands created by appellate cases would likely be required to provide an empirical basis for such a formula.

With respect to any decisions about applicable formulas, however, we would add a cautionary note about terminations without judicial action and case consolidations. Agency appeals in D.C. are disposed of without judicial action and are consolidated (decided in groups) more often than other cases in D.C. or elsewhere. In the population of 1996 and 1997 terminations in the nine circuits from which our sample of 4,000 cases was drawn, for example, approximately 26% of counseled appeals were disposed of on procedural grounds without judicial action. In contrast, 50% of D.C.'s agency appeals were terminated procedurally without judicial action. Judicial resource assessments based on filings will obviously fail to account for this characteristic of agency appeals in D.C.

Case consolidations pose a similar problem. Of those agency appeals in D.C. decided *with judicial action* in our sample, half were decided in consolidation with a lead case. This rate of consolidation far surpasses the rate of consolidation in the other circuits we studied, and thus poses a conundrum. Since consolidation is obviously intended as an efficiency mechanism, two consolidated cases should, arguably, require the expenditure of less judge time than two separate appeals. This appeared to be the view among many of the judges we interviewed, but how much time is actually saved as a result of consolidation remains an open question. Complicating the picture further is the possibility that cases subject to consolidation in the D.C. Circuit differ in important ways from cases that are not consolidated. Specifically, these cases may be harder and more time-consuming even if decided alone. We have no data that can resolve this question. Nor can we see any way to resolve the question with empirical evidence other than with information on the actual time spent by judges on consolidated and single cases.

# Appendix A
## Description of Interview Method

We interviewed eighteen judges from four U.S. courts of appeals to explore whether particularly time-consuming cases could be identified on the basis of case type (subject matter) or case characteristics. In conducting the interviews, we followed a structured interview protocol, which appears in Appendix B.

The interviews served two purposes. First, we sought to determine whether judges sitting in diverse courts share a common view of case burden that might be used to evaluate the workload associated with cases in the courts of appeals. Second, we sought to mine judges' experiences for indicators of case burden that would enable us to develop quantitative measures of workload. A related objective was to validate, if possible, a number of measures presumed to correlate with case burden that have been used in previous studies of appellate workload.

In January and February of 1999, we interviewed six judges from the D.C. Circuit, and four judges each from the Second, Fifth, and Tenth Circuits. We selected the Second, Fifth and Tenth Circuits because they vary across dimensions such as court size, caseload volume and caseload mix. The Second Circuit, for example, has a caseload of intermediate size, but often hears cases involving complex commercial or securities transactions that are potentially comparable to agency appeals in the D.C. Circuit in terms of workload burden. The Fifth Circuit is a high volume court with a cross-section of the national appellate caseload, although its docket includes a higher than average number of habeas corpus death penalty appeals. The Tenth Circuit has a modestly sized caseload and a typically diverse caseload mix.

We selected interviewees on the basis of recommendations and availability. Judge David S. Tatel, who sits on the D.C. Circuit and who also serves on the Statistics Subcommittee, suggested participants from his court. We supplemented Judge Tatel's list after consultation with Chief Judge Harry T. Edwards. Judge Dennis G. Jacobs, who sits on the Second Circuit and serves on the Statistics Subcommittee, suggested most of the Second Circuit participants. We asked the chief judges of the Fifth and Tenth Circuits to arrange interviews in their courts, according to the schedule and location of judges during the period set aside for interviews.

Interview sessions were conducted using a standard protocol, with questions designed to elicit information about what makes an appeal particularly burdensome. We defined a "burdensome" case as one that "takes a lot of judge time, relative to other cases." Judges were asked to respond to questions based on "average" cases of a given type, or "average" cases having a particular case characteristic. Judges indicated in most instances that they defined their individual "benchmark aver-

age" as one of the following: (1) all civil cases, (2) all criminal cases, (3) a subset of civil or criminal cases (e.g., civil diversity, criminal cases after trial, criminal and civil diversity cases having three or fewer issues), or (4) a combination of civil and criminal cases. Judges were asked to consider only judge time in assessing case burden, rather than staff time, and were instructed to focus on counseled appeals that progress to termination on the merits.

The interviews were organized in three parts. Section I included questions regarding whether judges perceived a relationship between case type and case burden. Judges were asked to discuss case types they found most burdensome, indicate what made these case types so burdensome, and assess the degree to which the associated burden exceeded burden in average cases. We employed two kinds of interview queries: (1) uncued queries, where judges generated information to open-ended questions without reference to a list of case types, and (2) cued queries, where judges reviewed a list of specific case types and assessed the burden associated with each type. One cued query listed case types that might be considered standard fare for the federal courts of appeals. Another listed administrative agency case types that have a more pronounced effect on the appellate docket in the District of Columbia than elsewhere.

Section II of the interview included questions about whether discrete events occurring during the life of an appeal might correlate with case burden. Judges were asked to comment, for example, on whether the amount of time allocated for oral argument would signal that a case was likely to be more or less time-consuming than average. Other questions asked about the signal value of motions (and grants thereof) to extend oral argument time or to extend the number of pages in the brief. Judges were asked about factors that might affect the length of time between hearing (or submission) and the issuance of an order or opinion. The purpose of these questions was to determine if the time lapse reflected the degree of case burden.

Section III of the protocol shifted from the focus on case type developed in Section I to a focus on case characteristics as indicators of burden. This part of the interview consisted of cued queries about the relationship between judge time and specific case-related characteristics. Judges were provided organized lists of case characteristics and were asked to designate which were useful in explaining the expenditure of judge time on a case. One such list asked about parties in cases—whether, for example, the presence of multiple parties, intervenors, third parties, or the government as a party was typically associated with time-consuming cases. A second list asked about the procedural history of cases—whether, for example, the presence of summary judgment below, consolidations, and cross-appeals affected burden.

Other lists invited comment on aspects of the record and briefs (e.g., briefs from multiple parties, the size of the record from below, the number of issues raised in the briefs), substantive case content (e.g., the existence of an issue of first impression, the presence of technical or scientific issues, the involvement of statutory interpretation, the presence of matters of national importance or visibility), the standard of review in the case (e.g., clearly erroneous, abuse of discretion, arbitrary and capricious, de novo), and outcome characteristics (e.g., publication of opinion, separate concurring or dissenting opinions, reversal or remand, post-disposition motions).

Interviews typically lasted one hour, with somewhat longer interviews being the norm in the D.C. Circuit. With the exception of one telephone interview, meetings with the judges were conducted face-to-face. All interviews were conducted by one or two members of the project team.

# APPENDIX B
## Interview Protocol

*Appendix B presents verbatim the protocol used in conducting the interviews. The statement on this page was read to the judges at the outset of the interview. The remaining pages show the questions asked of the judges and the lists of case type or case characteristics that the judges reviewed in responding to the cued questions.*

## Introduction: Objective of the Interview

One component of the Judicial Conference's assessment of circuit judgeship needs is a formula that sets a threshold for requesting another judgeship—that threshold is reached when a court's caseload exceeds 500 "weighted" original filings per panel. Under the formula, all pro se filings (whether or not they are by prisoners) are discounted by two-thirds (i.e., counted as one-third of a case). That is the only "weight" applied to appeals in the formula. The formula is only a threshold, and several courts have more than 500 filings per panel.

When the Judicial Conference adopted the formula, it decided not to apply it to the D.C. Circuit pending a study of that court's caseload. The D.C. Circuit's mix of cases is very different from the mix in other regional courts of appeals. For example, that court has more (and different) administrative agency cases than other courts and has relatively few prisoner, immigration, or social security cases. The first objective of the study is to help the Subcommittee on Judicial Statistics decide whether the D.C. Circuit is different in ways that would make it inappropriate for the committee to use the national "500" formula when it considers D.C.'s judgeship needs. The second objective is to obtain information that the committee can use to inform its judgments if it decides the formula should not apply to D.C.

One way of looking at this issue is to ask judges about what makes an appeal particularly burdensome. By "burdensome" in this context I mean "takes a lot of judge time, relative to other cases." We will focus on two aspects of cases to explore whether there are predictors of the amount of time judges must spend in deciding a case. These two aspects are: (1) the case type, or subject matter of the appeal, and (2) other case characteristics. I'll also ask questions about the nature of the appellate process and whether factors relating to that process (such as the grant of oral argument) indicate or reflect something about the amount of time judges must spend on individual cases.

I'll be asking you primarily about appeals that actually progress to a termination on the merits. We recognize that some appeals take a lot of staff time, but the focus of this study is judge time.

## Section I    Relationship between Case Type and Judge Time

First, I would like to discuss whether any relationship exists between "case type"—i.e. case subject matter, such as criminal, antitrust, etc—and judicial workload.  Assume we are talking only about non-pro se cases.

**Q1:    What types of cases are, on average, the most time-consuming?**   Please focus on types of cases that *generally* require a substantial time commitment, rather than on issue areas that occasionally give rise to a few highly burdensome cases.

> [If the judge is able to identify specific case types, probe for different weight relationships.]  **How do these particularly burdensome cases compare to the average  case (in terms of time commitment)?  Are they 3X as time-consuming, 10X as time consuming, 25X as time consuming?**
>
> **What makes cases of this type particularly time-consuming?**

**Q2:    Among direct appeals from administrative agencies, are there any that, in your experience, tend to be particularly burdensome?**

**Please look over this list of administrative agencies and indicate whether direct appeals from any agencies on the list tend to be <u>particularly</u> burdensome, on average. Are there agencies on the list that tend to be associated with <u>minimally</u> burdensome appeals, on average?**  [Probe for relationship, including comparisons to the average case, e.g., 2X, 10X, 1/2X, etc. Alternatively, determine whether  "grouping" is applicable.]

> *Environment/Energy*
> > Environmental Protection Agency
> > Federal Energy Regulatory Commission
>
> *Labor*
> > National Labor Relations Board
> > Federal Labor Relations Authority
>
> *Immigration*
> > Immigration and Naturalization Service
>
> *Trade/Finance*
> > Federal Trade Commission
> > Securities and Exchange Commission
>
> *Communications*
> > Federal Communications Commission
>
> *Benefits*
> > Benefits Review Board

[If the judge identifies at least some agency appeals as time-consuming, ask this question.]
> **What makes these agency appeals so time-consuming?**

**Compare the burden of <u>agency</u> cases that you've identified as particularly time consuming with the burden of <u>non-agency</u> cases earlier noted [prompt the judge with the case types identified in Q1 above]. Are the case burdens comparable?**

**Are workload differences among agency appeals a function of whether the appeal arises from a rulemaking (ratemaking) action versus an adjudication?**

**Q3: Please turn your attention now to a list of case types that frequently arise on the dockets of federal appellate courts.** [Provide the judge with the following list.] **Again, assume we're talking about non-pro se cases. Are there case types here that you find regularly take more time or less time than the "average" case in your circuit? Can you tell us how burdensome each case type is compared to the amount of time you would spend on the "average" case in your circuit? For example, are they 2X as burdensome, 5X as burdensome, 1/2X as burdensome, etc.?**

> Criminal (conviction or sentencing)
> Capital Habeas Corpus
> Tax (liability)
> US Party Tort (Federal Tort Claims Act)
> Diversity Tort
> Diversity Contract
> Title VII (Employment Discrimination)
> Labor Disputes (not NLRB review or ERISA)
> Securities (not SEC review)
> Social Security Disability Claims
> Bankruptcy (BAP in 2nd & 10th circuits)
> Copyright and Trademark
> Environmental Disputes (not EPA review)

## Section II   Process

Now I'd like to move from questions about **subject matter** and what that tells us about judge time to questions about **the track or nature of appellate process** and whether these matters tell us anything about judge time. For example, it's generally assumed that cases decided on the merits *on average* require more time than cases decided or dismissed on a procedural motion or jurisdictional defect.

In each of the following questions, if the answer is "yes", we would like to get some idea of how much difference these factors make in terms of workload and time commitment— either in terms of a quantity (2X, 10X, etc).

**Q4:** One principle behind screening is that, at least once the briefs are filed, it's possible to make some preliminary assessment of whether cases need argument. In your court, is the decision to hear argument a good indicator that the case will take more judge time than a typical nonargued case? If so, how much more? 2X? 10X?

**Q5:** Does the amount of time allocated for oral argument reflect anything about how much time a judge will likely spend on it?

Is the presence of a motion to extend the time for oral argument an indicator that the case is likely to take more time than the average case?

Would you say that when a motion to extend time is granted, it is an indicator that the case is likely to take more time than the average case?

**Q6:** Is the decision to grant a motion for additional pages in the brief an indicator that the case is likely to take more time than the average case?

**Q7:** What factors most affect the length of time between hearing (or submission) and the issuance of an order or opinion? Are there different factors depending on whether it is argued or submitted? [Some have argued that how long it takes for a case to get from argument or submission to the panel's decision is a good indicator of how burdensome it is (again, how much total judge time it takes). Others argue that disposition time is more a function of the court's overall workload and judicial resources, or its culture and norms about opinion preparation times and pre-filing circulation.

## Section III  Other Case Characteristics

Let's turn now to the question whether other case characteristics help explain judge time.

**Q8:** Are any of the following <u>party characteristics</u> typically associated with time-consuming cases?  Which, if any, are strong indicators that a case is likely to take more time than average? (Judge refers to a provided list.)

        Multiple parties               _____
        Federal government as party
               (As appellant or appellee?)      _____
        State government as party        _____
        Involvement of businesses as litigants, intervenors    _____
        Amicus curiae filings            _____
        Intervenors/ third parties        _____

**Q9:** **Are any of the following <u>case characteristics</u> typically associated with time-consuming cases?**

*Procedural History*
    Summary judgment                          _____
    Directed verdict                            _____
    Jury trial    _____
    Bench trial    _____
    Lengthy trial    _____
    Complex procedural history (multiple appeals and remand) _____
    Consolidations    _____
    Cross-appeals    _____
    Existence of published opinion in the district court    _____
    Multiple pre-disposition motions on appeal    _____

*Record and briefs*
    Briefs from multiple parties    _____
    Large variety of legal sources cited    _____
    Large record from below (appendices)    _____
    Source of record (agency or district court)    _____
    Large number of issues raised in briefs    _____

*Substantive Content*
    Existence of an issue of first impression    _____
    Presence of technical or scientific issues or questions    _____
    Application of state or international law    _____
    Statutory interpretation    _____
    Presence of constitutional issue    _____
    Presence of regulatory issue    _____
    Matters of national importance or visibility    _____

*Standard of review*
    Clearly erroneous    _____
    Abuse of discretion    _____
    Arbitrary and capricious    _____
    Substantial evidence    _____
    De novo    _____

**Q10:** **Are any of the following <u>outcome characteristics</u> typically associated with time-consuming cases?** (Time-consuming in judge-time, not disposition time.)

    Publication of opinion    _____
    Existence of separate opinions (dissent or concurrence)    _____
    Reversal or remand    _____
    Lengthy opinion    _____
    Large number of citations in opinion    _____

Petition for reconsideration (grant of same?)  _____
Petition for en banc hearing (grant of same?)  _____
Multiple other post-disposition motions  _____

# APPENDIX C
## Sampling, Specification, and Reliability of Data Extracted from Docket Sheets

A.  <u>Docket Sheet Sampling</u>

Data related to case burden were gathered electronically from docket sheets of cases in nine of the twelve circuits.  Three circuits (the First, Sixth and the Eleventh) were excluded from the study because of technical problems accessing the docket sheets. The other circuits' docket sheets were downloaded via Public Access to Court Electronic Records (PACER) or via the internet.  A random sample of approximately 4000 cases terminated in the years 1996 and 1997 was selected, downloaded, and analyzed using a macro program written in Visual Basic for Microsoft Word.  The program is attached as an exhibit to this appendix.  The random sample included only counseled cases that were (1) terminated on the merits or (2) terminated procedurally after judicial action.  We chose to include cases that were terminated on the basis of a procedural or jurisdictional defect but which required judicial action because several judges we interviewed told us that procedural terminations can require a substantial investment of judge time. All other procedural terminations (not included in our sample) are processed by staff, rather than by judges.  We exclude pro se cases because the reduced demand associated with such appeals is already accounted for in the "500 formula."

Table C1 below shows the number of sampled cases per circuit as well as the breakdown by termination method.  Cases were sampled to yield a target of 400 cases from each of the numbered circuits and 800 cases from the D.C. Circuit.  To insure that each sample was representative of the circuit's case mix, a modified stratified sampling technique was used whereby terminations in each circuit were sorted according to civil nature of suit, criminal offense, or agency appealed from, and cases were randomly selected within that order.  To do so, we chose a sampling interval N, selected to yield a sample close to 400, and selected every Nth case beginning at a randomly chosen number between 1 and N.

**Table C1**
**Docket Sheet Sample Size and Composition, by Circuit**

| Circuit | Total Number of Cases Sampled From | Sampling Interval (N) | Sample Size* | Percent Merits Terminations | Percent Procedural Terminations With Judicial Action |
|---------|------------|------|------|------|------|
| D.C. | 1727 | 2 | 862 | 85% | 15% |
| Second | 2941 | 7 | 420 | 91% | 9% |
| Third | 3165 | 8 | 395 | 90% | 10% |
| Fourth | 3535 | 9 | 391 | 93% | 7% |
| Fifth | 5802 | 15 | 386 | 88% | 12% |
| Seventh | 2674 | 7 | 381 | 91% | 9% |
| Eighth | 3325 | 8 | 414 | 92% | 8% |
| Ninth | 8137 | 23** | 345 | 88% | 12% |
| Tenth | 2407 | 6 | 401 | 89% | 11% |
| TOTAL | 6742 | (N/A) | 3995 | 89% | 11% |

\* The sample sizes are in some instances slightly smaller (by at most nine cases) than would follow from the sampling interval, reflecting dockets that were not available via PACER or the internet.
\*\*The sampling interval for the Ninth Circuit should have been 20 rather than 23, so the sample for that circuit is slightly smaller than we intended.

B.     Specification and Measurement of Case Burden Indicators

As noted in the text of this report, the data gathered from the docket sheets included (1) whether the case was a lead or single case, or was instead a non-lead (consolidated) case; (2) the number of parties; (3) the number of independently represented parties; (4) the number of independently represented intervenors; (5) the number of independently represented amici; (6) the existence (and number) of oral arguments; (7) the number of briefs filed before oral argument; (8) the number of (supplemental) briefs filed following oral argument; (9) whether a case was reversed, remanded, or a petition granted; and (10) whether the case was heard en banc.[1]  Values for these variables were gathered by the Visual Basic program, which uses both the structure of the docket sheet and the occurrence of unique words or word clusters to interpret docket contents. Because the courts do not follow uniform procedures in the data entry process, phrases used to reflect the occurrence of events such as the filing of briefs or the holding of oral argument can vary substantially by circuit.  The discussion that follows indicates the manner in which each variable was

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[1] The computer program coded additional information that was not employed either because it could not be coded accurately (e.g., time allowed for oral argument) or because it was deemed to be more a product of differences in docketing practice than differences in case burden (e.g., number of docket entries).

coded. The accuracy and reliability of the data gathered via the computer program is discussed in the next section.

1.      *Status of Case as Lead, Single, or Non-Lead.* The program searched for the presence of a list of cases on the docket sheet's first page to determine the status of the sampled case. If the first sheet of the docket listed additional cases as being related by consolidation or cross-appeal, or if additional cases were listed under a heading such as related or other appeals, the sampled case was determined to have a status other than single. If no such list of cases was found, the case was coded single. If a list was present, the case was coded lead only if its docket number was listed in the "lead case" column appearing on the first page. This was used only as a tentative coding. We later compared the computer coding to routinely reported statistical information about each case that indicates single/lead/non-lead status, and resolved all discrepancies in the full sample of 4000 cases by human examination of the docket sheet. Section C, below, provides information about this process.

2.      *Total Number of Parties.* Total number of parties was determined by a count of all persons listed on the docket as appellant, appellee, petitioner, or respondent.

3.      *Number of Independently Represented Parties.* We generally assumed that parties who shared counsel also shared and presented the same legal positions in the case. Independent representation was apparent from the docket sheet title page, which includes two columns providing the party name and their attorney representatives. If any counsel listed for a party was previously listed for another party in the case, the program simply skipped that party in counting independently represented parties.

4.      *Number of Intervenors.* Docket sheets for all the courts we sampled designate intervenors as such under the intervenor's name. The count included only the number of intervenors that were independently represented (as defined in item 3, above). We counted as intervenors only those participants who intervened at the appellate level. Intervenors at the district court become parties and have standing to appeal in their own right, so they were counted as "parties" rather than intervenors. *See* Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 3902.1 at 109 (persons granted intervention in the trial court become parties and have standing to appeal). As a result, intervenors at the trial court were also included in the measure of total participants on appeal.

5.      *Number of Amici Curiae*.   Docket sheets for all courts designate amici curiae as such under the amicus' name. The count included only the number of amici that were independently represented (as defined in item 3, above).

6.      *Existence (and Number) of Oral Arguments*.   The program determined whether oral argument was held in a case by keying to  phrases on the docket sheets, such as "case argued", "case heard", "argument held", and "hearing held" (each circuit is consistent in how it dockets the occurrence of oral argument, but the nine circuits in the study record oral argument in five different ways ).  More than one oral argument occurred in some cases, typically in the event of an en banc proceeding.

7.      *Number of Briefs Filed*.   The program counted the number of docket entries reflecting filing of a brief, counting separately the number of briefs filed before oral argument or submission and the number of supplemental briefs filed following oral argument. We did not count documents that were not designated as "briefs," however. Thus, motions for summary affirmance, for example, were not counted as briefs even though they may incorporate legal arguments about the merits of an appeal.  Significant variation both within and across circuits in how the filing of a brief is docketed made this the most complex aspect of the computer program (it takes account of at least 18 forms these docket entries can take), and led to the relatively high incidence of computer error reflected in part C, below.

8.      *Reversals and Remands, and En Banc Hearings*.  The computer program was used merely as an aid in coding this information.  The program extracted from the docket the full text of the final judgment entry in the docket, which was later reviewed by a combination of computer search and manual examination to determine whether the judgment or decision of the district court was reversed, remanded or vacated (in whole or in part), or whether the petition for review (or, rarely, for a writ) was granted in whole or in part.  In addition, to determine en banc status, we used a combination of computer and manual search to identify when an en banc hearing was held or a judgment was entered en banc.

C.    <u>Accuracy and Reliability of Electronically Coded Data</u>

Since the data on case characteristics was coded via a computer program, we conducted a test of its accuracy by comparing the results it produced to coding by human coders.  The test involved taking a random subsample of approximately 15%[2]  of our docket sheets and having each docket coded by one member of a team of three coders (one lawyer and two law students).[3]  The results of the human and computer coding were then compared and, for each instance of disagreement, the docket was re-checked by a lead researcher to determine which coder was correct.[4]

We then used two methods to assess the accuracy of the computer coding.  First, we examined the level of  agreement between human and computer coding on each variable.  Table C2 provides statistics on the percentages of  intercoder agreement, as well as the source of any error.[5]  Second, we evaluated the net impact on summary statistics caused by erroneous coding in the subsample.  Table C3 shows this comparison, recording the "actual" values based on the lead researcher's reconciliation between the human and computer coding, as well as the degree of error on the part of both coders.  Because of the varying docketing practices of the circuits, the accuracy of the docket coding must be assessed separately for each circuit; thus each table shows the comparisons by circuit.

The statistics presented in Table C2 reflect (1) that the percentage of agreement between human and computer coding is generally quite high, and (2) that the computer coding is usually more accurate than the human coding.  On the other hand, a high level of agreement can be expected when a variable's value is almost always zero, such as the variable reflecting the number of intervenors.  Disagreement is likely to occur only in the subset of cases where there is at least one intervenor.  Hence it is perhaps more telling to

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[2] The subsample was selected by assigning a random number between 0 and 1 to each docket in the full sample, and then selecting for the subsample all dockets whose random number was less than 0.15. The subsample contained 605 dockets.

[3] If the human coder determined that a case was non-lead, he or she did not code additional information for that  docket, so the sample coded in entirety was reduced to 466 cases.

[4] The lead researcher's re-checking was done with knowledge of the different results obtained by  computer and human coders, but without knowledge of which coder produced which result.  In most instances, it was clear that one result was correct and the other in error, but in a small percentage (about 5%), the "correct" value was simply not clear from the docket, and the decision about the correct result was a matter of some inference about what seemed most likely correct.

[5] In a few instances, both human and computer coding were incorrect, so the sum of these error values may exceed the percentage of overall disagreement.

note from Table C3 that both computer and human coding are very accurate in determining the percentage of cases with at least one intervenor.  In contrast, the incidence of error in the number of briefs filed before argument is as high as 22%.  Fortunately, the information in Table C3 indicates that the impact of this error on summary statistics was very minor, since erroneous coding was often a matter of small degree (e.g. coding 7 briefs when 8 where actually filed).  Thus, for example, Table C3 demonstrates that the maximum error in determining the average number of briefs filed was only 0.16 brief (the computer coding showed an average of 2.56 briefs in the 4th circuit, but the true value was 2.40).

Because our objective is to determine whether indicia of time demands in the D.C. Circuit are notably different from those in other circuits, we believe that the accuracy of the computer coding is quite satisfactory. The minor impact any error may have on summary statistics (such as means, medians, or percentages) is likely to be so small as to fail to affect rankings among the circuits.  For example, an error of +/- 0.16 brief on average is not large enough to significantly alter conclusions based on relative comparisons among the circuits.  Moreover, in terms of magnitude, the human coders were more likely to make erroneous judgments than was the computer program.

**Table C2**
**Coder Agreement**

| Variable | Circuit | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | DC | 2nd | 3rd | 4th | 5th | 7th | 8th | 9th | 10th |
| **Lead/NonLead/Single** | | | | | | | | | |
| % agreement | 97.4% | 100% | 100% | 96.4% | 96.4% | 100% | 97% | 97.9% | 98% |
| human in error | 2.6% | | | **3.6%** | **3.6%** | | 1.5% | 2.1% | 2.0% |
| computer in error | | | | | | | **1.5%** | | |
| **Number of Independently Represented Parties** | | | | | | | | | |
| % agreement | 87% | 89% | 93% | 95% | 93% | 93% | 90% | 87% | 94% |
| human in error | **11%** | 2% | 7% | 4% | 4% | 4% | 4% | 8% | 6% |
| computer in error | 3% | **9%** | | 2% | 4% | 2% | 6% | 4% | |
| **Number of Independently Represented Intervenors** | | | | | | | | | |
| % agreement | 92% | 100% | 98% | 98% | 100% | 100% | 99% | 100% | 100% |
| human in error | **7%** | | 2% | 2% | | | 1% | | |
| computer in error | **1%** | | | | | | | | |
| **Number of Independently Represented Amici** | | | | | | | | | |
| % agreement | 99% | 98% | 98% | 100% | 96% | 100% | 100% | 100% | 100% |
| human in error | 1% | **2%** | **2%** | | | | | | |
| computer in error | | | | | **4%** | | | | |
| **Number of Oral Arguments** | | | | | | | | | |
| % agreement | 95% | 94% | 98% | 100% | 100% | 93% | 100% | 96% | 98% |
| human in error | 3% | 4% | 2% | | | **7%** | | 4% | 2% |
| computer in error | **3%** | 2% | | | | | | | |
| **Number of Briefs Filed Before Argument** | | | | | | | | | |
| % agreement | 74% | 80% | 76% | 73% | 93% | 69% | 91% | 87% | 80% |
| human in error | 18% | 9% | 12% | 5% | 4% | **22%** | 6% | 8% | 16% |
| computer in error | 12% | 11% | 12% | **22%** | 4% | 9% | 3% | 6% | 6% |
| **Number of Briefs Filed After Argument** | | | | | | | | | |
| % agreement | 97% | 96% | 100% | 98% | 96% | 98% | 99% | 100% | 94% |
| human in error | 1% | 2% | | 2% | | 2% | | | **4%** |
| computer in error | 1% | 2% | | | **4%** | | 1% | | **4%** |

**BOLD** indicates highest level of error in each row.

**Table C3**
**Impact of Erroneous Coding on Summary Statistics**

| Variable | Circuit | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | DC | 2nd | 3rd | 4th | 5th | 7th | 8th | 9th | 10th |
| Average Number of Independently Represented Parties | | | | | | | | | |
| Actual | 2.12 | 2.22 | 2.19 | 2.27 | 2.29 | 2.18 | 2.07 | 2.13 | 2.06 |
| Human Difference | **0.08** | 0.04 | 0 | -0.02 | -0.04 | 0.04 | 0.04 | -0.02 | 0 |
| Computer Difference | -0.03 | **0.06** | 0 | -0.02 | -0.04 | -0.02 | 0 | 0 | 0 |
| Average Number of Independently Represented Intervenors | | | | | | | | | |
| Actual | 0.67 | 0 | 0 | 0.02 | 0 | 0 | 0.01 | 0 | 0.02 |
| Human Difference | **0.16** | 0 | 0.02 | 0.04 | 0 | 0 | 0.01 | 0 | 0 |
| Computer Difference | **-0.01** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Percentage of Cases With Any Independently Represented Intervenors | | | | | | | | | |
| Actual | 20% | 0% | 0% | 2% | 0% | 0% | 1% | 0% | 2% |
| Human Difference | 1.3% | 0% | **2.4%** | 1.8% | 0% | 0% | 0% | 0% | 0% |
| Computer Difference | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Average Number of Independently Represented Amici | | | | | | | | | |
| Actual | 0.05 | 0.24 | 0.05 | 0.04 | 0.11 | 0.11 | 0.06 | 0.02 | 0.02 |
| Human Difference | 0.01 | 0.17 | **0.19** | 0 | 0 | 0 | 0 | 0 | 0 |
| Computer Difference | 0 | 0 | 0 | 0 | **-0.04** | 0 | 0 | 0 | 0 |
| Percentage of Cases With Any Independently Represented Amici | | | | | | | | | |
| Actual | 5% | 11% | 2% | 4% | 7% | 4% | 6% | 2% | 2% |
| Human Difference | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Computer Difference | 0% | 0% | 0% | 0% | **-4%** | 0% | 0% | 0% | 0% |
| Percent of Cases With Oral Argument | | | | | | | | | |
| Actual | 59% | 89% | 33% | 42% | 39% | 62% | 71% | 56% | 30% |
| Human Difference | 0% | 0% | -2% | 0% | 0% | 0% | 0% | **-4%** | 0% |
| Computer Difference | 0% | **-2%** | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| Average Number of Briefs Filed Before Argument | | | | | | | | | |
| Actual | 2.34 | 2.93 | 2.26 | 2.40 | 2.32 | 2.22 | 2.68 | 2.63 | 2.48 |
| Human Difference | **0.50** | -0.02 | 0.02 | -0.02 | -0.04 | -0.13 | 0.06 | -0.02 | -0.12 |
| Computer Difference | -0.01 | -0.04 | -0.02 | **0.16** | 0.04 | 0.09 | -0.03 | -0.08 | 0.06 |
| Percentage of Cases With Post-Argument Briefs | | | | | | | | | |
| Actual | 6.6% | 1.9% | 0.0% | 1.8% | 10.7% | 0.0% | 1.5% | 4.2% | 2.0% |
| Human Difference | 1.3% | 1.9% | 0 | -1.8% | 0 | **2.2%** | 0 | 0 | 2.0% |
| Computer Difference | 0 | 1.9% | 0 | 0 | **-3.6%** | 0 | -1.5% | 0 | 0 |

**BOLD** indicates highest level of error in each row.

# Exhibit to Appendix C
## Visual Basic Program For Coding Dockets

```vb
Public Varx As DataObject
Dim ORDERcount As Integer
Dim AMcount As Integer
Dim APcount As Integer
Dim ptycount As Integer
Dim aptycount As Integer
Dim INcount As Integer
Dim BFcount As Integer
Dim initbrcount As Integer
Dim finalbrcount As Integer
Dim postargbr As Integer
Dim OAcount As Integer
Dim ATcount As Integer
Dim EVcount As Integer
Dim mansave As Integer
Dim manflag As Integer
Dim Consolcount As Integer
Dim addappcount As Integer
Dim crosscount As Integer
Dim relcount As Integer
Dim isirp As Integer

Dim Vardate As Date
Dim lbfdate As Date
Dim mddate As Date
Dim argdate As Date
Dim enddate As Date
Dim Stringvar As String
Dim dktnum As String ' this is the case dkt number as shown at top of docket
Dim jdmttext As String
Dim dktnumber As String ' used only in search to determine whether case is
lead or notlead
Dim sourcepath As String
Dim crossapp As String
Dim convpath As String
Dim tempdoc As String
Dim docname As String
Dim caseid As String
Dim circ As String
Dim circuit As String
Dim pagemention As String
Dim lodgecount As Integer
Dim minsmention As String
Dim bancmention As String
Dim mandate As String
Dim oversize As String
Dim revrem As String
Public vard As String
Dim joined As String

Sub toploop() ' This is the Program Starting Point
Set Varx = New DataObject
circ = InputBox("Enter directory (circuit) name: ")
If circ = "" Then Stop
'Application.Run MacroName:="init"
With Application.FileSearch
    .NewSearch
    .LookIn = "E:\dccirc\" & circ
    .SearchSubFolders = False
    .FileName = "9*"
    .MatchTextExactly = False
    .FileType = msoFileTypeAllFiles
    .Execute
    If .FoundFiles.Count < 1 Then
        Stop
    End If
    For I = 1 To .FoundFiles.Count
        Documents.Open FileName:=.FoundFiles(I)
        Application.Run MacroName:="init"
        Windows(docname).Activate
        Application.Run MacroName:="MAIN"
        Windows("data.doc").Activate
        ActiveDocument.Save
        ActiveWindow.Close
        Windows(tempdoc).Activate
        ActiveWindow.Close SaveChanges:=wdDoNotSaveChanges
        Windows(docname).Activate
        Application.Run MacroName:="saveit"
    Next I
    Application.ScreenUpdating = True
End With
End Sub

Sub init()
    docname = ActiveDocument.Name
    sourcepath = ActiveDocument.Path
    convpath = sourcepath & Application.PathSeparator & "conv"
    ChangeFileOpenDirectory (convpath)
    Documents.Add Template:="Normal", NewTemplate:=False
    tempdoc = ActiveDocument.Name
    Documents.Open FileName:="E:\dccirc\" & circ & "\Conv\data.doc"
    Selection.EndKey Unit:=wdStory
End Sub

Sub MAIN()
    Application.ScreenUpdating = False
    Application.Run MacroName:="M0"
    Application.Run MacroName:="M1"
    Application.Run MacroName:="M2"
    Application.Run MacroName:="M3"
    Application.Run MacroName:="M3aa"
    Application.Run MacroName:="M3a"
    Application.Run MacroName:="M3b"
    Application.Run MacroName:="M3c"
    Application.Run MacroName:="M3d"
    Application.Run MacroName:="M4"
    Application.Run MacroName:="M5"
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Windows("data.doc").Activate
    Application.ScreenUpdating = True
    Selection.TypeText Text:=docname & vbTab
    Selection.TypeText Text:=circuit & vbTab & caseid & vbTab & Vardate &
vbTab
    Selection.TypeText Text:=dktnum & vbTab
    Selection.TypeText Text:=joined & vbTab
    Selection.TypeText Text:="Consols: " & vbTab & Str(Consolcount) & vbTab
    Selection.TypeText Text:="Addl Appeals: " & vbTab & Str(addappcount) &
vbTab
    Selection.TypeText Text:="Cross Appeals: " & vbTab & Str(crosscount) &
vbTab
    Selection.TypeText Text:="Related Appeals: " & vbTab & Str(relcount) &
vbTab
    Selection.TypeText Text:="All Parties: " & vbTab & Str(aptycount) & vbTab
    Selection.TypeText Text:="Ind Rep Ptys: " & vbTab & Str(ptycount) & vbTab
    Selection.TypeText Text:="Apl: " & vbTab & Str(APcount) & vbTab
    Selection.TypeText Text:="Amicus: " & vbTab & Str(AMcount) & vbTab
    Selection.TypeText Text:="Intervenor: " & vbTab & Str(INcount) & vbTab
    Selection.TypeText Text:="Evts: " & vbTab & Str(EVcount) & vbTab
    Selection.TypeText Text:="OA: " & vbTab & Str(OAcount) & vbTab
    Selection.TypeText Text:=argdate & vbTab
    Selection.TypeText Text:="lodgeBR: " & vbTab & Str(lodgecount) & vbTab
    Selection.TypeText Text:="BF: " & vbTab & Str(BFcount) & vbTab
    Selection.TypeText Text:="initBF: " & vbTab & Str(initbrcount) & vbTab
    Selection.TypeText Text:="finalBF: " & vbTab & Str(finalbrcount) & vbTab
    Selection.TypeText Text:="PostArgBF: " & vbTab & Str(postargbr) & vbTab
    Selection.TypeText Text:= lbfdate & vbTab
    Selection.TypeText Text:="Orders: " & vbTab & Str(ORDERcount) & vbTab
    Selection.TypeText Text:=pagemention & vbTab
    Selection.TypeText Text:=minsmention & vbTab
    Selection.TypeText Text:=bancmention & vbTab
    Selection.TypeText Text:=revrem & vbTab
    Selection.TypeText Text:=crossapp & vbTab
    Selection.TypeText Text:=oversize & vbTab
'
'NOTE: the variable mandate holds the full text of the last judgment entry,
```

```
' whereas the variable mddate holds the date of the last "mandate issued"
entry

    Selection.TypeText Text:=mandate & vbTab & enddate & vbTab
    Selection.TypeText Text:=jdmttext & vbTab
    Selection.TypeText Text:="mandate:" & vbTab & mddate & vbTab
    Selection.TypeParagraph
Application.ScreenUpdating = False
    ActiveDocument.Save
    Documents(docname).Activate
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find
        .Text = "^l{3,200}"
        .Replacement.Text = "^l^l"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = True
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
'    Application.Run MacroName:="saveit"
End Sub

Sub M0()
    ORDERcount = 0
    AMcount = 0
    APcount = 0
    INcount = 0
    ptycount = 0
    aptycount = 0
    BFcount = 0
    initbrcount = 0
    finalbrcount = 0
    postargbr = 0
    OAcount = 0
    ATcount = 0
    EVcount = 0
    mansave = 0
    Consolcount = 0
    addappcount = 0
    crosscount = 0
    relcount = 0
    caseid = ""
    dktnum = ""
    pagemention = ""
    lodgecount = 0
    minsmention = ""
    revrem = ""
    joined = ""
    bancmention = ""
    oversize = ""
    mandate = ""
    crossapp = ""
    jdmttext = ""
    enddate = "1/1/1900"
    argdate = "1/1/1900"
    lbfdate = "1/1/1900"
    mddate = "1/1/1900"
    End Sub

Sub M1()
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find
        .Text = "^p"
        .Replacement.Text = "^l"
```

```
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "^l {10,50}GENERAL DOCKET FOR^l"
        .MatchWildcards = True
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then
        Exit Sub

    End If
Selection.MoveRight Unit:=wdCharacter, Count:=1
    With Selection.Find
        .Text = "<*>"
    End With
    Selection.Find.Execute
    circuit = Selection.Text
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    With Selection.Find
        .Text = "^lDocket as of *include all events.*^l"
        .Replacement.Text = ""
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchAllWordForms = False
        .MatchSoundsLike = False
        .MatchWildcards = True
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then
        Exit Sub
    End If
    Selection.MoveRight Unit:=wdCharacter, Count:=1
    Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
    dktnum = Selection.Text
    Selection.EndKey Unit:=wdLine, Extend:=wdExtend
    Selection.MoveLeft Unit:=wdCharacter, Count:=1, Extend:=wdExtend
    caseid = Selection.Text
    Selection.Cut
    Selection.MoveLeft Unit:=wdCharacter, Count:=1
    Selection.Delete Unit:=wdCharacter, Count:=1
    With Selection.Find
        .Text = "^l^l[A-Z]"
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then
        Exit Sub
    End If
    Selection.MoveRight Unit:=wdCharacter, Count:=1
    Selection.MoveLeft Unit:=wdCharacter, Count:=1
    Selection.InsertBreak Type:=wdPageBreak
    Selection.TypeText Text:="///PARTIES///"
    Selection.TypeText Text:=Chr(11)
    Selection.TypeText Text:=Chr(11)
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find
        .Text = caseid
        .Replacement.Text = "^l"
        .Forward = True
        .Wrap = wdFindContinue
```

```vba
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchAllWordForms = False
            .MatchSoundsLike = False
            .MatchWildcards = True
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
End Sub
Sub M2()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        Selection.Find.Replacement.ClearFormatting
        With Selection.Find
            .Text = "^lDocket as of *include all events.*^l"
            .Replacement.Text = ""
            .Forward = True
            .Wrap = wdFindContinue
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchAllWordForms = False
            .MatchSoundsLike = False
            .MatchWildcards = True
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
End Sub


Sub M3()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
searchloop:
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l^#"
            .Replacement.Text = ""
            .Forward = True
            .Wrap = wdFindStop
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = False
            .MatchSoundsLike = False
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveDown Unit:=wdLine, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
        vard = Selection.Text
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        If IsDate(vard) Then
            Vardate = vard
        Else
            GoTo searchloop
        End If
        Selection.InsertBreak Type:=wdPageBreak
        Selection.TypeText Text:="///EVENTS///"
        Selection.TypeText Text:=Chr(11)
End Sub

Sub m3aa()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^lCurrent cases:^l"
            .Forward = True
            .Wrap = wdFindContinue
            .Format = True
            .MatchCase = False
```

```vba
            .MatchWholeWord = False
            .MatchWildcards = True
            .MatchSoundsLike = False
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        With Selection.Find
            .Text = "Lead"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            joined = "Single"
            dktnumber = ""
            Exit Sub
        End If
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.MoveRight Unit:=wdCharacter, Count:=1, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.MoveRight Unit:=wdCharacter, Count:=1, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        dktnum = Trim(dktnum)
        If (Len(dktnum) < 8) Then
            dktnumber = Left(dktnum, 3) & " " & Right(dktnum, 4)
        Else
            dktnumber = dktnum
        End If
        joined = "Not Lead"
End Sub


Sub m3a()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l {1,10}[Cc]onsolidated*^l"
            .Forward = True
            .Wrap = wdFindContinue
            .Format = True
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = True
            .MatchSoundsLike = False
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.Find.ClearFormatting
m3aloop:
        With Selection.Find
            .Text = "^l {7,20}[7-9][0-9]"
            .Wrap = wdFindStop
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Consolcount = Consolcount + 1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:="(" & Consolcount & ")"
        Selection.MoveRight Unit:=wdWord, Count:=4, Extend:=wdExtend
        With Selection.Find
            .Text = dktnumber
```

```
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            joined = "Lead"
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.EndKey Unit:=wdLine
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        GoTo m3aloop
End Sub

Sub m3b()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l {1,10}[Aa]dditional*^l"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            GoTo m3bnext
        End If
        With Selection.Find
            .Text = "^l {1,10}[Cc]ompanion*^l"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            GoTo m3bnext
        End If
        With Selection.Find
            .Text = "^l {1,10}Pending Consol*^l"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            GoTo m3bnext
        End If
        Exit Sub
m3bnext:
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.Find.ClearFormatting
m3bloop:
        With Selection.Find
            .Text = "^l {7,20}[7-9][0-9]"
            .Wrap = wdFindStop
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        addappcount = addappcount + 1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:="(" & addappcount & ")"
        Selection.MoveRight Unit:=wdWord, Count:=4, Extend:=wdExtend
        With Selection.Find
            .Text = dktnumber
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            joined = "Lead"
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.EndKey Unit:=wdLine
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        GoTo m3bloop
End Sub

Sub m3c()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"

        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l {1,10}[Cc]ross*^l"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.Find.ClearFormatting
m3cloop:
        With Selection.Find
            .Text = "^l {7,20}[7-9][0-9]"
            .Wrap = wdFindStop
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        crosscount = crosscount + 1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:="(" & crosscount & ")"
        Selection.MoveRight Unit:=wdWord, Count:=4, Extend:=wdExtend
        With Selection.Find
            .Text = dktnumber
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            joined = "Lead"
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.EndKey Unit:=wdLine
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        GoTo m3cloop
End Sub

Sub m3d()
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l {1,10}[Rr]elated*^l"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        Selection.Find.ClearFormatting
m3dloop:
        With Selection.Find
            .Text = "^l {7,20}[7-9][0-9]"
            .Wrap = wdFindStop
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        relcount = relcount + 1
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:="(" & relcount & ")"
        Selection.MoveRight Unit:=wdWord, Count:=4, Extend:=wdExtend
        With Selection.Find
            .Text = dktnumber
        End With
```

```vba
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            joined = "Lead"
        End If

        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.EndKey Unit:=wdLine
        Selection.MoveRight Unit:=wdCharacter, Count:=2, Extend:=wdExtend
        Selection.EndKey Unit:=wdLine, Extend:=wdExtend
        GoTo m3dloop
End Sub

Sub M4()
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    With Selection.Find
        .Text = "Docket as of *"
        .Replacement.Text = "^l"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchAllWordForms = False
        .MatchSoundsLike = False
        .MatchWildcards = True
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        Selection.MoveDown Unit:=wdLine, Count:=1, Extend:=wdExtend
        Selection.TypeBackspace
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    With Selection.Find
        .Text = "^m//PART"
        .Replacement.Text = "^l^l"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then
        Exit Sub
    End If
    Selection.MoveLeft Unit:=wdCharacter, Count:=1
    Selection.MoveDown Unit:=wdLine, Count:=1
DC4loop:
    Selection.Find.ClearFormatting
    With Selection.Find
        .Text = "^l[A-Z]*^l     *^l^l[A-Z,^l]"
        .Replacement.Text = "^l^l"
        .Forward = True
        .Wrap = wdFindStop
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = True
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then Exit Sub
    Set saverange = Selection.Characters(1)
    saverange.SetRange                Start:=Selection.Characters(1).Start, _
End:=Selection.Characters(1).Start
    Set endrange = Selection.Characters(1)
    endrange.SetRange Start:=Selection.End, End:=Selection.End
```

```vba
    Selection.SetRange Start:=saverange.Start, End:=endrange.Start
    Selection.Find.ClearFormatting
    With Selection.Find
        .Text = "COR "
        .Replacement.Text = ""
        .Forward = True
        .Wrap = wdFindStop
        .Format = False
        .MatchCase = True
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then
        With Selection.Find
            .Text = "NTC "
        End With
        Selection.Find.Execute
    End If
    If Selection.Find.Found = False Then
        Selection.SetRange Start:=endrange.Start, End:=endrange.Start
        Selection.MoveLeft Unit:=wdCharacter, Count:=2
        GoTo DC4loop
    End If
    aptycount = aptycount + 1
    Selection.SetRange Start:=saverange.Start, End:=saverange.Start
    Selection.MoveRight Unit:=wdCharacter, Count:=1
    Selection.TypeText Text:=" AP# " & Str(aptycount) & " "
    Selection.SetRange Start:=saverange.Start, End:=endrange.Start
    With Selection.Find
        .MatchCase = False
        .Text = "(see above)"
    End With
    Selection.Find.Execute
    isirp = 0
    If Selection.Find.Found = False Or aptycount = 1 Then
        isirp = 1
        ptycount = ptycount + 1
        Counttext = "  IRP# " & ptycount & " "
        Selection.SetRange Start:=saverange.Start, End:=saverange.Start
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:=Counttext
    End If
    Isaparty = 0
    Selection.SetRange Start:=saverange.Start, End:=endrange.Start
    With Selection.Find
        .Text = "appellant"
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        APcount = APcount + 1
        Isaparty = 1
        Counttext = "  PP# " & APcount & " "
        Selection.SetRange Start:=saverange.Start, End:=saverange.Start
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:=Counttext
        GoTo nextdc4
    End If
    Selection.SetRange Start:=saverange.Start, End:=endrange.Start
    With Selection.Find
        .Text = "petitioner"
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        APcount = APcount + 1
        Isaparty = 1
        Counttext = "  PP# " & APcount & " "
        Selection.SetRange Start:=saverange.Start, End:=saverange.Start
        Selection.MoveRight Unit:=wdCharacter, Count:=1
        Selection.TypeText Text:=Counttext
        GoTo nextdc4
```

```
        End If
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        With Selection.Find
            .Text = "respondent"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            APcount = APcount + 1
            Isaparty = 1
            Counttext = "  PP# " & APcount & " "
            Selection.SetRange Start:=saverange.Start, End:=saverange.Start
            Selection.MoveRight Unit:=wdCharacter, Count:=1
            Selection.TypeText Text:=Counttext
            GoTo nextdc4
        End If
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        With Selection.Find
            .Text = "appellee"
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            APcount = APcount + 1
            Isaparty = 1
            Counttext = "  PP# " & APcount & " "
            Selection.SetRange Start:=saverange.Start, End:=saverange.Start
            Selection.MoveRight Unit:=wdCharacter, Count:=1
            Selection.TypeText Text:=Counttext
            GoTo nextdc4
        End If
nextdc4:
        If Isaparty = 1 Then isirp = 0
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.ClearFormatting
        Selection.Find.Replacement.ClearFormatting
        With Selection.Find.Replacement.Font
            .Size = 10
            .Bold = True
            .Italic = True
        End With
        With Selection.Find
            .Text = "amicus"
            If isirp = 1 Then
                .Replacement.Text = "AMICUS {" & Str(AMcount + 1) & "}"
            Else
                .Replacement.Text = "AMICUS"
            End If
            .MatchCase = False
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            AMcount = AMcount + isirp
        End If
        With Selection.Find
            .Text = "intervenor"
            If isirp = 1 Then
                .Replacement.Text = "INTERVENOR {" & Str(INcount + 1) & "}"
            Else
                .Replacement.Text = "INTERVENOR"
            End If
            .MatchCase = False
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            INcount = INcount + isirp
        End If
        Selection.SetRange Start:=endrange.Start, End:=endrange.Start
        Selection.MoveLeft Unit:=wdCharacter, Count:=2
        GoTo DC4loop:
End Sub

Sub M5()
```

```
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^m//EVENT"
            .Replacement.Text = "^l^l"
            .Forward = True
            .Wrap = wdFindStop
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = False
            .MatchSoundsLike = False
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then
            Exit Sub
        End If
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveDown Unit:=wdLine, Count:=1
NextEvent:
        Selection.Find.ClearFormatting
        With Selection.Find
            .Text = "^l[0-9]*^l^l"
            .Replacement.Text = "^l^l"
            .Forward = True
            .Wrap = wdFindStop
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchSoundsLike = False
            .MatchAllWordForms = False
            .MatchWildcards = True
        End With
        Selection.Find.Execute
        If Selection.Find.Found = False Then GoTo nomo
        Selection.MoveLeft Unit:=wdCharacter, Count:=1, Extend:=wdExtend
        Selection.Copy
        Windows(tempdoc).Activate
        Selection.Paste
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Application.Run MacroName:="evts1"
        Application.Run MacroName:="evts2"
        Application.Run MacroName:="evts3"
        Application.Run MacroName:="evts4"
        Selection.WholeStory
        Selection.Cut
        Windows(docname).Activate
        Selection.Paste
        Selection.TypeBackspace
        GoTo NextEvent
nomo:
End Sub

Sub evts1()
        EVcount = EVcount + 1
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.Find.ClearFormatting
        Selection.Find.Replacement.ClearFormatting
        With Selection.Find.Replacement.Font
            .Size = 14
            .Bold = True
            .Italic = True
        End With
        With Selection.Find
            .Text = "^#^wper curiam"
            .Replacement.Text = ""
            .Forward = True
            .Wrap = wdFindContinue
            .Format = True
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = False
```

```
        .MatchSoundsLike = False                                    With Selection.Find
        .MatchAllWordForms = False                                      .Text = "pages"
    End With                                                            .Replacement.Text = "PAGES"
    Selection.Find.Execute Replace:=wdReplaceAll                     End With
    Selection.Find.Execute                                          Selection.Find.Execute Replace:=wdReplaceAll
    If Selection.Find.Found = True Then                             Selection.Find.Execute
        ORDERcount = ORDERcount + 1                                 If Selection.Find.Found = True Then
        Selection.MoveRight Unit:=wdCharacter, Count:=1                pagemention = "pages/words"
        Selection.TypeText Text:="(" & Str(ORDERcount) & ")"       End If
    End If                                                          Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"   With Selection.Find
    With Selection.Find                                                 .Text = "pgs"
        .Text = "order filed by judge"                                  .Replacement.Text = "PGS"
        .Replacement.Text = ""                                      End With
    End With                                                        Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute Replace:=wdReplaceAll                    Selection.Find.Execute
    Selection.Find.Execute                                          If Selection.Find.Found = True Then
    If Selection.Find.Found = True Then                                 pagemention = "pages/words"
        ORDERcount = ORDERcount + 1                                 End If
        Selection.MoveRight Unit:=wdCharacter, Count:=1             Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Selection.TypeText Text:="(" & Str(ORDERcount) & ")"       With Selection.Find
    End If                                                              .Text = "min."
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"       .Replacement.Text = "MIN."
    With Selection.Find                                             End With
        .Text = "^#^wcourt order"                                   Selection.Find.Execute Replace:=wdReplaceAll
        .Replacement.Text = ""                                      Selection.Find.Execute
    End With                                                        If Selection.Find.Found = True Then
    Selection.Find.Execute Replace:=wdReplaceAll                        minsmention = "minutes"
    Selection.Find.Execute                                          End If
    If Selection.Find.Found = True Then                             Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        ORDERcount = ORDERcount + 1                                 With Selection.Find
        Selection.MoveRight Unit:=wdCharacter, Count:=1                 .Text = "mins"
        Selection.TypeText Text:="(" & Str(ORDERcount) & ")"           .Replacement.Text = "mins"
    End If                                                          End With
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"   Selection.Find.Execute Replace:=wdReplaceAll
    With Selection.Find                                             Selection.Find.Execute
        .Text = "^#^wjudge order" ' eighth cir                      If Selection.Find.Found = True Then
        .Replacement.Text = ""                                          minsmention = "minutes"
    End With                                                        End If
    Selection.Find.Execute Replace:=wdReplaceAll                    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Execute                                          With Selection.Find
    If Selection.Find.Found = True Then                                 .Text = "minutes"
        ORDERcount = ORDERcount + 1                                     .Replacement.Text = "minutes"
        Selection.MoveRight Unit:=wdCharacter, Count:=1             End With
        Selection.TypeText Text:="(" & Str(ORDERcount) & ")"       Selection.Find.Execute Replace:=wdReplaceAll
    End If                                                          Selection.Find.Execute
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"   If Selection.Find.Found = True Then
    With Selection.Find.Replacement.Font                                minsmention = "minutes"
        .Size = 14                                                  End If
        .Bold = True                                                Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        .Italic = True                                              With Selection.Find
        .Name = "Arial"                                                 .Text = "revers"
    End With                                                            .Replacement.Text = "REVERS"
    With Selection.Find                                             End With
        .Text = " wds"                                              Selection.Find.Execute Replace:=wdReplaceAll
        .Replacement.Text = " WDS"                                  Selection.Find.Execute
    End With                                                        If Selection.Find.Found = True Then
    Selection.Find.Execute Replace:=wdReplaceAll                        GoTo checkrr
    Selection.Find.Execute                                          End If
    If Selection.Find.Found = True Then                             Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        pagemention = "pages/words"                                 With Selection.Find
    End If                                                              .Text = "remand"
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"       .Replacement.Text = "REMAND"
    With Selection.Find                                             End With
        .Text = " words"                                            Selection.Find.Execute Replace:=wdReplaceAll
        .Replacement.Text = " WORDS"                                Selection.Find.Execute
    End With                                                        If Selection.Find.Found = False Then GoTo contrr
    Selection.Find.Execute Replace:=wdReplaceAll               checkrr:
    Selection.Find.Execute                                          If revrem = "" Then revrem = "Reversed or Remanded"
    If Selection.Find.Found = True Then                             Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        pagemention = "pages/words"                                 Selection.Find.Text = "opinion"
    End If                                                          Selection.Find.Execute
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"   If Selection.Find.Found = True Then GoTo goyes
```

```
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "terminated on the merits"
    Selection.Find.Execute
    If Selection.Find.Found = True Then GoTo goyes
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "decision"
    Selection.Find.Execute
    If Selection.Find.Found = True Then GoTo goyes
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "judgment"
    Selection.Find.Execute
    If Selection.Find.Found = True Then GoTo goyes
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "order"
    Selection.Find.Execute
    If Selection.Find.Found = True Then GoTo goyes
    GoTo contrr
goyes:
revrem = "revrem yes"
contrr:
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "n banc"
        .Replacement.Text = "n BANC"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        bancmention = "In Banc?"
    End If

    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.MoveRight Unit:=wdWord, Count:=8, Extend:=wdExtend
    With Selection.Find
        .Text = "^#^#^wMandate"
        .Replacement.Text = ""
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "^l^#"
        End With
        Selection.Find.Execute
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveDown Unit:=wdLine, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
        vard = Selection.Text
        If IsDate(vard) Then
            mddate = vard
        End If
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "oversize"
        .Replacement.Text = "OVERSIZE"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        oversize = "oversize"
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "crossapp"
        .Replacement.Text = "CROSSAPP"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        crossapp = "crossappeal?"
    End If

End Sub

Sub evts2()
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find.Replacement.Font
        .Name = "Arial"
        .Size = 12
        .Bold = True
        .Italic = True
    End With
    With Selection.Find
        .Text = "    ORAL ARGUMENT Held"
        .Replacement.Text = "    ORAL ARGUMENT HELD {" & Str(OAcount + 1) &
"}"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = True
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If
    With Selection.Find
        .Text = "    ORAL ARGUMENT heard"
        .Replacement.Text = "    ORAL ARGUMENT HEARD {" & Str(OAcount + 1) &
"}"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If
    With Selection.Find
        .Text = "    Reargued "
        .Replacement.Text = "    REARGUED {" & Str(OAcount + 1) & "}"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If
    With Selection.Find
        .Text = "    Re-argued "
        .Replacement.Text = "    RE-ARGUED {" & Str(OAcount + 1) & "}"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If
    With Selection.Find
        .Text = "    Argued "
        .Replacement.Text = "    ARGUED {" & Str(OAcount + 1) & "}"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If
    If circuit <> "Seventh" Then
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
```

```vba
        With Selection.Find
            .Text = "    case argued"
            .Replacement.Text = "    CASE ARGUED {" & Str(OAcount + 1) & "}"
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            OAcount = OAcount + 1
            GoTo oadate
        End If
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "] case argued"
            .Replacement.Text = "] CASE ARGUED {" & Str(OAcount + 1) & "}"
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            OAcount = OAcount + 1
            GoTo oadate
        End If
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "    case heard"
        .Replacement.Text = "    CASE HEARD {" & Str(OAcount + 1) & "}"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        OAcount = OAcount + 1
        GoTo oadate
    End If

    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "    submitted"
        .Replacement.Text = "    SUBMITTED"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        GoTo oadate
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "Case submitted to panel on the BRIEF"
        .Replacement.Text = "Case submitted to panel on the BRIEF"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        GoTo oadate
    End If

    Exit Sub
oadate:
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "^l^#"
    End With
    Selection.Find.Execute
    Selection.MoveLeft Unit:=wdCharacter, Count:=1
    Selection.MoveDown Unit:=wdLine, Count:=1
    Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
    vard = Selection.Text
    If IsDate(vard) Then
        argdate = vard
    End If

End Sub

Sub evts3()


    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    Selection.Find.Replacement.Font.Bold = True
    With Selection.Find
        .Text = "Brief"
        .Replacement.Text = "BRIEF"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = True
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "mandate"
        .Replacement.Text = "MANDATE"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Replacement.Font.Size = 14
    With Selection.Find
        .Text = "oversize"
        .Replacement.Text = "OVERSIZE"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Replacement.Font.ColorIndex = wdGreen
    Selection.Find.Replacement.Font.Bold = True
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "BRIEF*[Ll][Oo][Dd][Gg][Ee]"
        .MatchWildcards = True
        .Wrap = wdFindStop
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then lodgecount = lodgecount + 1
    With Selection.Find
        .Text = "[Ll][Oo][Dd][Gg][Ee]*BRIEF"
        .MatchWildcards = True
        .Wrap = wdFindStop
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then lodgecount = lodgecount + 1
    If circuit = "Ninth" Then GoTo filedbr
    If circuit = "Seventh" Then GoTo filedbr
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "BRIEF*[Ff][Ii][Ll][Ee][Dd]"
        .MatchWildcards = True
        .Wrap = wdFindStop
    End With
    Selection.Find.Execute
    If Selection.Find.Found = True Then GoTo checkbf
    Exit Sub
filedbr:
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "[Ff][Ii][Ll][Ee][Dd] *BRIEF"
        .MatchWildcards = True
        .Wrap = wdFindStop
    End With
    Selection.Find.Execute
    If Selection.Find.Found = False Then Exit Sub
checkbf:
    Set endrange1 = Selection.Characters(1)
    Set endrange = Selection.Characters(1)
    endrange1.SetRange Start:=Selection.End, End:=Selection.End
    Selection.MoveRight Unit:=wdWord, Count:=5, Extend:=wdExtend
```

```vba
        endrange.SetRange Start:=Selection.End, End:=Selection.End
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        Set saverange = Selection.Characters(1)
        saverange.SetRange               Start:=Selection.Characters(1).Start,
End:=Selection.Characters(1).Start
        Selection.SetRange Start:=saverange.Start, End:=endrange1.Start
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        With Selection.Find
            .Text = "transcript"
            .Wrap = wdFindStop
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = False
            .MatchSoundsLike = False
            .MatchAllWordForms = True
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "motion"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "errata"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "compliance"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "order"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "strike"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "deficient"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "defective"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "failure"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        With Selection.Find
            .Text = "BUT NOT FILED"
'note change:
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "briefing"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = " due"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "be filed"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "notice filed"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "RESPONSE FILED"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "extend time"
        Selection.Find.Execute
        If Selection.Find.Found = True Then Exit Sub
        If circuit = "Seventh" Then
            Selection.SetRange Start:=saverange.Start, End:=endrange.Start
            Selection.Find.Text = "appendix"
            Selection.Find.Execute
            If Selection.Find.Found = True Then Exit Sub
        End If
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "   initial"
        Selection.Find.Execute
        If Selection.Find.Found = True Then initbrcount = initbrcount + 1
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "   final"
        Selection.Find.Execute
        If Selection.Find.Found = True Then finalbrcount = finalbrcount + 1
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "addendum"
        Selection.Find.Execute
        If Selection.Find.Found = True Then GoTo chkwhen
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "letter"
        Selection.Find.Execute
        If Selection.Find.Found = True Then GoTo chkwhen
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "supplemental"
        Selection.Find.Execute
        If Selection.Find.Found = True Then GoTo chkwhen
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "amend"
        Selection.Find.Execute
        If Selection.Find.Found = True Then GoTo chkwhen
        Selection.SetRange Start:=saverange.Start, End:=endrange.Start
        Selection.Find.Text = "correct"
        Selection.Find.Execute
        If Selection.Find.Found = True Then GoTo chkwhen
        GoTo Doit
chkwhen:
        If OAcount = 0 Then Exit Sub
Doit:
        If OAcount > 0 Then postargbr = postargbr + 1
        Selection.SetRange Start:=saverange.Start, End:=endrange1.Start
        With Selection.Font
            .Size = 14
            .AllCaps = True
            .ColorIndex = wdGreen
        End With
        Selection.SetRange Start:=endrange1.Start, End:=endrange1.Start
        Selection.TypeText Text:="{" & Str(BFcount + 1) & "}"
        BFcount = BFcount + 1
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "^l^#"
        End With
        Selection.Find.Execute
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveDown Unit:=wdLine, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
'        Selection.Copy
'        Application.Run MacroName:="getclip"
'        vard = getclipd()
        vard = Selection.Text
        If IsDate(vard) Then
            lbfdate = vard
        End If
End Sub
```

```vba
Sub evts4()
    manflag = 0
'    If mandate <> "" Then
'        Exit Sub
'    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find
        .Text = "^l"
        .Replacement.Text = "^t"
        .Forward = True
        .Wrap = wdFindContinue
        .Format = False
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.MoveRight Unit:=wdWord, Count:=7, Extend:=wdExtend
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find.Replacement.Font
        .Name = "Arial"
        .Size = 16
        .Italic = True
        .ColorIndex = wdGreen
    End With
    With Selection.Find
        .Text = "^#^#^wJUDGMENT"
        .Replacement.Text = ""
        .Forward = True
        .Wrap = wdFindContinue
        .Format = True
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        mandate = "Judgment"
        manflag = 2
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "Terminated^won^wthe^wMerits^wafter^wSubmission"
        .Replacement.Text = ""
        .Forward = True
        .Wrap = wdFindContinue
        .Format = True
        .MatchCase = False
        .MatchWholeWord = False
        .MatchWildcards = False
        .MatchSoundsLike = False
        .MatchAllWordForms = False
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        mandate = "Merits after Submission"
        manflag = 3
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.MoveRight Unit:=wdWord, Count:=10, Extend:=wdExtend
    With Selection.Find
        .Text = "] Judgment"

End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        mandate = "Judgment"
        manflag = 2
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "Terminated^won^wthe^wMerits^wafter^wOral"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        mandate = "Merits after Oral"
        manflag = 3
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    With Selection.Find
        .Text = "Procedurally^wTerminated^wAfter^wOther^wJudicial"
    End With
    Selection.Find.Execute Replace:=wdReplaceAll
    Selection.Find.Execute
    If Selection.Find.Found = True Then
        mandate = "Procedurally Terminated After Other Judicial"
        manflag = 3
    End If
    If circuit = "Seventh" Then
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "Filed opinion of the court"
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            mandate = "Filed opinion"
            manflag = 2
        End If
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "Filed Circuit Rule 53 order"
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        Selection.Find.Execute
        If Selection.Find.Found = True Then
            mandate = "Rule 53 order"
            manflag = 2
        End If
    End If
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "affirm"
    Selection.Find.Execute
    If Selection.Find.Found = True Then manflag = 3
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "revers"
    Selection.Find.Execute
    If Selection.Find.Found = True Then manflag = 3
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "remand"
    Selection.Find.Execute
    If Selection.Find.Found = True Then manflag = 3
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.Text = "vacat"
    Selection.Find.Execute
    If Selection.Find.Found = True Then manflag = 3
    Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
    Selection.Find.ClearFormatting
    Selection.Find.Replacement.ClearFormatting
    With Selection.Find
        .Text = "^t"
        .Replacement.Text = "^l"
        .Forward = True
        .Wrap = wdFindContinue
```

```
            .Format = False
            .MatchCase = False
            .MatchWholeWord = False
            .MatchWildcards = False
            .MatchSoundsLike = False
            .MatchAllWordForms = False
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        If manflag = 0 Then Exit Sub
        If manflag < mansave Then
            Exit Sub
        End If
        mansave = manflag
        Selection.GoTo What:=wdGoToPage, Which:=wdGoToNext, Name:="1"
        With Selection.Find
            .Text = "^l^#"
        End With
        Selection.Find.Execute
        Selection.MoveLeft Unit:=wdCharacter, Count:=1
        Selection.MoveDown Unit:=wdLine, Count:=1
        Selection.MoveRight Unit:=wdCharacter, Count:=8, Extend:=wdExtend
        vard = Selection.Text
        If IsDate(vard) Then enddate = vard
        Selection.WholeStory
        Selection.MoveLeft Unit:=wdCharacter, Count:=1, Extend:=wdExtend
        Selection.Find.ClearFormatting
        Selection.Find.Replacement.ClearFormatting
        With Selection.Find
            .Text = "^w"
            .Replacement.Text = " "
            .Forward = True
            .Wrap = wdFindContinue
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        With Selection.Find
            .Text = "^l"
            .Replacement.Text = " "
        End With
        Selection.Find.Execute Replace:=wdReplaceAll
        jdmttext = Selection.Text
End Sub

Sub saveit()
        ActiveDocument.SaveAs FileName:=docname, FileFormat:=wdFormatRTF, _
            LockComments:=False, Password:="", AddToRecentFiles:= _
            True, WritePassword:="", ReadOnlyRecommended:=False, _
            EmbedTrueTypeFonts:= _
            False, SaveNativePictureFormat:=False, SaveFormsData:=False, _
            SaveAsAOCELetter:=False

End Sub

Sub wait1()
        Start = Timer   ' Set start time.
        Do While Timer < Start + 2
            DoEvents    ' Yield to other processes.
        Loop
End Sub
```

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## APPENDIX D
## Obtaining Data on Opinion Length

We gathered data on the lengths of published opinions from the Federal Reporter. Although unpublished opinions may also require substantial amounts of judge time, we excluded them from our analysis because interviewed judges consistently emphasized that publication and the length of published opinions most strongly reflected case burden.

We employed a "brute force" strategy for determining the average length of published opinions in the various circuits. We computed opinion length as the difference between the starting pages of sequential citations in the Federal Reporter (3rd). Because opinions are not published in strict chronological order, we chose a broad range of volumes (60-149 of F.3d) to insure that we included all opinions arising from the sample of cases we used for docket analysis--those terminated in fiscal years 1996 and 1997.

We used Westlaw to obtain lists of all citations from volumes 60 through 149 of the Federal Reporter (3rd) by searching for and downloading all cases with citations containing the precise phrase "60 F.3d," "61 F.3d," etc. The citations were then read into a spreadsheet program and manipulated to extract volume number, beginning page number, and circuit. Sorting these by volume and page number, we computed length by subtracting successive page numbers (we could not compute the length of the last opinion in each volume). After eliminating citations to "table" entries (and the last citation in each volume), we were left with 19,162 opinions covering 135,720 pages. Table 1D summarizes the results by circuit for the entire population of published opinions for all circuits. Data presented in the body of the report at Table 7, however, reflect the length of opinions from our sample of 4,000 cases only.

### Table 1D

### Opinion Length for Total Population of 19,162 Opinions

| Circuit | Number of Opinions | Number of Pages | Average Opinion Length (pages) |
|---------|--------------------|-----------------|--------------------------------|
| D.C.    | 916                | 7638            | 8.3                            |
| 1st     | 991                | 8029            | 8.1                            |
| 2nd     | 1667               | 12115           | 7.3                            |
| 3rd     | 814                | 8448            | 10.4                           |
| 4th     | 875                | 7454            | 8.5                            |
| 5th     | 1836               | 13236           | 7.2                            |
| 6th     | 1185               | 9324            | 7.9                            |
| 7th     | 2323               | 16035           | 6.9                            |
| 8th     | 2501               | 13104           | 5.2                            |

| | | | |
|---|---|---|---|
| 9th | 2746 | 17608 | 6.4 |
| 10th | 1256 | 9216 | 7.3 |
| 11th | 1412 | 9135 | 6.5 |
| Fed. | 640 | 4378 | 6.8 |
| ALL | 19162 | 135720 | 7.1 |

The remainder of this appendix explains the spreadsheet manipulations for the benefit of others who might wish to engage in similar exercises.

## Spreadsheet Manipulations

Following is a sample of citations downloaded from Westlaw as ASCII text, depicted as column A of a spreadsheet:

| A |
|---|
| 6.   Systems Contractors Corp. v. Orleans Parish School Bd., |
| 148 F.3d 571, 127 Ed. Law Rep. 722 (5th Cir.(La.), Aug 12, 1998) |
| (NO. 97-30479) |
| |
| |
| 7.   TranSouth Financial Corp. v. Bell, 149 F.3d 1292, 12 Fla. L. Weekly Fed. C 6 |
| (11th Cir.(Ala.), Aug 12, 1998) (NO. 97-6767) |
| |
| |
| 8.   Serafyn v. F.C.C., 149 F.3d 1213, 331 U.S.App.D.C. 340, 13 Communications Reg. (P&F) 102 |
| (D.C.Cir., Aug 11, 1998) (NO. 95-1385, 95-1440, 95-1608) |

Processing of these data is done in two steps. The result of the first step is that each citation appears on a single line in the spreadsheet. It is accomplished by pasting the following formulas into columns B-E (these use Microsoft Excel functions; other spreadsheets programs have analogous functions).

| B | C | D | E |
|---|---|---|---|
| =LEN(A2) | =IF(LEN(TRIM(A2))>0,IF(D2=D3,C3+1,1),"") | =IF(ISNUMBER(SEARCH(".",E2,1)),VALUE(LEFT(E2,SEARCH(".",E2,1))),"") | =IF(B2=0,"",E1&" "&A2) |

The results will look as follows, for the data shown in column A above. The value in column C will be 1 if and only if the value in column E is the full citation. Copy columns B-E and then paste back in the same locations only the cell values (not the formulas). Excel accomplishes this step with the "paste special" command. To separate out the full

citation entries, simply sort all rows by column C and delete all rows where column C contains something other than 1.

| B | C | D | E |
|---|---|---|---|
| 61 | 3 | 6 | 6.   Systems Contractors Corp. v. Orleans Parish School Bd., |
| 64 | 2 | 6 | 6.   Systems Contractors Corp. v. Orleans Parish School Bd., 148 F.3d 571, 127 Ed. Law Rep. 722 (5th Cir.(La.), Aug 12, 1998) |
| 14 | 1 | 6 | 6.   Systems Contractors Corp. v. Orleans Parish School Bd., 148 F.3d 571, 127 Ed. Law Rep. 722 (5th Cir.(La.), Aug 12, 1998) (NO. 97-30479) |
| 0 | | | |
| 0 | | | |
| 82 | 2 | 7 | 7.   TranSouth Financial Corp. v. Bell, 149 F.3d 1292, 12 Fla. L. Weekly Fed. C 6 |
| 45 | 1 | 7 | 7.   TranSouth Financial Corp. v. Bell, 149 F.3d 1292, 12 Fla. L. Weekly Fed. C 6 (11th Cir.(Ala.), Aug 12, 1998) (NO. 97-6767) |
| 0 | | | |
| 0 | | | |
| 94 | 2 | 8 | 8.   Serafyn v. F.C.C., 149 F.3d 1213, 331 U.S.App.D.C. 340, 13 Communications Reg. (P&F) 102 |
| 56 | 1 | 8 | 8.   Serafyn v. F.C.C., 149 F.3d 1213, 331 U.S.App.D.C. 340, 13 Communications Reg. (P&F) 102 (D.C.Cir., Aug 11, 1998) (NO. 95-1385, 95-1440, 95-1608) |

With the full citations thus organized, delete columns A through D, leaving the citations in column A, and paste a new set of formulas into columns B through M. These are as follows (presented here for readability in a column, rather than a row). The formulas will work as presented only for F.3d citations with 2-or 3-digit volume numbers.

| Column | Formula |
|---|---|
| B | =FIND(" F.3d ",A2) |
| C | =FIND(" ",A2,B2-5) |
| D | =MIN(FIND(" ",A2,B2+6),FIND(CHAR(44),A2,B2+6)) |
| E | =MID(A2,C2+1,D2-C2-1) |
| F | =VALUE(MID(A2,C2+1,3)) |
| G | =VALUE(MID(E2,9,20)) |
| H | =IF(F3=F2,G3-G2,-8) |
| I | =FIND("(NO. ",A2,1) |
| J | =FIND("Cir.",A2,1) |
| K | =FIND("(",A2,J2-6) |
| L | =MID(A2,K2+1,J2-K2-1) |
| M | =MID(A2,I2+5,LEN(A2)-I2-5) |

The results, for the citations shown above, are as follows.

| B | C | D | E | F | G | H | I | J | K | L | M |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 67 | 63 | 76 | 148 F.3d 571 | 148 | 571 | -8 | 129 | 104 | 99 | 5th | 97-30479 |
| 45 | 41 | 55 | 149 F.3d 1292 | 149 | 1292 | -79 | 116 | 90 | 84 | 11th | 97-6767 |
| 29 | 25 | 39 | 149 F.3d 1213 | 149 | 1213 | -8 | 121 | 101 | 96 | D.C. | 95-1385, 95-1440, 95-1608 |

All rows are now sorted by columns F (volume number) and G (page number). Column H will then show the opinion length (difference between beginning pages of successive opinions in the same volume). The length will read -8 for the last case in each volume. Column L shows the circuit that decided the case, and column M lists the docket numbers of cases to which the opinion applies. The other columns contain intermediate or redundant information and are not needed. It is best at this point to copy and paste the values over all the formulas, to preserve the key values during further manipulation or analysis. The basic task of obtaining opinion length, circuit, and docket number(s) is now complete.