NEBRASKA CIVIL JUSTICE ADVISORY GROUP REPORT

Fees

Nevada CJPA Report

Appendix has a suggested sliding fee schedule for prisoner filings in Nevada. Could only suggest [illegible] [illegible] [illegible] [illegible] for [illegible] sale.

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I. DESCRIPTION OF THE COURT

The United States District Court for the District of Nebraska comprises the State of Nebraska. Court is held at Lincoln, North Platte, and Omaha.[1] Three permanent United States District Judges are authorized for the District of Nebraska.[2] In addition, Congress authorized one additional "temporary" United States District Judge for the District of Nebraska in the Federal Judgeship Act of 1990 (commonly referred to as the Biden Bill).[3] The latter judgeship is temporary because any vacancy in the office of district judge in the District of Nebraska occurring five years or more after the effective date of the act creating the new judgeship will not be filled.[4]

The District of Nebraska has experienced two judicial vacancies since July 1990. On July 2, 1990, District Judge Warren

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[1]See 28 U.S.C. § 107 (1988).

[2]See 28 U.S.C. § 133 (1988).

[3]See Pub.L. 101-650, § 203(c)(9) (1990).

[4]See Pub.L. 101-650, § 203 (c) (1990):

> . . . .
> (c) Temporary Judgeships. The President shall appoint, by and with the advice and consent of the Senate--
> . . . .
> (9) 1 additional district judge for the district of Nebraska;
> . . . .
> The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this title, shall not be filled.

K. Urbom announced his intention to take senior status effective December 1, 1990. This created a vacancy in the Lincoln regional office. The next vacancy occurred with the implementation of the Federal Judgeship Act of 1990, referred to above. Judge Urbom's vacancy was filled on May 26, 1992, when Magistrate Judge Richard G. Kopf was designated as the replacement judge for Judge Urbom. (Judge Kopf was confirmed in the summer of 1992.) To date, the temporary judgeship is vacant. The caseload problems that these two vacancies created were partially alleviated by Judge Urbom carrying a full caseload for a time after he took senior status.[5]

The Judicial Conference of the United States has authorized three United States Magistrate Judges for the district of Nebraska. Until October 1992, one vacancy in the office of magistrate judge existed due to the confirmation of a magistrate judge as a district judge in the summer of 1992. The United States District Judges filled the magistrate judge vacancy in October 1992 and the new magistrate judge took the oath of office in January 1993.

Two bankruptcy judges are authorized for the District of Nebraska.[6] There are currently no vacancies in the office of bankruptcy judge.

The Civil Justice Reform Act Advisory Group for the District of Nebraska was appointed by the Chief Judge of the District in the spring of 1991. The Advisory Group held its first meeting on May

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[5]The specific caseload problems that these vacancies have caused are discussed more fully in sections II.A.3 and II.B.2, below.

[6]See 28 U.S.C. § 152 (1988).

18, 1991. The United States District Court for the District of Nebraska was not designated as a pilot court or an early implementation district.

II. ASSESSMENT OF CONDITIONS IN THE DISTRICT

The general condition of the civil and criminal dockets in the District of Nebraska is good relative to the condition of the dockets in more populous districts. Nevertheless, there exist difficulties with the dockets related to judgeship vacancies and the pressure of the criminal matters that must be handled by the United States District Courts. In addition, certain court and litigant (including attorney) practices in managing litigation contribute to the docket problems.

A. CONDITION OF THE DOCKET

1. Condition of the Civil and Criminal Dockets

a. Number of Cases Commenced

The number of civil cases commenced in the District of Nebraska from 1986 through 1992 shows a slow downward trend. The number of civil filings peaked in 1987 at 1,763 and has slowly diminished to a low of 1,182 in 1992. In contrast, the number of criminal cases commenced in the district has slightly increased from 1986 through 1992. In 1986, there were 187 criminal filings. In 1992, there were 201 criminal filings. However, criminal filings, although slowly trending upward, have tended to fluctuate more from year to year than civil filings (see, e.g., 1987 filings (137), 1988 filings (124), and 1989 filings (169)). There have been even greater fluctuations in the number of criminal

defendants. The number of criminal defendants is particularly significant because of the disproportionate amount of time that multiple criminal cases consume.[7]

Total Civil and Criminal Filings: Twelve Month Period (June 30 - July 1)

Year	Civil Cases	Criminal Cases	Criminal Defendants
1986	1,752	187	322
1987	1,763	137	198
1988	1,538	124	177
1989	1,595	169	274
1990	1,361	195	353
1991	1,261	183	234
1992	1,182	201	277

[7]See section II.B.2.a., below, for a discussion of the impact of the criminal docket on cost and delay in civil cases in the District of Nebraska.

b. Cases Commenced by Jurisdictional Category

Civil Cases Commenced by Jurisdictional Category: Twelve Month Period (June 30 - July 1)[8]

Year	Federal Question	Diversity	U.S. as a Party
1986	819	351	579
1987	955	344	461
1988	828	324	384
1989	893	281	407
1990	820	193	347
1991	695	176	392

c. Cases Commenced by Substantive Category

Contract, real property, civil rights, and prisoner petition cases represent the largest categories of cases commenced in the District of Nebraska from 1986 through 1992. These are the only categories of cases to reach triple digits in any year. The least significant category of cases in terms of number of filings was antitrust cases, which reached double digits in only one year (1989). Overall filings in 1986 and 1987 may have been higher because of a large number of pro se prisoner petitions (which have been diminished due to a new grievance procedure at the prison) and Veteran's Administration Cases in those years.[9]

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[8]At the time this report was prepared, information was unavailable from the Administrative Office of the United States Courts for 1992.

[9]See Interview of Magistrate Judge Piester (Summary) at 1, Appendix D.

Total Civil Cases Commenced by Substantive Category[10]

	86	87	88	89	90	91	92
Contract	504	361	252	315	183	168	206
Real Property	102	132	110	96	123	143	123
Tort	47	42	47	44	33	38	39
Antitrust	5	3	7	10	4	3	3
Civil Rights	168	125	128	177	159	157	160
Prisoner Petition	318	475	342	346	332	250	249
Forfeit. & Penals.	13	10	26	33	30	53	19
Labor	53	63	43	46	59	47	50
All Others	542	552	583	528	438	402	333
Total	1752	1763	1538	1595	1361	1261	1182

[10]There is a slight discrepancy between the total yearly civil filings in this table and the preceding table portraying civil cases commenced by jurisdictional category. For example, in this table the total civil filings for 1986 are 1752, while the total diversity, federal question, and United States as a Party filings are 1749. This cannot be explained on the basis that there are cases in this table under the "All Others" category that are neither federal question, diversity, or United States as a Party cases (e.g., Admiralty?), because, if that were so, the totals in this table would always be larger than the totals in the preceding table. However, for the year 1991, this is not true. The 1991 total for this table is 1261, while the total in the preceding table is 1263. At the time this report was prepared, the Advisory Group had no explanation for the discrepancy.

d. Utilization of Court Time

This subsection contains charts and graphs illustrating the utilization of court time for the United States District Judges in the District of Nebraska from 1982 - 1992. The statistics in these charts were developed by the clerk's office. The first two charts portray the number of civil and criminal jury and nonjury trials and trial hours from 1982 through 1992. The following graph depicts the increase in the number of criminal trials relative to civil trials from 1982 - 1992. The next three charts illustrate criminal sentencings by judge for the years 1990 - 1992 and the number of sentencings per month by judge within each year. The final two charts illustrate the average number of minutes spent on arraignments and sentencings in 1991 and 1992 by the three district judges sitting from January 1, 1991, through June 30, 1992. The final five pie charts illustrate the 1990 and 1991 bench time on criminal and civil matters, as well as bench time for visiting judges.

Before discussing these statistics, it is important to understand the automated case management system used in the district of Nebraska because of the possible impact of that system on the assignment of multiple defendant criminal cases. The case assignment system used in the District of Nebraska since 1991 is based on the integrated case management docketing system. This is an automated system which allows for the random selection of judges for cases. The case assignment system is based on a Unix driven computerized random draw. In Omaha, there are various case

assignment decks. There is one deck for civil cases and one deck for criminal cases. Contained within each of these decks are five "judges' cards" for each district judge, for a total of fifteen cards in the deck. When a case is filed, the docket clerk draws a judge card from the automated system. The automated system then randomly shuffles the remaining cards in the deck. The aim is that one judge be drawn for each case unless the case is related to another case. This procedure is used until all fifteen cards in the deck are depleted. When the deck is depleted, it is automatically refilled by the system with a new set of fifteen cards. The refilling is "blind." That is, no one knows when the system is refilled, so that the process remains undiscoverable by outside observers. The same system is used for criminal cases. The assignment system is totally random, and no one knows the sequence of the cards within the deck. Because the remaining cards in the deck are shuffled after each card is drawn, the operator drawing the judge is unable to predict who will be drawn for the case.

In the Lincoln office, the same assignment system is used, but there is a difference in the compilation of the number of cards for each deck. Currently, there is a criminal deck and a civil deck. In the criminal deck, there are ten judge assignment cards, seven for Senior Judge Urbom and one each for Chief Judge Strom, Judge Cambridge, and Judge Kopf. In the civil deck, there are twenty-one cards, twelve for Senior Judge Urbom and three each for Chief Judge Strom, Judge Cambridge, and Judge Kopf. The reason for the

difference between the compilation of the decks between Omaha and Lincoln is to alleviate the burden on Senior Judge Urbom that would otherwise result. Currently, therefore, the Omaha district judges are handling approximately thirty per cent of the criminal case assignments and forty-two per cent of the civil case assignments in Lincoln.

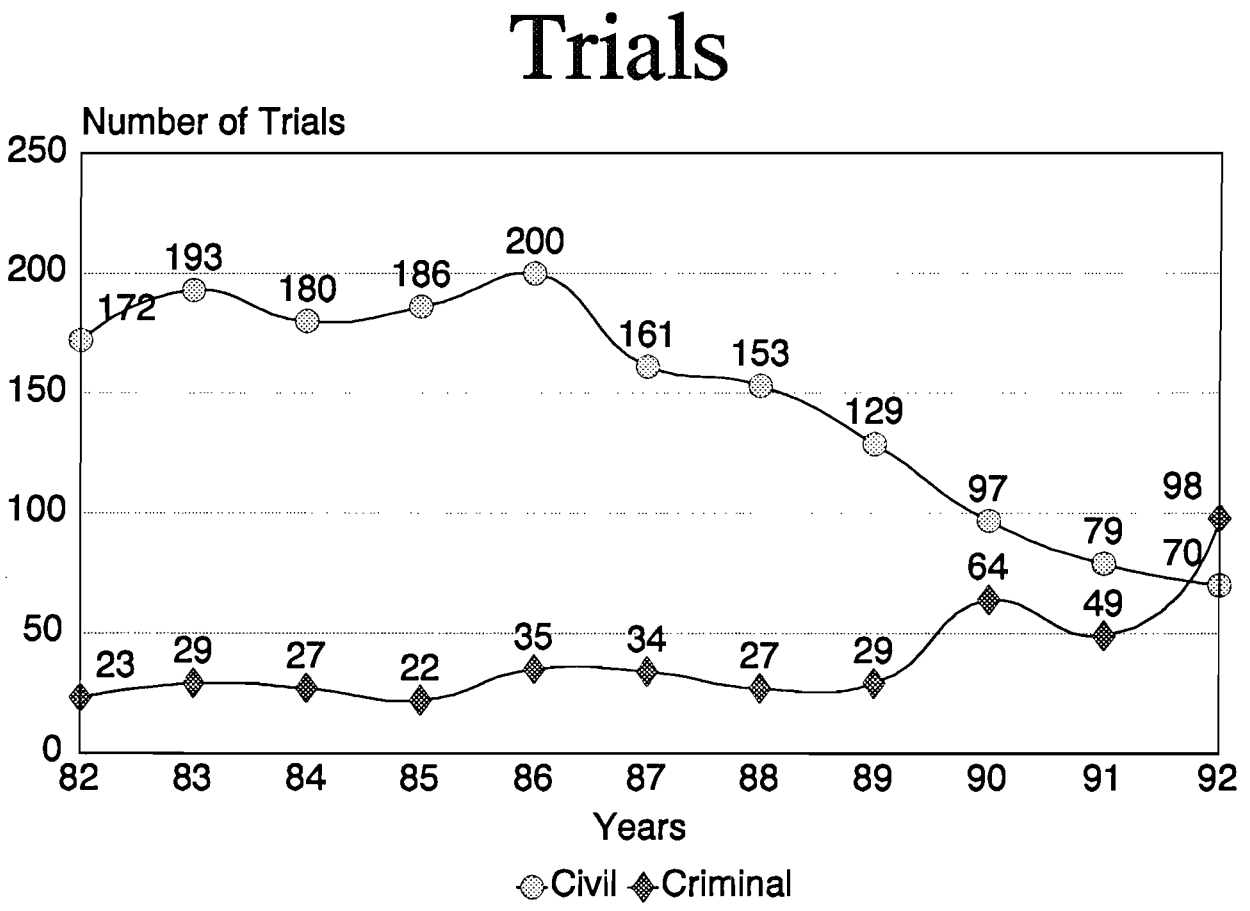
Prior to the implementation of the automated case assignment system in August 1991, the District of Nebraska used a manual case assignment system. However, this system was used for Omaha only, because at that time there was only one district judge assigned to cases in Lincoln and the docket was not shared between the Omaha and Lincoln judges. This manual system utilized a one and one-half by two inch card. One judge's name was stamped on each card. In the Omaha docket, it was the normal practice to have one hundred case assignment cards, fifty for each of the two judges then sitting in Omaha. These cards were shuffled and numbered after the shuffle, so that they remained in the same order into which they were originally shuffled. When the case assignment cards were down to about ten or fifteen remaining, another fifty cards for each of the judges were added. The numbering system began with one and ran to one thousand. When the number one thousand was reached, the system repeated. When the cards were shuffled and numbered, they were placed in a deck with tape on the top and bottom of the deck. The judges' names were on the back side of each card and thus were not visible to the person drawing the next case assignment card. After a card was drawn from the deck, the civil or criminal case

number was written on the card. At the conclusion of business each day, all of the assignment cards were given to the Chief Deputy Clerk for record keeping purposes. At the time the manual system was used in Omaha, there were three categories for case assignment: Civil, Criminal, and Bankruptcy Appeals.

Knowledge of the assignment system may help to understand one aspect, at least, of the following statistics. In 1990, one district judge was assigned to a number of multiple defendant criminal cases. This contributed to that district judge spending a large amount of time on criminal cases as opposed to civil cases for the calendar years 1990 and 1991. Neither the old nor the current assignment systems take into account whether a criminal action is a single or a multiple defendant action. Therefore, despite a random, anonymous selection process, it is possible for one judge to receive an "excess" number of multiple defendant criminal cases, which tend to absorb more time than other kinds of cases.

By comparing information for the years 1982, 1986, and 1991 derived from the first two charts, it is possible to obtain a good picture of the evolution of the criminal and civil dockets and the impact of the criminal docket on the civil docket. In 1982, there were 23 total criminal trials in the district of Nebraska, absorbing 336 hours of trial time. In the same year, there were 172 total civil trials, absorbing 1596 total hours of time by all judges. In 1986, there were 35 criminal trials and 359 total hours spent on those criminal trials by all judges, while the number of

civil trials rose to 200, with 1923 hours spent by all judges on those civil trials. In 1991, the total criminal trials had grown to 49 and the total hours spent on criminal trials had ballooned to 897. In contrast, the number of civil trials had dropped to 79,



with 1168 hours spent by all judges on those civil trials. These figures indicate that the criminal docket is absorbing more and more of the judges' time, with a corresponding adverse effect on the ability to try civil cases.

Civil cases held in the U.S. Federal District Court of Nebraska

Calendar Year	Number of Trials			Hours Spent in Trial		
	Non-Jury	Jury	Total	Non-Jury	Jury	Total
82	113	59	172	742	854	1,596
83	107	86	193	704	1,239	1,943
84	122	58	180	624	1,611	2,235
85	114	72	186	459	1,365	1,824
86	154	46	200	882	1,041	1,923
87	118	43	161	599	1,066	1,665
88	109	44	153	751	627	1,378
89	91	38	129	579	1,011	1,590
90	63	34	97	420	784	1,204
91	49	30	79	481	687	1,168
92	42	28	70	475	758	1,233

Criminal cases held in the U.S. Federal District Court of Nebraska

Calendar Year	Number of Trials			Hours Spent in Trial		
	Non-Jury	Jury	Total	Non-Jury	Jury	Total
82	11	12	23	73	263	336
83	13	16	29	32	394	426
84	9	18	27	25	287	312
85	11	11	22	30	375	404
86	18	17	35	47	313	359
87	19	15	34	58	264	321
88	12	15	27	20	209	228
89	16	13	29	49	346	395
90	35	29	64	33	1,004	1,037
91	24	25	49	88	809	897
92	69	29	98	167	771	938

The charts that portray criminal sentencings for the years 1990 - 1992 by judge show that during the years 1990 and 1991, one judge had an unusually high number of sentencing

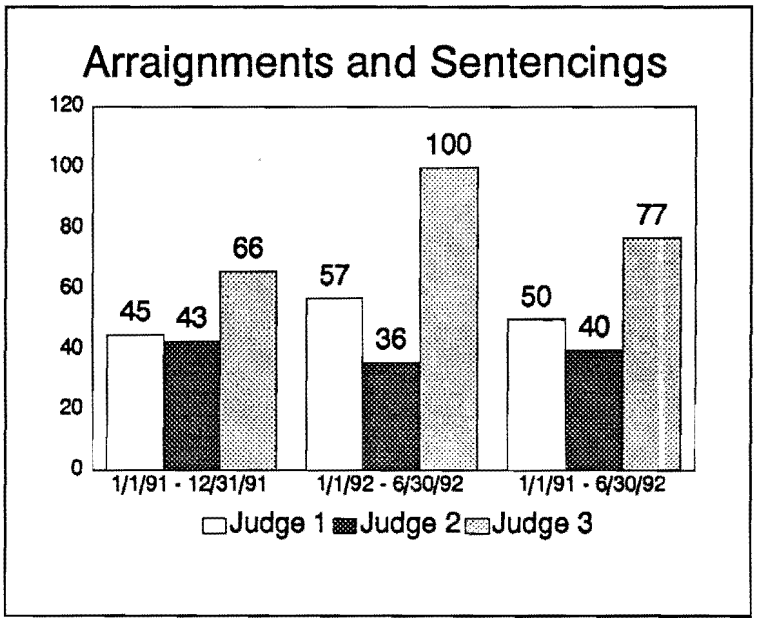
Criminal Setencings for the U.S. District Court of Nebraska

	1992				1991			1990		
Month	Judge 1	Judge 2	Judge 3	Judge 4	Judge 1	Judge 2	Judge 3	Judge 1	Judge 2	Judge 3
J	4	5	5	XXXX	12	7	15	1	3	0
F	10	2	9	XXXX	4	4	5	3	8	3
M	2	4	0	XXXX	11	5	10	5	2	15
A	9	6	6	XXXX	10	3	7	6	7	17
M	4	15	9	XXXX	5	4	3	4	3	11
J	9	6	17	0	5	2	7	4	6	10
J	5	5	4	0	5	4	14	5	0	12
A	3	0	5	1	1	13	9	9	4	20
S	10	6	13	0	1	5	9	7	1	15
O	3	7	6	0	2	4	14	3	1	11
N	2	8	4	5	3	4	6	6	7	6
D	7	6	9	6	0	3	13	14	13	5
Total	**68**	**70**	**87**	**12**	**59**	**58**	**112**	**67**	**55**	**125**

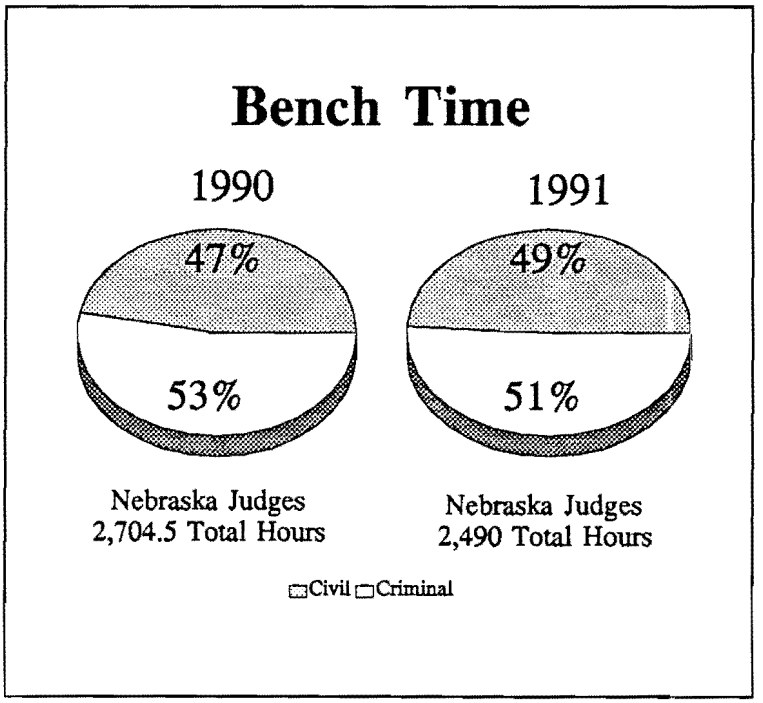
Criminal Sentencings Grand Totals:
1992 237
1991 229
1990 247

proceedings. This judge had 125 sentencings in 1990, as opposed to the next closest judge, who had 67 sentencings. This same judge had four months in 1990 in which he had fifteen or more sentencings. No other judge had as many as fifteen in any month of 1990. (One other judge had fourteen in one month.) For 1991, this same judge had a high of 112 sentencing proceedings, as compared with 59 for the next highest judge. However, in 1991 the sentencings were spread out somewhat more evenly, with only one month in which the judge had as many as fifteen sentencing proceedings. By 1992, the sentencing burdens for the three judges portrayed had evened out somewhat, with the highest judge having

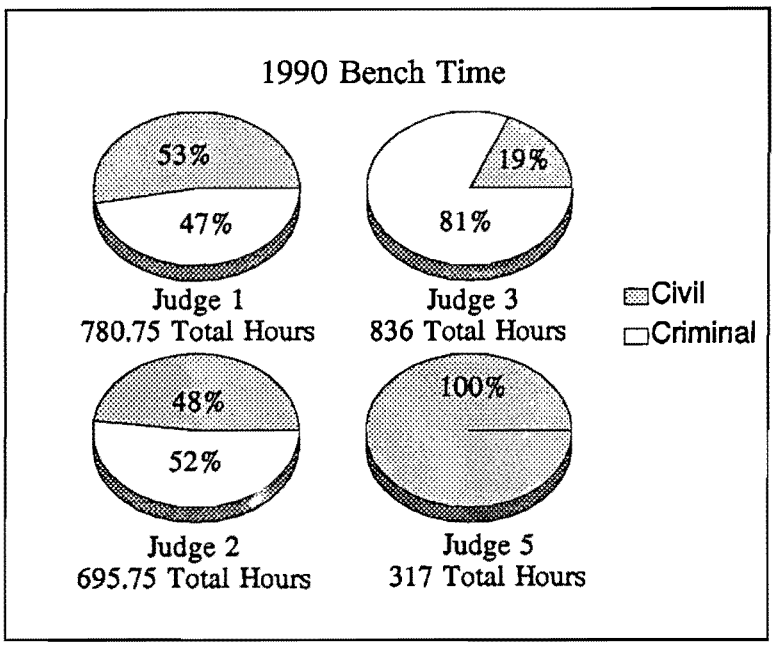
fifty sentencings and the other two judges having forty-three each. It should be noted that the total criminal sentencings were 247 for 1990, 229 for 1991, and 136 for 1992. As indicated earlier, the more equal distribution of the sentencing proceedings in 1992 probably reflects a more equal spread of multiple defendant criminal cases after 1990 and 1991.



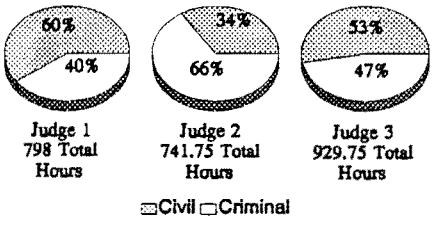
The pie charts also dramatically reveal the effect of the criminal docket on the civil docket in terms of bench time in 1990 and 1991. Fifty-three percent of the bench time of the United States District Judges for the District of Nebraska was spent on criminal cases in 1990 and fifty-one per cent in

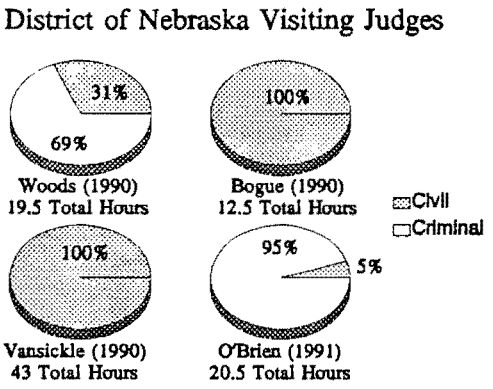


1991. In 1990, the bench time spent on criminal cases ranged from a high of 81% for one judge to a low of 47% for the three judges who spent bench time on criminal matters.[11] For 1991, the high was 66% of bench time for one judge to a low of 40%.



Judge 5 was a Senior Judge





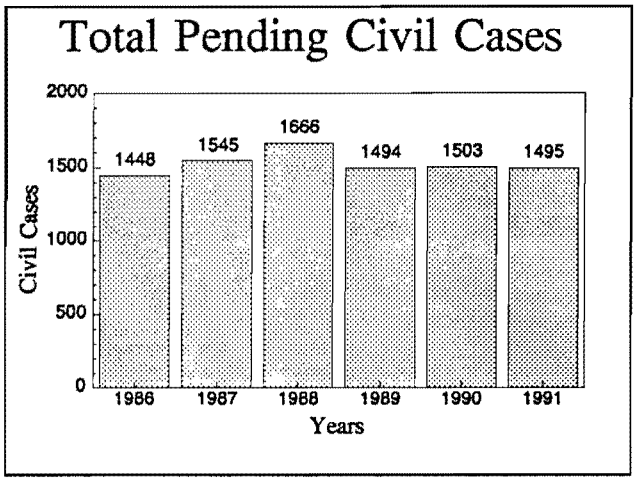
[11]One judge spent 100% of his bench time on civil matters, representing 317 total hours.

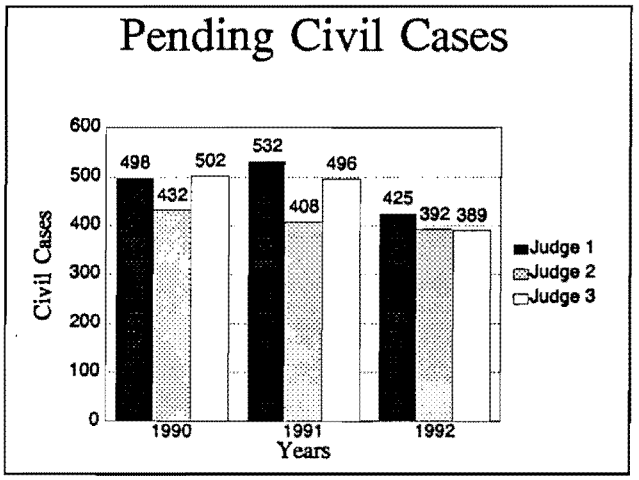
The total average bench time on both civil and criminal cases was 657.38 hours in 1990, ranging from a high of 836 total hours to a low of 317 total hours. In 1991, the total average bench time on both civil and criminal cases was 823.17, ranging from a high of 929.75 total hours to a low of 741.75 total hours. However, it should be noted that the number of district judges dropped from four to three between the years 1990 and 1991. In 1990, one judge spent a much higher percentage of bench time on criminal cases than did the other judges (81% as opposed to 52% for the next closest judge). In 1991, the criminal bench time evened out somewhat (66% high/40% low). The higher bench time in 1990 may reflect the large number of sentencing proceedings conducted by the high judge in that year relative to the other judges. However, this same judge also conducted a disproportionately higher number of sentencings in 1991, after the bench time had evened out. As noted earlier, the greater time spent by one judge on criminal matters in 1990 and 1991 is largely attributable to the large number of multiple defendant criminal proceedings assigned to that judge during 1990. This was a product of the fact that the case assignment system in use in 1990 did not attempt to spread the number of multiple defendant cases equally among the judges. The current system also does not attempt to do this, raising a question whether a special multiple defendant case assignment deck should be established for the district.

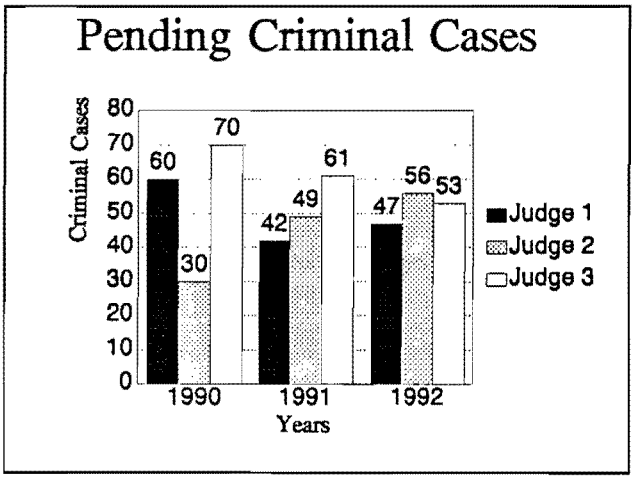
2. Trends in Case Filings and Demands on Court Resources

a. Total Pending Civil and Criminal Cases

The following three graphs illustrate total pending civil cases from 1986 through 1991, pending civil cases by judge for the years 1990 - 1992, and pending criminal cases by judge for the years 1990 - 92. With the exception of a spike in 1988 (1,666 cases), total pending civil cases have remained relatively stable. In 1986, the number was 1,448 and in 1991 the number was only slightly higher, at 1,495. From 1990 through 1992, pending civil cases dropped for each of the three district judges who were sitting during that time period. Similarly, from 1990 through 1992 pending criminal cases dropped slightly from 160 to 156 overall. In addition, the number of criminal cases for the three judges sitting during that







time period has evened out considerably. In 1990, the criminal cases per judge ranged from a high of 70 to a low of 30. In 1992, the criminal cases per judge ranged from a high of 56 to a low of 47.

b. Total Civil Cases Pending for Three Years or Longer; Filings and Terminations.

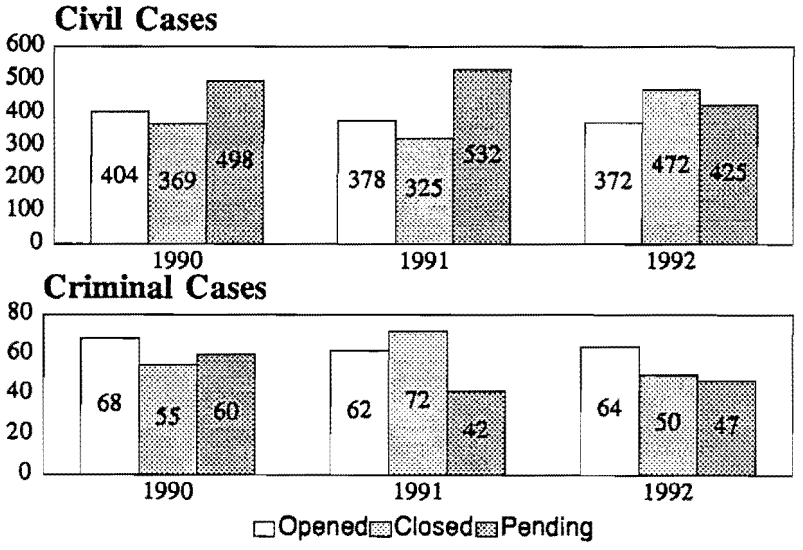
This subsection contains the following information: A chart showing the number of cases pending less than one year, from one to two years, from two to three years, and over three years from 1982 through 1991; a graph illustrating the total civil cases that have been pending for three years or longer, a chart illustrating the number of filings, terminations, and cases pending by judge for the years 1990 - 1992 for the three district judges sitting during that period of time, and six bar graphs portraying the same information on filings, terminations, and pending cases for 1990 - 1992.

Year	Total	Less Than 1 Year	1 to 2 Years	2 to 3 Years	3 Years and Older	
					Number	Percent
82	1,173	740	281	91	61	5.2
83	1,298	926	218	97	57	4.4
84	1,308	935	286	62	25	1.9
85	1,363	1,028	232	85	18	1.3
86	1,448	1,062	299	62	25	1.7
87	1,545	1,090	355	87	13	0.8
88	1,666	1,025	451	157	33	2.0
89	1,494	936	396	123	39	2.6
90	1,503	908	372	182	41	2.7
91	1,495	828	359	171	137	9.2
92	1,264	767	291	143	63	5.0

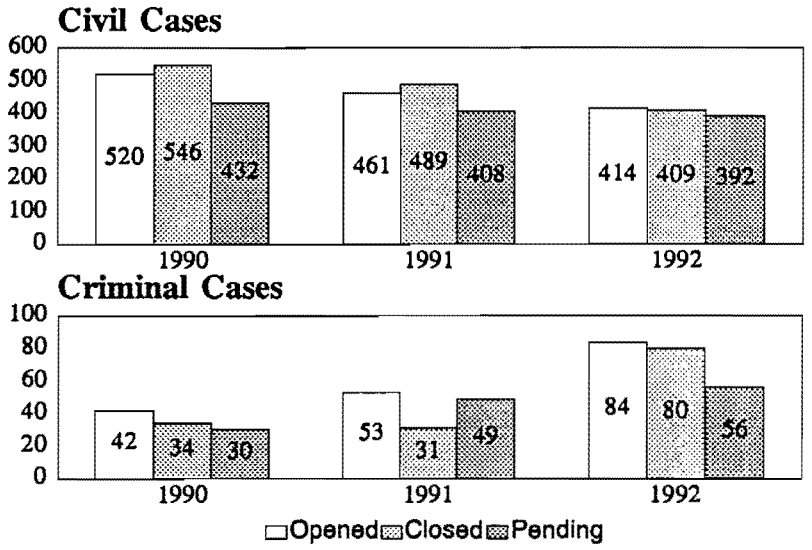
* 1992 Includes Land Condemnation Cases

Statistical Year	Criminal Cases Filings	Terminations	Pending	Civil Cases Filings	Terminations	Pending
Judge 1						
1990	66	55	60	404	369	498
1991	62	72	42	378	325	532
1992	64	50	47	372	472	425
Judge 2						
1990	42	34	30	520	546	432
1991	53	31	49	461	489	408
1992	84	80	56	414	409	392
Judge 3						
1990	87	42	70	402	387	502
1991	67	66	61	371	378	496
1992	65	67	53	363	467	389

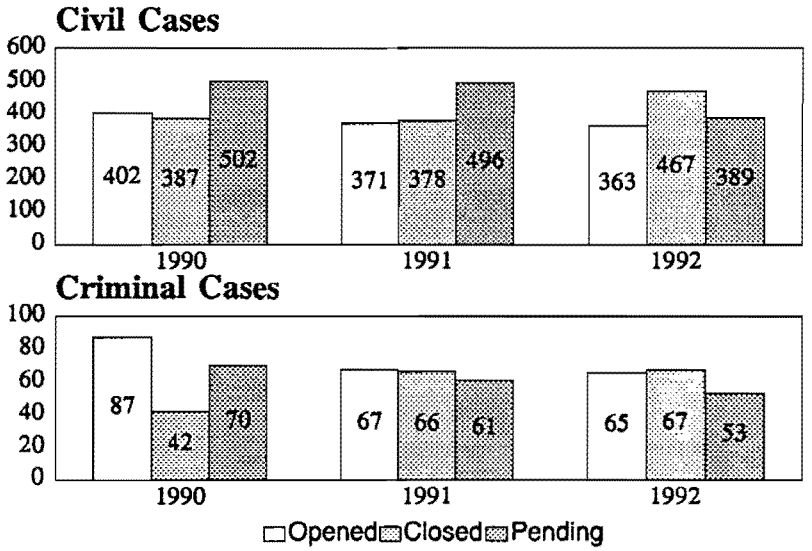
Judge 1



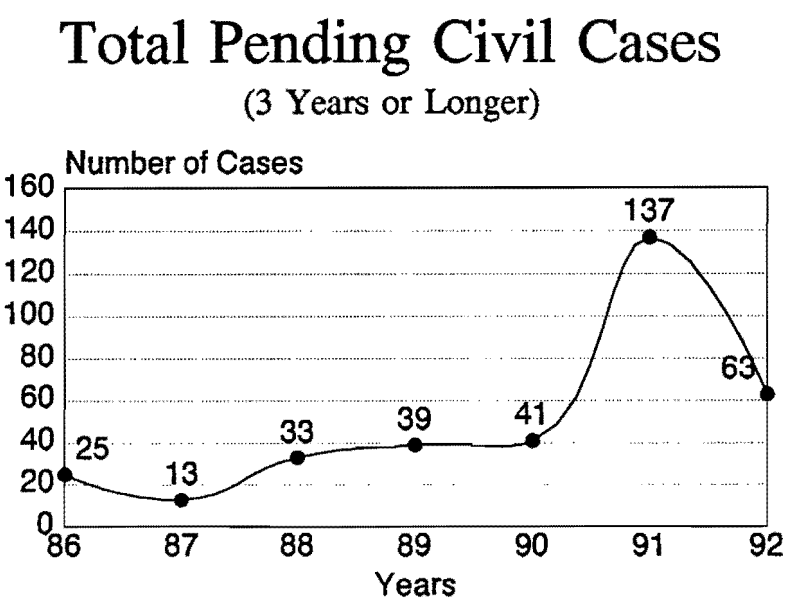
Judge 2



Judge 3



Of special interest is the information on total civil cases pending for three years or longer. The number of these cases declined steadily as a percentage of total pending civil cases from 1982 through 1987. Beginning in 1988, however, the number of cases pending over three years began increasing moderately until 1991, when they jumped sharply to 9.2% of total pending civil cases (from 2.7% in 1990). Viewing the charts on filings and terminations, it does not seem possible to account for this spike by dramatically increased filings or decreased terminations in 1991. Similarly, nothing dramatic seems to have been happening on the criminal side of the docket during that same period of time in terms of dramatically increased filings or dramatically decreased terminations. The apparent explanation for the spike is the large number of asbestos cases that went into the three-year old category in 1991. This was an anomaly that should not be repeated in future years.



3. Trends in Court Resources

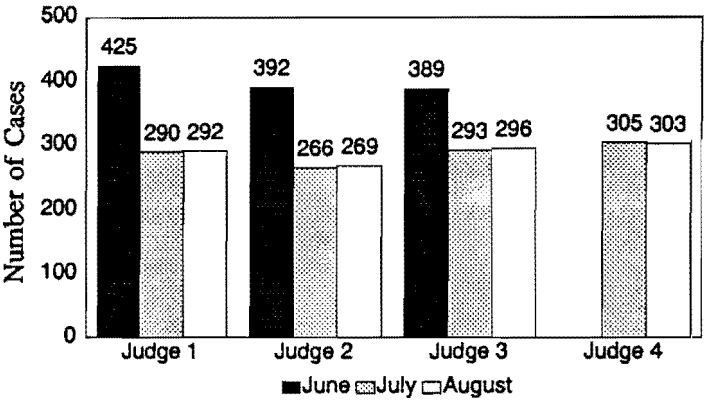
The following charts illustrate the effect on caseloads of the judicial vacancy in the District of Nebraska that was filled in the summer of 1992. As the charts indicate, the civil and criminal caseloads per judge dropped significantly with the confirmation of a third district judge. In June of 1992, prior to the confirmation of the third judge, the average civil caseload per judge was 402 cases and the average criminal caseload was 52. In July, after the confirmation of an additional judge, the average civil caseload was 288.5 cases per judge and the average criminal caseload was 42.5 cases per judge.

Civil and Criminal Caseloads (1992)

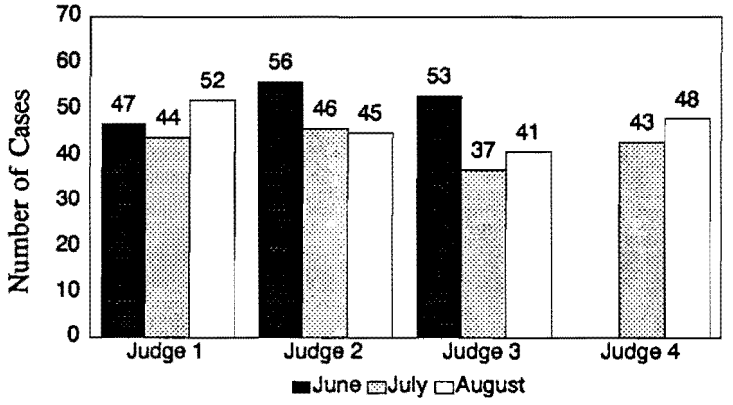
June	Civil	Criminal
Judge Lyle Strom	425	47
Judge William Cambridge	389	53
Judge Warren Urbom	392	56
July	**Civil**	**Criminal**
Judge Lyle Strom	290	44
Judge William Cambridge	293	37
Judge Warren Urbom	266	46
Judge Richard Kopf	305	43
August	**Civil**	**Criminal**
Judge Lyle Strom	292	52
Judge William Cambridge	296	41
Judge Warren Urbom	269	45
Judge Richard Kopf	303	48

However, it must be remembered that the caseloads were lowered with the confirmation of the third district judge only because a senior judge was carrying a substantial caseload and thus partly filling the void left by the unfilled fourth "temporary" judgeship, discussed in section I, above. Had the senior judge not carried a heavier than normal load, the caseload averages would not have dropped at all.

Total Pending Civil Cases



Total Pending Criminal Cases



The next chart is a judicial workload profile comparing the Nebraska and national median time in months from filing to disposition in criminal and civil cases and the Nebraska and national median time in months from issue to trial in civil cases. In criminal cases, the Nebraska medians do not differ significantly from the national figures from 1981 through 1988. After 1988, the Nebraska and national figures begin to diverge, with the Nebraska median from filing to disposition climbing to 9.1 months in 1991 as compared with a national median of 5.8 months. Civil cases show a similar pattern, with the national median from filing to disposition hovering at 9 to 10 months from 1987 through 1992 and the Nebraska median rising to 12 months by 1992. The Nebraska and national comparison of median times from issue to disposition are even more divergent. The national median was 13 to 15 months from 1981 through 1992. The Nebraska median never dropped below 15 months in any of the same years, and from 1988 through 1992 Nebraska ranged from a 16-month low in 1990 to a 27 month high in 1992, with the median in all other years (1988, 1989, and 1991) being 18 months. The Nebraska medians thus compare unfavorably with the national medians by a substantial margin in the later years, which reflect the most recent trends in criminal and civil caseloads.

Judicial Workload Profile

	U.S. District Court (District of Nebraska)			U.S. District Courts (All District Courts)		
	*Criminal Felony	*Civil	**From Issue to Trial (Civil Only)	*Criminal Felony	*Civil	**From Issue to Trial (Civil Only)
1992	8.3	12	27	5.9	9	15
1991	9.1	11	18	5.8	10	15
1990	8.1	11	16	5.4	9	14
1989	5.8	12	18	5.2	9	13
1988	4.7	10	18	4.5	9	14
1987	5.2	10	16	4.1	9	14
1986	4.2	7	15	3.9	7	14
1985	3.5	6	16	3.7	7	14
1984	4.6	7	16	3.5	7	14
1983	3.4	7	16	3.4	7	14
1982	3.8	11	17	3.4	7	14
1981	3.8	10	15	3.3	9	14

Median Times (Months)

* From Filing to Disposition
* For all criminal felony defendants and all civil cases except land condemnation, prisoner petitions, and deportation reviews, terminated during the year whether by trial or other disposition, this figure shows the time interval in months for the middle (median) case. For all criminal felony defendants time is computed from the filing date to either the sentencing date or the dismissal/acquittal date including excludable delays reported under the Speedy Trial Act. When the District had less than 10 terminations the median case was not computed.

** For civil cases, except land condemnation, going to a trial during profile years, this figure shows the time interval in months for the middle (median) case. Time is computed from the date the answer or response is filed to the date trial begins.

B. COST AND DELAY

1. Is There Excessive Cost and Delay in Civil Litigation in the District of Nebraska?

Whether cost and delay in civil litigation are "excessive" in the District of Nebraska is to some extent a relative question. Obviously, the District of Nebraska does not suffer from the docket problems that plague more populous districts. For example, in the Southern District of New York there were 7,925 civil filings in the period from July 1, 1990, through June 30, 1991. In the Eastern District of Pennsylvania, the figure for the same period was 8,254 filings. In contrast, the filings for the same period in the District of Nebraska were 1,261.[12] However, if the judicial workload profile of Nebraska is compared with that of the nation as a whole, it can be seen that the workload of the Nebraska judges is significantly heavier.[13] To take the twelve month period ending in September of 1991 as an example, there were 466.67 filings per district judge in Nebraska and 377.18 filings per district judge nationally. Even if Nebraska had possessed the full complement of four district judges allotted to the district (instead of the three who were actually sitting during this period), the Nebraska filings per judge would still have been 350 per district judge. The latter

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[12]The figures are taken from the Annual Report of the Director of the Administrative Office of the U.S. Courts for the periods ending June 30, 1990, and June 30, 1991.

[13]The statistics that follow are derived from the national and Nebraska judicial workload profiles compiled by the Administrative Office of the United States Courts and the Clerk of the United States District Court for the District of Nebraska.

figure compares favorably with the national figure, but the favorable comparison indicates that Nebraska needs four permanent district judges to place it on a par with national caseload averages.

The Advisory Group's examination of the condition of the docket reveals that the impact of the criminal docket and a shortage of district judges available in the district during certain time periods have significantly affected the speed with which civil cases can be resolved. These are systemic problems that must be addressed by governmental institutions other than the judiciary. Nevertheless, the Advisory Group's examination of the evidence of cost and delay in the District of Nebraska reveals that improvements can be made in both the speed with which cases are disposed of and the cost of civil litigation in the District. Interviews with the United States District Judges and United States Magistrate Judges have also revealed a number of practices by both judges and attorneys that contribute to cost and delay within the district. Attorney surveys have revealed a number of systemic concerns with federal litigation in the District of Nebraska that relate to excessive cost and delay. In particular, narrative responses in the attorney surveys reveal a widespread opinion that the District of Nebraska needs more judges, magistrates, and staff in order to curtail cost and delay in civil litigation. Litigant interviews have revealed that while litigants were generally satisfied with the results of federal litigation, there was

substantial litigant opinion that cost and delay were excessive.[14]

2. The Principal Causes of Cost and Delay

The Advisory Group has determined that the principal causes of cost and delay in civil cases within the District are attributable to the following factors:

a. The Criminal Docket

The criminal docket in the District of Nebraska, while small compared to the civil docket, exerts a serious adverse impact on the ability to try civil actions in a speedy manner. The Speedy Trial Act[15] results in criminal cases being given priority on the trial docket. Thus, civil cases that are otherwise ready for trial are delayed while higher priority criminal cases are tried. The Sentencing Guidelines have produced complexity and delay at the sentencing stage of criminal litigation, which further delays the disposition of civil actions. Congress continues to federalize crimes that could more efficiently be handled by the state systems. Furthermore, Congress continues to do this without providing adequate resources to the federal courts to accommodate the increased caseload produced by the new federal crimes. Examples of such federal crimes are so-called School Zone Drug Cases[16] and the

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[14]Of the litigants who expressed opinions on cost and delay, 5 of 8 (62.5%) whose cases settled stated that the cost of litigation was unreasonable, and 7 of 14 (50%) whose cases were tried stated that costs were excessive. In addition, 6 of 9 (66.6%) litigants whose cases settled stated that delay was excessive, and 5 of 13 (38.5%) whose cases were tried stated that delay was excessive. See Civil Litigant Survey, Appendix C.

[15]See 18 U.S.C. § 3161 et. seq.

[16]See 21 U.S.C. § 860.

recent federalization by Congress of "car jacking."[17] Many states, but not Nebraska, have duplicated such legislation and followed the policy set by Congress. If Nebraska were to duplicate the federal school zone drug and car jacking legislation, the pressure on federal prosecutors to bring criminal actions under the federal legislation in federal court would lessen.

One problem concerning the criminal docket that can be addressed at the local level is the problem of excessive assignment of multiple defendant criminal cases to a single district judge. This problem can be alleviated by the creation of a multiple defendant case assignment deck. This would assure that the burden of multiple defendant criminal cases is spread evenly over all sitting district judges. Based on its examination of the criminal docket and discussions with the clerk's office, the Advisory Group has determined that a "multiple defendant" case subject to the multiple defendant assignment deck should be defined as a case with five or more criminal defendants.

b. Judicial Practices

Approximately 50% of the attorneys responding to the attorney survey (210/421) stated that they had experienced unreasonable delays in civil cases in the District of Nebraska.[18] Fifty-eight

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[17]See Car Theft Prevention and Deterrence Act, 18 U.S.C. § 2119.

[18]Fifty-three per cent of the practitioners responding to the federal criminal attorneys' survey also reported that they had experienced delays in the criminal pretrial process. However, only 6% of these practitioners stated that judicial inefficiencies contributed moderately and none stated that judicial inefficiencies were a substantial cause of the delay. In addition, 0% of the

per cent (122/211) of the attorneys so responding stated that the cases in which they experienced unreasonable delay had been unnecessarily costly. Fifty-five per cent (108/198) of those attorneys stated that judicial inefficiencies were moderate or substantial contributing factors to the unreasonable delay. Fifty per cent (58/116) of those attorneys stated that judicial inefficiencies were moderate or substantial contributing factors to the excessive cost. Unfortunately, the attorney surveys did not reveal substantial agreement about the nature of the judicial inefficiencies that contributed to the delay and cost. For example, 88% (364/411) of the attorneys stated that ineffective case management by magistrate judges had either not contributed to the excessive delay or cost at all or had only slightly (23% - 96/411) contributed to unnecessary delays or unreasonable costs. Similarly, 70% (278/401) of the attorneys stated that ineffective case management by district judges had either not contributed to unnecessary delay or unreasonable costs at all or had only slightly (21% - 83/401) contributed. However, the Advisory group's independent examination of judicial practices has revealed a number

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criminal practitioners stated that ineffective case management by magistrate judges was a moderate or substantial cause of delay. 12% stated that ineffective case management by district judges contributed moderately to delay, and 0% stated that ineffective case management by district judges was a substantial cause of delay. Of the responses indicating that ineffective case management by district judges contributed to delay either slightly or moderately, 24% of the total number of attorneys responding to the survey stated that excessive time spent during arraignments or changes of plea contributed substantially to the delay they did experience in criminal cases. See Criminal Attorney Survey, Appendix C.

of judicial practices that contribute to unnecessary delay in the disposition of civil cases.

An important source of delay and cost in civil cases is the use by some judges in Omaha of the so-called "trailing docket."[19] Under the trailing docket, setting firm trial dates becomes virtually impossible. In addition, many of the benefits of having a final pretrial conference shortly before trial are lost, because the final pretrial conference will often be held months, sometimes many months, before the actual trial. The system used in Lincoln and now by one judge in Omaha, seems preferable. The uncertainty which is created in the minds of lawyers who are low on a long list of cases does not occur in Lincoln because the trailing docket is not used. Instead, lawyers are given a specific month in which their case will be tried, and the date within the month is set at the final pretrial conference, which is held near to trial. This system provides for much firmer trial dates, as well as for final pretrial conferences in reasonable proximity to trial. The system is more efficient and seems fairer to litigants, witnesses, and

[19]The trailing docket is a list of cases ready for trial that is arranged in chronological order by case number. Thus, the older cases on the list have lower numbers than the newer cases. The word "trailing" indicates that those cases on the list that are not disposed of in a given month are carried over to the next month and are available to be called for trial then. However, cases on the list are not called in chronological order. Rather, the trial judge or someone on the judge's staff must scrutinize the trial list to estimate the length of time that each case will take to try. When a trial time of appropriate length opens up, a case that will take that amount of time to try is selected from the list and called for trial. This creates great uncertainty among lawyers handling cases on the list about when their cases might be called. Cases can and have remained on the trailing docket for up to a year or more before being called for trial.

lawyers. It is the Committee's view that if lawyers know precisely when they're going to be 'up to bat', they have more incentive to settle a case than if they are stuck way down on a list not knowing when they will be called for trial.

A related problem is the attitude of the district judges toward continuances. Especially where the trailing docket is used, the district judges seem quite willing to grant continuances to lawyers who claim they cannot be ready for trial when their cases are called. In some respects, this willingness to grant continuances is admirable. It seems to be based partly on the notion that it is unfair for the judges to expect lawyers to be ready for trial on short notice when firm trial dates cannot be provided by the judges in the first place. It is also based partly on the notion that the case is under the control of the lawyers and the litigants, not the judges. Thus, if the attorneys are agreeable to a continuance, the inclination of the judges is to give it to them. The difficulty with this attitude is that delay imposes costs on the judicial system, and thereby on the public, as well as on the litigants. These costs, which appear in the form of crowded dockets and concomitant delay in the disposition of all civil litigation, are exacerbated by a continuance policy that is too liberal.

A third important judicial practice (which is also related to the above-noted trailing docket problem) that bears on the problems of cost and delay is the idiosyncratic nature of trial calendaring by the district judges. Some judges employ staff members to

calendar their cases, while others utilize magistrate judges. The Advisory Group believes that the method of calendaring should be uniform throughout the district. The Advisory Group believes that the better practice is to utilize magistrate judges for trial scheduling, because magistrate judges have greater experience with the kinds of cases that are likely to settle once they are scheduled for trial. Thus, the magistrate judges have a better grasp of how many cases should be scheduled for trial in a given month because of their greater understanding about which cases on the trial list are likely to settle. If it is impractical to utilize magistrate judges for scheduling, an acceptable alternative would be to use experienced courtroom deputies, who also possess substantial expertise in understanding the kinds of cases that are likely to settle.

A final judicial practice that bears on the problems of delay and expense occurs due to the fact that there is no standard practice governing prioritization of motions among the judges.[20] Failure to prioritize motions is inefficient, in that motions that may terminate the action promptly are not given priority over motions of lesser importance. For example, when motions are not prioritized, post trial motions will be put on a judge's motion list along with other motions and, perhaps, not ruled on as promptly as is desirable in order to terminate the action at the trial level. Furthermore, the members of the Advisory Group have

[20]The various practices of the judges in deciding motions is discussed in the report of the Law Clerk Interviews in Appendix D.

noted cases in which preanswer motions have taken ten to twelve months to decide. In Omaha, a progression order does not enter while a preanswer motion is pending, although a progression order does enter in Lincoln after appearance. Thus, in Omaha, the failure to resolve preanswer motions promptly is a substantial cause of delay in civil cases.

c. Attorney Practices

There is a widespread consensus among district and magistrate judges that attorneys contribute to cost and delay in the District of Nebraska in a number of ways:

(1) There are too many pretrial motions. Most dispositive pretrial motions are, if not frivolous, at least without merit;[21]

(2) There is far too much discovery;[22]

(3) There are far too many continuances requested when

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[21]In the survey of federal criminal attorneys, 48% of the attorneys stated that conduct of counsel had contributed either slightly, moderately, or substantially to delay in the criminal pretrial process. Of these respondents, 53% indicated that unnecessary motions were a cause of the delay they had experienced. See Criminal Attorney Survey, Appendix C.

[22]Two of the litigants who responded to the Civil Litigant Survey commented on excessive discovery. One stated that attorneys' fees were too high as a result of excessive discovery. The other stated that it had been forced to spend money on travel to authenticate documents that the opposing party then stipulated were true and admissible. See Civil Litigant Survey, Appendix C.

Of the 48% of federal criminal practitioners who indicated that conduct of counsel was either a slight, moderate, or substantial cause of delay in the criminal pretrial process, 48% indicated that lack of voluntary disclosure was a contributing cause of the delay and 48% indicated that failure to attempt to resolve discovery disputes in good faith without court intervention was a contributing cause of delay. See Criminal Attorney Survey, Appendix C.

cases are called for trial. Even given the inefficiencies of the trailing docket in Omaha, there are too many requests for continuances made for inadequate reasons. For example, a reason sometimes given for a trial continuance is that an expert witness will not be available on the trial date. Given the availability of videotape depositions, this should not ordinarily be an adequate excuse for a continuance;

(4) The settlement process is often not taken seriously until the eve of trial. The judges and courtroom clerks have an excellent feel for the kinds of cases that normally settle. Yet even categories of cases that have a high rate of settlement are often not settled until they are called for trial. There is frequently no reason that these cases cannot be settled at a much earlier point in time.

(5) In cases in which videotape depositions are used, the depositions are often not edited adequately, resulting in excessive trial time spent viewing unimportant portions of the deposition;

(6) Sufficient use is not made of United States Magistrate Judges to try cases. Many more civil actions could be tried sooner if there were more frequent consent to a trial by magistrate judges.

It should be noted, however, that the attorney surveys do not reveal that the district and magistrate judges' opinions of

attorney practices are totally shared by attorneys themselves. In fact, the attorney surveys generally indicate the belief on the part of attorneys that cost and delay are more attributable to judicial inefficiencies or systemic problems than to attorney behavior in the District of Nebraska. For example, in response to Question No. 9 on the civil attorneys' survey (Have you encountered delays in civil cases that you consider unreasonable?), 211 attorneys replied "no," while 210 replied "yes." In response to Question No. 10 (Have those cases in which you experienced unreasonable delay been unnecessarily costly in your opinion?), 89 attorneys replied "no'" while 122 replied "yes." Yet in identifying the reasons for the perceived delay only 41% (83/202) of the attorneys identified the conduct of opposing counsel as a moderate or substantial contributing factor, and only 9.8% (19/192) identified personal or office practice inefficiencies as moderate or substantial contributing factors. However, 55% (108/198) of the attorneys identified judicial inefficiencies as moderately or substantially contributing to the delay, while 86% (173/202) identified lack of judicial resources as moderate or substantial contributing factors, and 82% (161/198) identified time expended by the court on the criminal docket as a moderate or substantial contributing factor to delay. Similarly, in identifying the causes of excessive costs in the cases in which excessive delay had been experienced, 53% (61/114) of the attorneys identified the conduct of counsel as a moderate or substantial contributing factor, and only 5% (6/112) identified personal or office practice

inefficiencies as a moderate or substantial contributing factor, while 50% (58/116) identified judicial inefficiencies, 72% (83/115) identified lack of adequate judicial resources, and 66% (72/109) identified time expended by the court on the criminal docket as moderate or substantial causes of excessive costs.[23]

To a certain extent, it is to be expected that the perspectives of attorneys and judges will differ about the causes of excessive delay and cost in civil litigation, with each group tending to view its own practices as efficient and the other group's as inefficient. Nevertheless, even the attorney surveys reveal a substantial percentage of attorneys (41%) who believe the tactics of opposing counsel are a moderate or substantial cause of delay in cases in which excessive delay has been experienced and a majority (53%) who believe that conduct of counsel moderately or substantially contributed to excessive costs in those cases. In this respect, the perspectives of the judges and the attorneys are in agreement.

More significantly, however, the tendency on the part of both judges and attorneys to attribute inefficiencies to the other group

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[23]Of the twenty-five litigants who responded to the Civil Litigant Survey, two whose cases were settled complained specifically about excessive attorneys' fees and three whose cases went to trial complained about attorneys' fees. However, not all of the complaints made necessarily reflected on the conduct of counsel. For example, one litigant whose case was tried stated that attorneys' fees were high because of excessive discovery, presumably by the opposing party, and one stated that the need for adequate preparation by counsel contributed to high attorneys' fees. One litigant whose case was tried even stated that the fees were "very low for a prominent lawyer to work hard"! See Civil Litigant Survey, Appendix C.

is dwarfed by the overwhelming agreement among judges and attorneys that lack of judicial resources and the impact of the criminal docket are the primary causes of excessive delay and cost. These factors are discussed further below in subsection e., (Systemic Problems).

d. Litigant Practices

Of the approximately 50% of attorneys who stated in the attorneys' survey that they had encountered unreasonable delays in civil cases, only 9% (18/199) stated that the conduct of clients was a moderate or substantial contributing factor to the unreasonable delay. Of this same group, only 14% (28/197) identified the conduct of insurers as a moderate or substantial contributing factor to the delay. Of the 58% of attorneys who stated that the cases in which they experienced unreasonable delay had also been unreasonably costly, only 11% (12/112) identified the conduct of clients as contributing moderately or substantially to the excessive cost, and only 18% (19/109) identified the conduct of insurers as moderately or substantially responsible. The Advisory Group's interviews with the district and magistrate judges did not reveal any litigant conduct that contributed significantly to unreasonable cost or delay.

e. Systemic Problems

It has been observed in section B.2.a., above, that the continued federal criminalization by Congress of matters that might be more efficiently handled by state courts is a major cause of cost and delay in federal civil cases. This problem, however, is

part of a larger difficulty. Congress continues to create substantive legislation that adds cases to the federal courts' civil dockets without adequately evaluating the impact on the courts or providing them with the resources to cope effectively with the increase. The other side of this same coin is that Congress has not undertaken a major revision of the subject-matter jurisdiction grants and related procedures of the federal courts since 1948. To be sure, Congress has made important changes in federal jurisdiction and procedure from time to time since 1948--the virtual elimination of three-judge court practice in 1976,[24] the raising of the jurisdictional amount in diversity cases to $50,000 in 1988,[25] and the recent amendments codifying the doctrine of supplemental jurisdiction[26] and revising the general venue statutes[27] are examples. Furthermore, Congress authorized an important study of federal jurisdiction and procedure that was completed by the Federal Courts Study Committee in 1990.[28] Nevertheless, the changes

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[24]In 1976, Congress repealed 28 U.S.C. § 2281 - 82 and enacted a more limited provision requiring three-judge courts only in suits challenging the apportionment of congressional districts or statewide legislative bodies. See 28 U.S.C. § 2284. See generally Hart & Wechsler's The Federal Courts and the Federal System 1334 (3d ed., P. Bator, P. Mishkin, D. Meltzer & D. Shapiro, Eds. 1988).

[25]See Judicial Improvements and Access to Justice Act of 1988, Pub. L. No. 100-702, § 201(a), 102 Stat. 4642, 4646, codified at 28 U.S.C. § 1332.

[26]See 28 U.S.C. § 1367.

[27]See 28 U.S.C. § 1391(a) & (b).

[28]See Report of the Federal Courts Study Committee (1990).

made have been piecemeal and, in some cases, defective.[29] A comprehensive reexamination of federal jurisdiction and practice, including an examination of the resources necessary for the federal courts to accomplish the work given to them, is long overdue.

In the examination of the state of the docket, it was reported that the District of Nebraska suffered from a vacancy of one district judge during the part of the period examined. When this vacancy was filled, the caseload per judge dropped dramatically. Currently, the district is still one district judge short, with the caseload of that district judge being handled partly by a senior judge. The delay in filling judicial vacancies is a significant contributing factor to the existence of cost and delay in the district. In addition, the delay has imposed substantial hardships on the senior district judge, who is sacrificing his retirement to prevent excessive caseload burdens on the rest of the judges.

In subsection c., (Attorney Practices), above, it was noted that both the judges and the attorneys in the District of Nebraska

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[29]In particular, the codification of the doctrine of supplemental jurisdiction in 28 U.S.C. § 1367 appears to have created more problems than it has solved. See, e.g., Freer, Compounding Confusion and Hampering Diversity: Life after Finley and the Supplemental Jurisdiction Statute, 40 Emory L.J. 445 (1991); Rowe, Burbank & Mengler, Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer, 40 Emory L.J. 943 (1991); Arthur & Freer, Grasping at Burnt Straws: The Disaster of the Supplemental Jurisdiction Statute, 40 Emory L.J. 963 (1991); Rowe, Burbank & Mengler, A Coda on Supplemental Jurisdiction, 40 Emory L.J. 993 (1991); Arthur & Freer, Close Enough for Government Work: What Happens When Congress Doesn't Do Its Job, 40 Emory L.J. 1007 (1991). In addition, the recent amendments to the general venue statutes in 28 U.S.C. § 1391(a)(3) were so defectively done that legislation was necessary to correct the statute. See Federal Courts Administration Act of 1992, § 504, 106 Stat. 4506 (1992), amending 28 U.S.C. § 1391(a)(3).

strongly agree that the lack of adequate judicial resources and the impact of the criminal docket are the most significant contributing factors to unreasonable cost and delay in civil litigation. In addition to the statistical information cited and discussed in that subsection, the need for additional judicial resources is confirmed by the narrative responses to certain questions in the attorneys' survey. Survey Question No. 18 queried what additional resources were needed if the attorney felt that lack of judicial resources is a cause of unreasonable cost or delay. One hundred twenty-four attorneys responded that additional judges were needed, fifteen responded that more magistrate judges were needed, and forty-two responded that more law clerks and other supporting staff were needed. Question No. 49 asked for suggestions about how to alleviate the impact of the criminal docket on the civil docket (assuming that the attorney believed that the criminal docket had an adverse impact on the civil docket). Forty-two attorneys responded, in substance, that federal criminal jurisdiction was too broad, with special concern about drug cases expressed in 14 of the narrative responses. In addition, twenty-two attorneys stated that more judges were needed, and 30 responded that separate criminal and civil dockets would be desirable, perhaps with the judges rotating in and out of the separate dockets.

In the examination of attorney practices that contribute to excessive cost and delay, it was noted that attorneys engage in unnecessary discovery. However, it should be noted also that under the current pattern of the Federal Rules of Civil Procedure,

unlimited discovery is permitted unless, upon application to the court, discovery is restricted by protective order. This pattern of unlimited discovery itself encourages abusive discovery by attorneys. Even the most ethical attorney will tend to engage in excessive discovery out of an abundance of caution in the attempt to represent his or her client competently and with zeal. Recently, the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has proposed numerous amendments to the Federal Rules of Civil Procedure that address the problem of unlimited discovery. These proposed amendments provide for certain automatic disclosure by the parties at the beginning of the litigation and limit discovery without leave of court thereafter.[30] Adoption of these or similar provisions for the limitation of discovery would seem to be essential to curb discovery abuses that are inevitable under the current system.

Responses to the attorneys' surveys indicated a number of other case management techniques that might be adopted to curb cost and delay in the District of Nebraska. Fifty-nine per cent (244/408) of the attorneys believed that requiring status conferences or hearings with the court on dispositive motions would have a substantial or moderate effect in expediting civil litigation. Sixty per cent (251/413) responded that permitting the filing of procedural nondispositive motions by letter, rather than

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[30]See Preliminary Draft of Proposed Amendments to the Federal Rules of Civil Procedure and the Federal Rules of Evidence, 137 F.R.D. 53 (1991).

formal motion and brief, would have a substantial or moderate beneficial effect. Sixty-five per cent (268/412) of the attorneys felt that requiring attendance of the parties and/or their insurers at court settlement conferences would have a substantial or moderate expediting effect. Seventy-six per cent (316/411) responded that increasing the availability of telephone conferences or hearings with the court would have a moderate or substantial beneficial effect. Sixty-four per cent (266/415) of the attorneys responded that requiring automatic disclosure of the identity of witnesses likely to have information which bears significantly upon claims, defenses, or damages would have a moderate or substantial beneficial effect, while sixty-four per cent (262/410) felt that automatic disclosure of documents relied upon in preparing pleadings or to be used in support of allegations or calculations of damages and fifty-five per cent (222/403) felt that automatic disclosure of insurance agreements would have such an effect. In addition, 62% (260/414) of the attorneys responded that it would moderately or substantially expedite litigation if the court would condition grants of broader discovery upon the shifting of costs in instances where the burden of responding to the broader discovery request appears to be disproportionate.

f. Alternative Dispute Resolution

In 1990, the Federal Courts Study Committee recommended that Congress broaden statutory authority for local rules on alternative dispute resolution and provide funds for experimentation with alternative dispute resolution. The Federal Courts Study Committee

also recommended that the Judicial Conference establish a committee to provide advice to the district courts on alternative dispute resolution.[31] The Advisory Group's survey of Nebraska federal practitioners revealed substantial opinion in favor of a number of alternative dispute resolution mechanisms to reduce delay and costs. A significant number of attorneys responded that mandatory, non-binding arbitration would be desirable, depending upon the amount in controversy in the action. Thirty-three per cent (134/403) indicated that such arbitration would have a moderate or substantial beneficial effect when the amount in controversy was less than $100,000; thirty-five per cent (129/367) indicated that such an effect would occur if the amount in controversy was less than $200,000; and twenty-seven per cent (99/365) believed that such an effect would occur if the amount in controversy was less than $1,000,000. Fifty-seven per cent of the attorneys (238/415) indicated a belief that providing court-sponsored mediation for some or all issues in dispute would have a moderate or substantial effect in expediting litigation.

III. RECOMMENDATIONS AND THEIR BASES

The Advisory Group's recommendations will be divided into three categories: (i) recommendations for changes that only Congress can make; (ii) recommendations for changes that must be made by institutions other than Congress or the United States District Court for the District of Nebraska; and (iii)

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[31] See Report of the Federal Courts Study Committee 81 - 87 (1990).

recommendations for changes that can be made by the district judges of the District of Nebraska..

A. RECOMMENDED CONGRESSIONAL ACTION

1. Additional District Judges, Magistrate Judges, Staff and Courtroom Space

As noted in section II, above, there is a clear consensus among the bar and bench that the problems of delay and cost in civil litigation will ultimately be solved only by additional personnel. The Advisory Group agrees with this consensus. Although the Advisory Group believes that the additional recommendations it makes below will, if implemented, have beneficial effects on the problems of delay and cost, those recommendations will be insufficient in themselves to solve the problems entirely. In fact, some of the Advisory Group's additional recommendations will be difficult to implement in the absence of additional judges.

The first step in providing additional judicial personnel is for Congress to make the "temporary" United States District Judge for the District of Nebraska a permanent judgeship.[32] Based on the Advisory Group's examination of the state of the docket, including the nature of the criminal docket, as well as the interviews conducted with the United States District and Magistrate Judges and the surveys of the attorneys in the district, the Advisory Group is convinced that permanent progress in eliminating cost and delay is not possible with only three permanent United States District

[32]See section I, text accompanying notes 3-4, above.

Judges. If at a future date the number of United States District Judges is reduced from four to three in Nebraska, unreasonable delay and cost will be the result. As indicated by the judicial workload profile discussed in section II of this report, four permanent judges are necessary to reduce the Nebraska medians from filing to disposition and issue to disposition to the level of the national medians.

The second step in providing additional judges is for the existing judicial vacancy at the district court level to be filled by the President and the Senate. As this report is being written, a candidate has been recommended by those in charge of the local selection process, but no action has yet been taken by the President or the Senate. However, it is equally important that the process be reformed so that in the future it does not take as long as it has taken in the past. By no means has all of the delay in filling district judgeships been the fault of the President or the Senate. Some of the delay is clearly attributable to local political processes. Nevertheless, there is some reason to believe that delay in the confirmation process contributes to the difficulty in filling vacancies. The Executive and Legislative branches should work with the involved local parties to eliminate excessive time lags in filling judicial vacancies.

The Advisory Group's third recommendation is that Congress authorize an additional United States Magistrate Judge for the District of Nebraska. The Advisory Group recommends below that the magistrate judges be utilized more extensively by the district

judges, particularly in the pretrial stages of the litigation. If this recommendation is to be implemented, it seems likely that an additional magistrate judge will be necessary in the district. In addition, comments to the Advisory Group from both the bench and the bar indicate that litigants should be encouraged to utilize the magistrate judges more for the trial of cases. However, if this were to come to pass, there would clearly be a need for an additional magistrate judge. Even if the magistrate judges do not play an enhanced role, however, comments on the attorney surveys indicate that the bar believes that there should be additional magistrates as well as additional district judges in order to alleviate problems of delay and cost in civil litigation.

The Advisory Group's fourth recommendation is conditional. The Advisory Group recommends that Congress consider authorizing a fifth permanent United States District Judge for the District of Nebraska, if the other systemic recommendations made by the Advisory Group prove to be impractical or impossible. As observed in the discussion of the Nebraska and national judicial workload profiles in section II of this report and earlier in this subsection, four permanent United States District Judges will merely reduce the Nebraska median workload profiles to the level of the national medians. However, reducing judicial workloads to the national median level may not appreciably reduce delay and expense in civil litigation in Nebraska. The continuing pressure exerted by the criminal docket, which is growing both in number of cases and complexity, may thwart all efforts to solve problems of cost

and delay in federal civil litigation in this district. Although the Advisory Group recommends below that Congress consider reducing the criminal jurisdiction of the federal courts, the Committee realizes that this option may be less feasible than the addition of additional judicial resources to deal with increasing criminal and civil caseloads. At the very least, Congress should review the state of the docket in Nebraska biennially after the existing judicial vacancy is filled to determine whether a fourth district judge has had an appreciable effect in alleviating the district's problems of cost and delay in civil litigation.

Finally, if additional judicial personnel are authorized in accord with the Advisory Group's recommendations, additional support staff will undoubtedly be necessary in the clerk's office in order to deal with the increased number of civil trials that will result. This will require congressional authorization.

2. Elimination of Unnecessary Federal Crimes, Evaluation of Speedy Trial Act and Sentencing Guidelines, and Evaluation of Impact of Substantive Legislation on the Federal Judiciary

Congress could greatly alleviate the docket pressures on the United States District Court for the District of Nebraska by eliminating certain crimes from federal jurisdiction that can be effectively handled by state courts and by not adding such cases to federal criminal jurisdiction in the future. Two categories of cases that should clearly be eliminated from federal criminal jurisdiction are "school zone" drug cases and "car-jacking" cases,

as discussed in section II, above. More broadly, however, Congress should undertake a review of the federal criminal code with the purpose of eliminating from that code all crimes that can be effectively handled by state courts. If this were accomplished, docket pressures exerted by the criminal caseload would be greatly alleviated, with the likely result that there would not be so great a need for additional judicial personnel. In addition, Congress should consider whether the Speedy Trial Act can be reformed in a way that will preserve criminal defendants' rights to a reasonably prompt disposition of their cases while alleviating the pressures placed on the civil docket by the need to give criminal trials priority.

A final recommendation pertaining to the criminal side of the docket concerns the sentencing guidelines promulgated by the United States Sentencing Commission. There is a consensus among the bench and the bar in the District of Nebraska that while these guidelines have not increased the number of trials, they have enormously increased the time spent by judges and court personnel on sentencing procedures, with corresponding delays in the disposition of that litigation. The goal of the sentencing guidelines is an admirable one. However, there is substantial doubt on the part of many members of the bench and the bar whether that goal is being achieved and, if it is, whether it is being achieved at too great a cost to other values. Congress should examine closely whether the sentencing guidelines are achieving their goals and should also examine the costs that the guidelines are imposing on the operation

of the federal courts.

As noted in section II, above, the problem of federal crimes are part of a broader pattern of substantive legislation by Congress without regard for the impact of the legislation on the federal judiciary. When enacting substantive legislation, Congress should consider the impact on the federal courts of that legislation and provide the courts with the necessary resources to deal with any increased impact. A thorough review of the jurisdiction and procedure of the federal courts would also be useful, as also suggested in section II, above.

B. RECOMMENDED ACTION BY NON-LEGISLATIVE DEPARTMENTS

As indicated in section II.B.2.e., above, it was noted that the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has proposed to the United States Supreme Court amendments to the Federal Rules of Civil Procedure concerning discovery. These proposed amendments provide for automatic disclosure by the parties of certain basic information at the beginning of litigation and limit discovery by leave of court thereafter. The Advisory Group supports these amendments and believes that they are an essential step in limiting the abuse of discovery by attorneys. In the absence of the kind of structural change represented by these amendments, the pressure on attorneys to engage in excessive discovery out of an abundance of caution or to prevent charges of malpractice is irresistible. The Court should adopt these amendments under the Rules Enabling Act so that they will become effective on December 1, 1993.

In the preceding subsection, it was recommended that Congress eliminate from federal criminal jurisdiction crimes that can be more effectively handled by state courts in order to reduce the enormous pressure exerted by the criminal docket on the civil docket. Congressional action to achieve this result seems preferable to action by the executive branch, because it is the fundamental role of Congress to make the kinds of policy decisions that are involved in determining what kinds of crimes shall be federal or state. However, to the extent that there is discretion in the United States Department of Justice or the United States Attorney for the District of Nebraska to decline to try federal crimes in federal court, those agencies should consider the effect on the federal judiciary in determining to prosecute those crimes in federal court. The Advisory Group recognizes that this discretion must be exercised by balancing a large number of law enforcement values. Nevertheless, to the extent possible, it should be employed with the burdens on the judiciary partly in mind. In addition, to the extent that federal and state prosecutors in Nebraska can cooperate in determining the kinds of cases that can best be prosecuted in federal and state court, the operation of both judicial systems will be enhanced.

C. RECOMMENDED ACTION BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

1. Split Criminal and Civil Dockets

Once a fourth United States District Judge has been confirmed, the Advisory Group recommends that the criminal and civil dockets

be split and one or two judges, as possible, be assigned to deal only with civil cases in Omaha. The Advisory Group does not envision that district judges be permanently assigned to the criminal or civil sides of the docket. Rather, the judges should rotate on a regular basis into and out of each side of the docket. The comments received by the Advisory Group from the survey of attorneys indicate that there is substantial support for this measure as a means of alleviating the pressure on the civil side of the docket. The Advisory Group concurs with this sentiment and believes that it will enable more civil cases to be tried or disposed of sooner than would otherwise be the case. The Advisory Group's examination of the problems of the civil docket indicates that the sooner civil cases are called for trial, the sooner they will settle. Moreover, having only one or two judges dealing with criminal matters during an appropriate period of rotation will allow those judges to gain greater expertise with the sentencing guidelines, with a corresponding gain in efficiency being the likely result.

2. The Trailing Docket and Trial Scheduling

The Advisory Group strongly believes that use of the trailing docket should be discontinued by all district judges, and that the method of trial scheduling used in Lincoln be employed in Omaha. This will produce greater certainty in trial dates and allow pretrial conferences to be held near to trial. Firmer trial dates should, in turn, produce a greater reluctance on the part of the judges to grant continuances, which will further reduce delay. The

Advisory Group believes that a reasonable goal should be to try civil actions within twelve to eighteen months of commencement. This goal should allow a flexible scheduling policy to be adopted for unusual cases, while still trying most civil cases within the twelve to eighteen month period. In addition, the Advisory Group recommends that all district judges employ either magistrate judges or experienced courtroom deputies to schedule trials within particular months. The expertise of these individuals in predicting which cases are likely to settle should produce advantages in the form of a more accurate determination of the number of trials that should be scheduled in any given week or month.

3. Prioritization of Motions

The Advisory Group strongly believes that all judges should prioritize their motions in order to prevent delay in the disposition of cases. Although the judges themselves are in a good position to determine what the priority of motions should be based on their own office practices, the Advisory Group recommends that all dispositive motions should be ruled on within sixty days after briefs have been submitted. In addition, a progression order should be entered within sixty days after appearance by the defendant(s). The letter proposing the case progression should state that the deadlines described in the progression order will be implemented unless the parties confer and arrive at different deadlines that are subsequently approved by the court, or unless a party objects, in which case the court will rule on the objection

after giving all parties an opportunity to be heard. Furthermore, the Advisory Group recommends for consideration by the judges, the following motion priority list:

a. Post trial motions--these motions should be decided first, because their determination will allow the immediate disposition of cases that have been pending for some time;

b. Preanswer, dispositive procedural motions--this group includes motions to dismiss for lack of subject matterjurisdiction, personal jurisdiction, venue, failure to join a party under Rule 19, etc. These motions should be decided early because they may result in the disposition of the action without the need to address any aspect of the merits of a case. In addition, while these motions can involve material outside the pleading and even the need for a hearing to determine jurisdictional facts, they go to the heart of the court's authority to hear a particular case;

c. Preanswer motions to dismiss on substantive legal grounds--for example, motions to dismiss for failure to state a claim upon which relief can be granted. These motions should be decided as early as possible in order to dispose of cases that deserve to be dismissed on the merits at the threshold of the action. This will prevent the parties from having to engage in wasted discovery in situations where there is no legal basis for the suit. In addition, it will prevent delay in getting started with discovery when the motion is without merit;

d. Motions for judgment on the pleadings--these, when not converted into motions for summary judgment by reliance on materials outside the pleadings, are also motions that raise only legal issues. They should be disposed of early for the same reasons given in the preceding paragraph.

e. Motions for summary judgment--while it is important to dispose of these motions as early as possible to prevent unnecessary trials, they are listed last because they involve reliance on material outside the pleadings and can arise at various stages of the litigation.

4. Miscellaneous Case Management Suggestions

In addition to the recommendations made above, the Advisory Group believes that the following case management practices should be adopted by the court:

a. A United States District Judge or United States Magistrate Judge should be involved in every case at an early settlement conference, in all cases in which the mediation process discussed below is not used. The Advisory Group feels this involvement may lead to early disposition of many cases through settlement that would otherwise drag on unnecessarily. If it is deemed unfeasible to have an early settlement conference in every case in which mediation is not invoked, the Advisory Group nevertheless recommends that the court attempt to identify the categories of cases that most often settle without trial and schedule early settlement conferences in those cases;

b. The court should require that motions in limine be filed on or before the date of the pretrial conference and should rule on such motions within twenty days after they are submitted to the court. The Advisory Group believes that early disposition of these motions encourages settlement by revealing to the attorneys for both sides the evidence that will be admitted at trial. In addition, by more specifically defining the evidence that will be admitted at trial, the ruling on the motion will aid in determining the length of the trial;

c. To the extent that lack of editing of videotape depositions consumes unnecessary trial time, the Advisory Group recommends that the court insist that videotape depositions be edited before trial to eliminate unnecessary testimony. This should be accomplished by identifying in the proposed pretrial order (see NELR 16.2(A)(2)) the portions of the videotape deposition that a party intends to offer, along with the objections of the opposing party. The trial judge should rule on objections at least three working days before trial. If three working days are given to counsel, counsel must edit the videotape deposition to eliminate unnecessary or stricken portions of the deposition. The court should not accept from counsel a proposed pretrial order that does not attempt to identify the portions of a videotape deposition that are necessary and those that are not;

d. The court should consider whether holding status

conferences or telephone hearings with the attorneys on dispositive motions will expedite the consideration or disposition of those motions;

e. The court should consider whether filing nondispositive motions by letter, rather than formal motion would expedite consideration and disposition of those motions;

f. The court should increase the use of telephone conferences and hearings generally as a means of expediting civil litigation;

g. The court should direct the clerk's office to establish a multiple defendant case assignment deck for criminal cases involving five or more defendants;

h. When a motion for summary judgment is denied because of the presence of a genuine issue for trial, the court should not expend the time to write a lengthy opinion explaining the reasons why the motion is being denied. The Advisory Group believes that a short opinion denying the motion and explaining that the court has found a genuine issue for trial is sufficient and will save the court substantial time in disposing of motions for summary judgment on this ground;

i. The court should develop uniform procedures for arraignments, sentencings, and changes of pleas in criminal cases in order to eliminate, as near as possible, disparities in the amount of time spent by different judges on these matters;

j. The court should develop a procedure for criminal

cases in which wiretaps are involved that is similar to the procedure described in subparagraph (c), above, for the pretrial editing of videotape depositions in civil cases. The Advisory Group believes that a uniform pretrial procedure for the editing of tapes and the handling of transcripts in these cases will streamline the criminal process considerably.

D. ALTERNATIVE DISPUTE RESOLUTION

As noted in section II.B.2.f., above, there was substantial support among federal practitioners in Nebraska for providing court-sponsored mediation for some or all issues in dispute in civil cases. The Advisory Group recommends that the local rules be amended in conformity with Fed. R. Civ. P. 16(a)(5) to provide for the resolution of civil disputes by means of a court annexed mediation procedure for disposition before trial of certain civil cases designated by the United States District Judge or Magistrate Judge. In each case in which mediation is deemed appropriate, the progression order in the case should state that the judge believes the case to be appropriate for mediation and will refer the case for mediation unless objection is made. The order should also request the parties to inform the judge whether discovery will be necessary before the mediation takes place and to state their opinions about when the reference should be made. The Advisory Group recommends the following local mediation rule for adoption by the court:

16.3 Court-Annexed Mediation.

(a) Purpose. It is the purpose of the court

through adoption and implementation of this local rule in conformity with Fed. R. Civ. P. 16(a)(5), to provide an alternative mechanism for the resolution of civil disputes by means of a court-annexed mediation procedure for disposition before trial of certain civil cases with resultant savings in time and expenses to the litigants and to the court without sacrificing the quality of justice to be rendered or the right of the litigants to trial in the event that a voluntary settlement satisfactory to the parties is not achieved through the mediation procedure.

(b) Designation of Civil Cases for Mediation. For those cases that the district judge or magistrate judge deems appropriate for mediation, the judge shall state in the progression order that the case is deemed appropriate for mediation and direct the parties to confer and agree upon a mediator from the list of qualified mediators kept in the clerks office pursuant to paragraph (e), below. The progression order shall also request the parties to confer to determine whether discovery will be necessary before referral to the mediator and to determine when the referral should be made. If the parties are unable to agree on a mediator, the judge shall designate a mediator, taking care to accommodate the parties' preferences where possible. The parties shall always have the right to object to a mediator selected by the

court for cause. After the parties have had an opportunity to respond to the progression order, the judge shall enter an order referring the case to the mediator selected by the parties or the court and setting forth the date by which the mediation conference shall have been held. The clerk shall forward a copy of the order to all counsel of record.

(c) Scheduling the Mediation Conference. Within twenty (20) days after the entry of the order of referral, counsel for the parties shall confer with the mediator to secure a mutually agreeable mediation conference date. The mediator shall determine the date, time and place of the mediation conference, taking into consideration the convenience of all persons attending the mediation conference. Unless otherwise excused by the mediator, all nongovernmental litigants, including but not limited to corporate or insurance representatives, with full authority to negotiate a settlement shall be present at the mediation conference. The United States and all state and local governmental parties shall be represented at the mediation conference, but are excused from the requirement that the attending representative have authority to negotiate a settlement. Upon motion of an attending party, the court may impose sanctions on any party who fails to attend the mediation conference without good cause.

(d) Mediation Procedure. At the mediation conference, counsel for the parties will be expected to present such information, orally or in writing, reasonably required for the mediator to understand the issues presented. The mediator may request counsel to furnish written materials or information in advance of the mediation session. During the mediation session, the mediator will assist the parties in identifying the issues in conflict, explore realistic solutions and conduct an orderly settlement negotiation. The mediator may conduct a joint session attended by all persons or may conduct separate meetings with each of the parties and their counsel.

(e) Mediators.

(1) The Chief Judge shall certify those persons who are eligible and qualified to serve as mediators under this rule and a list of certified mediators shall be maintained in the office of the clerk and shall be made available to counsel and the public upon request.

(2) An individual may be certified to serve as a mediator if he or she:

(i) is a member in good standing of the bar of the United States District Court for the District of Nebraska;

(ii) has been admitted to practice for at least ten (10) years; and

(iii) has completed a course of training for mediators of at least thirty (30) hours duration.

(3) Any person desiring to be certified as a mediator shall complete an application upon the form provided by the clerk.

(4) Every person appointed as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453.

(5) Any person designated as a mediator for a particular case may be disqualified for personal bias, interest or prejudice in the manner provided in 28 U.S.C. § 144.

(6) Mediators may be compensated at the rate approved by standing order of the district court, as amended from time to time. The cost of the mediator's services shall be borne equally by the parties to the mediation conference.

IV. CONCLUSION

One attorney, in response to a narrative question on the attorney survey, stated: "Filing a case in federal court is like throwing a suitcase off a ship. Both will float for a while, but then neither will ever be heard of again." This is, to be sure, clever hyperbole. However, if corrective action is not taken within a reasonable time, the existing problems will not only persist, but worsen. The recommendations in this report will, hopefully, stimulate this corrective action. Nevertheless, the Advisory Group would not wish this report to end without a precise

understanding of its views about the core problems of the federal judicial system in Nebraska.

The Advisory Group attempted as thorough an examination of our local attorney, litigant, and judicial practices as feasible, in order to identify every possible practice that might be contributing to unreasonable cost and delay at the local level. The Advisory Group hopes that the recommendations made in the previous section reflect this examination. Nevertheless, the Advisory Group believes that the local practices that contribute to cost and delay pale into insignificance when compared to the systemic problems faced by the federal judges and practitioners--problems over which they have little, if any, control. Remarks on the attorney survey, as well as attorney responses to non-narrative questions, indicate quite clearly a belief on the part of the practicing bar that the district and magistrate judges are of high quality and are working quite hard to fulfill their responsibilities to the bar and the public. Interviews with the judges themselves indicate a belief that the federal bar is competent and responsible. The Advisory Group concurs with these sentiments. The ultimate solutions to the problems of the civil docket in Nebraska are, therefore, largely within the control of others, particularly Congress. Unless Congress makes the fourth district judge for Nebraska permanent, provides for an additional magistrate judge and addresses the problems of the criminal docket, either by reducing federal criminal jurisdiction to manageable proportions or providing substantially greater judicial resources,

the problems of the civil docket in Nebraska will remain unsolved over the long term. Indeed, unless the Senate and the President promptly fill the existing judicial vacancy in Nebraska, the short term problems of the criminal and civil dockets will worsen. Unless the Supreme Court addresses through its rule making power the structure of federal discovery, federal civil litigation will continue to involve excessive cost and delay. Thus, while the judges and lawyers in the District of Nebraska may be able to take some modest steps to reduce cost and delay in civil litigation at the margin, the ultimate solution to these problems lies elsewhere.

Nevertheless, the Advisory Group would not wish to leave the impression that no significant action can be taken within the District of Nebraska to alleviate the problems of delay and cost. Each recommendation made by the Advisory Group in the preceding section, while representing only a marginal contribution to the solution of the problems of cost and delay in itself, may have a substantial cumulative effect when combined with the other reforms. These measures will therefore represent an important statement by the judges, lawyers, and litigants of our district about the willingness to reform local processes, rather than simply to request a commitment of greater resources from Washington.

The local reform measures recommended may, at first observation, seem weighted heavily toward reform of court procedures, rather than reform of attorney practices that lead to excessive cost and delay. However, the Advisory Group believes that any such conclusion would be inaccurate. Many of the

suggested procedural reforms will impact on attorney practices that result in cost and delay, and some reforms are directly aimed at attorney behavior that leads to unnecessary delay and cost. For example, the recommended mediation procedure and early judicial involvement in the settlement process are designed to address the reluctance of attorneys to settle cases at early stages; the goal of trying cases within twelve to eighteen months of commencement will require more of attorneys in terms of prompt completion of discovery and other pretrial matters; and the recommendation that judges not accept a proposed pretrial order that does not designate the unnecessary portions of a videotape deposition directly addresses an attorney practice that produces delay and increased cost.[33] In addition, many judicial procedures that produce unnecessary cost and delay may have been adopted by the judges out of a sense of concern for lawyers and litigants. For example, the Advisory Group observed in section II of the report that the liberal continuance policy seems to be based on the judges' views that civil actions are properly controlled by the lawyers and the

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[33]The Advisory Group discussed, but did not recommend, other measures that would directly impact on attorney practices that cause cost and delay. For example, the Advisory Group discussed the possibility of shifting costs to attorneys or parties who file nonfrivolous but unsuccessful pretrial motions. The Advisory Group did not recommend this as one of its reforms, either at the local level or at the congressional or Supreme Court rule making level, because it seemed too radical an inroad on the traditional American rule governing attorneys' fees. Such a proposal would probably have to be considered by Congress rather than the courts in any event, due to doubts about the propriety of such a matter for judicial rule making. As a proposal to Congress, the Advisory Group considered the proposal to be too controversial for a report of this narrow scope.

litigants, not the judges. By recommending reforms in judicial practices that impact on attorneys as well as on judges, it is the hope of the Advisory Group to communicate to all parties that the public interest is also at stake. The emphasis of the recommendations is, therefore, on improvement in the overall quality of justice for all participants in the judicial process, as well as the public whose taxes support the system of justice.

APPENDIX A

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APPENDIX B

Organization of Advisory Group

The Civil Justice Advisory Group for the District of Nebraska was appointed by Chief Judge Lyle E. Strom in the spring of 1991. The first action of the Advisory Group was to request a docket study by Clerk Norbert H. Ebel. The major portion of this docket study was completed by the summer of 1991. It provided the Advisory Group with the initial statistical data required to evaluate the condition of the civil and criminal dockets, trends in case filings and the demands being placed on court resources, and the impact of the trends in case filings and courts resources on cost and delay within the district. The docket study did not end in 1991, but continued through the entire period of the Advisory Group's operation, until its report was completed. Information derived from the docket study is presented in section II.A. of the Advisory Group's report. The entire docket study is included in Appendix D.

The Advisory Group also determined to interview all United States District Judges and United States Magistrate Judges within the district to determine their views on the extent of cost and delay within the district and possible methods of alleviating cost and delay. Interview questionnaires were prepared and forwarded to the judges in advance of the interviews. Copies of these questionnaires are included in Appendix D. The Advisory Group was divided into subcommittees of one or two members to conduct the interviews. The interviews were completed by June 19, 1992. Each interview was transcribed by a court reporter. After the transcriptions were completed, a table of contents and summary of each interview were prepared by the Advisory Group's reporter and mailed to each member of the Advisory Group. Copies of the full

transcripts were made available for scrutiny by the members of the Advisory Group at the clerk's office. Copies of the tables of contents and interview summaries are included in Appendix D. The full transcripts of the interviews with the judges are on file in the clerk's office.

Ms. Kathleen J. Ford of the Advisory Group interviewed the law clerks of each United States District Judge and United States Magistrate Judge to determine how motion practice was conducted by the judges. These interviews were completed in the fall of 1992. Ms. Ford reported her findings to the Advisory Group thereafter. A copy of her report is included in Appendix D.

The Advisory Group determined that a survey of attorneys who practice in federal court in the District of Nebraska would be wise. A survey questionnaire was prepared by the Civil Subcommittee and approved by the Advisory Group. A copy of this survey is included in Appendix C. Returns were received from a sample of 424 attorneys in the fall of 1992. The results of the survey were compiled by the clerk's office and reported to the Advisory Group. Information obtained from the survey was used to prepare section II of the Advisory Group's report. The report of the survey results is included in Appendix C. In addition, a separate survey of attorneys who engage in federal criminal practice was prepared and distributed. A copy of this survey is included in Appendix C. The results of the survey were used to prepare section II of this report and are reported in Appendix C.

The Advisory Group also determined that a selected survey of litigants would be useful in determining the extent and causes of cost and delay in the district. A litigant survey questionnaire

was prepared by the Civil Subcommittee and approved by the Advisory Group. A copy of this survey is included in Appendix C. Returns were received from 25 litigants in the sample selected by the Advisory Group. The results of the survey were compiled by the clerk's office and reported to the Advisory Group. Information obtained from the survey was used to prepare section II of the Advisory Group's report. The report of the survey results is included in Appendix C.

After all of the above data was collected, the Advisory Group met in January 1993 to evaluate the extent of cost and delay in the district and to make recommendations for its elimination. Thereafter, the Advisory Group's report and cost and delay reduction plan were finalized and submitted to Chief Judge Strom in March 1993.