REPORT

of the

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

APRIL 1993

REPORT

of the

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

APRIL 1993

Table of Contents

			Page
I.	THE REPORT		1
	A.	INTRODUCTION	1
	B.	SUMMARY OF RECOMMENDATIONS	2
	C.	GENERAL BACKGROUND CONCERNING THE EASTERN DISTRICT OF WASHINGTON	5
		1. Demography of the District Influencing Federal Litigation	5
		2. Organization and Staff of the Court	6
		3. Analysis of the Court's Docket	7
	D.	THE COMMITTEE'S INFORMATION GATHERING PROCESS	9
		1. The Survey of Lawyers, Litigants and Prisoner Petitioners	9
		2. The Interviews with Judicial Officers	13
		3. The Complex Case Panel	13
	E.	SUMMARY OF FINDINGS	14
		1. The Surveys of Lawyers, Litigants and Prisoner Petitioners	14
		2. Findings from Other Information Sources	21
II.	ADVISORY COMMITTEE FINDINGS AND RECOMMENDATIONS		25
	A.	AREA OF CASE MANAGEMENT AND DISCOVERY	25
	B.	AREA OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS	30
	C.	AREA OF PRO SE PRISONER LITIGATION	33
	D.	OTHER AREAS FOR STUDY	40

Appendices

APPENDIX A	MEMBERS, CIVIL JUSTICE REFORM ACT COMMITTEE, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON
APPENDIX B	SUMMARY OF SURVEYS OF CONSUMERS OF THE CIVIL JUSTICE SYSTEM DIVISION OF GOVERNMENTAL STUDIES AND SERVICES DEPARTMENT OF POLITICAL SCIENCE WASHINGTON STATE UNIVERSITY
APPENDIX C	GUIDANCE TO ADVISORY GROUPS AND SY92 STATISTICS SUPPLEMENT SEPTEMBER 1992 ADMINISTRATIVE OFFICE OF THE U.S. COURTS
APPENDIX D	MODEL QUESTIONNAIRE FOR JUDICIAL INTERVIEWS AND REPORTS OF JUDICIAL INTERVIEWS
APPENDIX E	REPORT ON THE MAJOR CASE PANEL ON WASHINGTON PUBLIC POWER SUPPLY SYSTEM VS. GENERAL ELECTRIC
APPENDIX F	CIVIL JUSTICE REFORM ACT, 28 U.S.C. §§ 471-482

1993 REPORT OF THE CIVIL JUSTICE ADVISORY COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

I. THE REPORT

A. INTRODUCTION

This report is submitted pursuant to the provisions of the Civil Justice Reform Act of 1990, 28 U.S.C. §§471-482 the (CJRA) to the judges of the United States District Court for the Eastern District of Washington. It is the product of the CJRA Advisory Committee for the Eastern District[1], appointed in 1991 by Chief Judge Justin A. Quackenbush.

The 17-member committee, whose constitution is dictated in part by statute[2], is comprised both of attorney members, several of whom have active federal litigation practices, and non-lawyer members who represent constituent groups commonly involved in or affected by federal court litigation.

The committee began its meetings in 1991, instituting a series of monthly meetings in September of that year. Statutorily, it is charged with the responsibility of conducting a careful inquiry into the current case conditions and trends in the district court regarding case cost and timeliness of resolution, and report to the court concerning the inquiry, with appropriate recommendations.

While the CJRA does not dictate the method of inquiry to be pursued regarding litigation cost and time-efficiency, it does direct the focus of the inquiry: the condition of the civil and criminal dockets; trends in case filings and demands on the court resources; and causes of cost and delay in civil ligation. The CJRA also directs the assessment of certain potential tools for litigation management: differential case treatment; more active judicial case management; formal judicial discovery control; voluntary exchange of discovery; meet and confer requirements in discovery disputes; and alternative dispute resolution programs.

The Advisory Committee focused its initial work on defining appropriate information-gathering tools regarding cost and delay in the disposition of litigation in this district, and identifying the appropriate sources of information. Also, the Eastern District has seen its case-processing functions significantly affected by two factors somewhat unique to the district--a large number of pro se habeas corpus and civil rights petitions from prisoners in state institutions in the district, and billion dollar contract litigation involving the nuclear-power orientated Washington Public Power Supply System. The committee early determined that those idiosyncratic influences on the court's work should be factored in the information gathering process.

---

[1]Committee membership is given at Appendix A.

[2]28 U.S.C. §478(b): "The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of the major categories of litigants in such court . . ."

In late 1991, the committee designated two Washington State University faculty members as consultants to assist in designing the committee's fact gathering, and, working with those consultants the committee prepared a set of surveys of "consumers" of court services: litigants, attorneys, prisoner petitioners, and, as representative of the amorphous public, persons having recently completed civil or criminal jury service. Those surveys were administered during May-October, 1992, and the resulting respondents' data analyzed, by Washington State faculty and staff, in late 1992. The surveys and the resulting data are discussed in summary form in parts D and E below, and in detail at Appendix B.

In addition to the surveys, the committee undertook a series of formal interviews with each of the Article III and magistrate judges of the district, performed by 2-3 committee members, and based upon a detailed questionnaire designed by the committee to insure uniform interview depth and scope. The committee also arranged a day-long presentation by the litigants and lawyers involved in the recently-settled WPPSS vs. General Electric case, a several hundred million dollar Eastern District breach of contract case to assist the committee's deliberations.

Based upon the information gathered from the surveys, the judicial interviews, and the major case panel presentation, the Committee has prepared the following report and a set of 15 specific recommendations to the court.

B. SUMMARY OF RECOMMENDATIONS

AREA OF CASE MANAGEMENT AND DISCOVERY

RECOMMENDATION NO. 1: ***Judicial officers are encouraged to continue to take a strong and active role in the general case management of each civil case assigned to them.***

RECOMMENDATION NO. 2: ***The court should insure that scheduling conferences are routinely held within 90 days of filing, and should consider at that conference the appropriateness of discovery management and should apprise the lawyers and the litigants of available ADR processes.***

RECOMMENDATION NO. 3: ***The court should consider, and impose on a case-by-case basis, discovery management techniques which streamline discovery so as to achieve cost and time efficiencies so long as those techniques do not intrude on basic interests of the parties in the litigation.***

AREA OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

RECOMMENDATION NO. 4: ***The court should actively encourage litigant and their attorneys to submit their disputes to ADR. The court should require counsel to submit a certificate stating that he or she has fully explained to the client the various ADR procedures available and the fact that use of such procedures may result in a substantial saving of time and money to the client. This certificate should be submitted to the court within thirty days following the first status conference. If a party is appearing pro se, a brochure outlining the ADR procedures should be made available***

to that party.

RECOMMENDATION NO. 5: *The court should, at the time of the pretrial conference or at any date prior thereto determined by the court, and after the parties have completed substantial discovery, schedule a conference for the purpose of discussing settlement prospects of the case, which the parties and counsel are required to attend. At this conference the court should again advise the parties directly of the advantages of ADR, and actively encourage them to submit to one of the ADR procedures available.*

RECOMMENDATION NO. 6: *The court should encourage parties and counsel to utilize summary jury trials to facilitate negotiated settlements, and establish mechanisms appropriate to making summary jury trials routinely available.*

RECOMMENDATION NO. 7: *The court should encourage experimentation with the use of early neutral evaluation and the mini trial as promising ADR mechanisms.*

RECOMMENDATION NO. 8: *The court should amend Local Rule 39.1 to implement these ADR proposals.*

RECOMMENDATION NO. 9: *The court should commit sufficient resources, most desirably in the form of dedicated staff, to the establishment, coordination, and administration of the court's ADR program.*

AREA OF PRO SE PRISONER LITIGATION

RECOMMENDATION NO. 10: *The court should request funding to implement a pilot program that would establish an ombudsman position to evaluate and mediate all prisoner rights petitions that are filed in the federal court. The ombudsman would meet directly with the prisoner and state officials after the complaint is filed to determine whether the case could be settled, diverted, or whether other issues could be resolved. The recommendations from the ombudsman would be forwarded to the judge or magistrate judge that has been assigned the case.*

RECOMMENDATION NO. 11: *The court should recommend to the judicial conference or to the administrative office of the court that they establish some kind of network or central clearing house method of consolidating information (from the various district courts) regarding developments in the area of prisoner litigation.*

RECOMMENDATION NO. 12: *The court should consider assigning more of the prisoner rights cases to the magistrate judges.*

RECOMMENDATION NO. 13: *The court should consider either updating the current federal courtroom located in the post office building in Walla Walla or building a joint-use courtroom at the Walla Walla County Courthouse. An adequate facility for trying prisoner cases would be used by the court and the ombudsman. Such a secure facility in Walla Walla would also minimize the additional transportation and security costs*

that are presently required.

RECOMMENDATION NO. 14: The court should continue to review the complaints that are filed in federal court to determine whether the grievance has been completely exhausted with the Department of Corrections.

RECOMMENDATION NO. 15: The court should encourage the Department of Corrections to convene a task force to evaluate the issue of prisoner grievances and litigation and to develop an implementation plan. Task force members might include representatives from a prisoner advocate group, the Legislature, the Washington State Attorney General's Office, the court and the Washington State Department of Corrections.

The court should recommend that the task force review several areas of concern regarding prisoner litigation such as:

A) Whether additional complaints could be resolved by the prisoner grievance procedures (disputes involving what are currently considered non-grievable issues);

B) Whether the Department of Corrections should hire independent professional grievance hearing examiners skilled and trained in mediation and adjudicatory techniques who report directly to either another department within state government or report at least to the state-wide grievance coordinator;

C) Evaluating access to lawyer services, how all inmates could receive access to legal material so inmates will be able to develop their cases more effectively in federal court, how access to legal materials is handled and how prisoners' legal materials are kept in their cells;

D) Considering methods of monitoring the retaliation concerns that the prisoners have raised with regard to filing of prisoner rights matters in federal court, and study retaliation issues and make appropriate recommendations regarding procedures or possible solutions to retaliation complaints;

E) Studying how interpreters may be provided to the inmates when there is a language problem with respect to completing the proper legal forms in presentation of their case to the federal court.

H.7

C. GENERAL BACKGROUND CONCERNING THE EASTERN DISTRICT OF WASHINGTON

1. Demography of the District Influencing Federal Litigation

a. Location

The State of Washington is divided into two federal judicial districts, the Western District, which includes the area covered by the western-most sixteen counties in the state, and the Eastern District, comprised of the area covering the twenty counties lying east of the Cascade Range. Those largely rural 20 counties together cover some 43,000 square miles.

b. Population

The aggregate population of the district is roughly 1,100,000, with about three-quarters of that number residing in three population centers--Yakima/Yakima County (approx. 200,000), Tri-Cities/Benton-Franklin Counties (approx. 150,000), and Spokane/Spokane County (approx. 375,000).[3] The balance of the population is fairly evenly spread over the district.

c. Minority Population

Four Native American reservations are located within the district, the Kalispell, Spokane, Colville and Yakima, the latter two covering large expanses of land in the northeastern and southwestern parts of the district. Tribal lands account for in excess of 5,000 square miles in the district, and the Native American population in the district, both on and off tribal lands, is roughly 25,000, or 2-1/2% of the district.

There is also a numerically significant Hispanic population in the district, residing mainly in Yakima, Benton and Franklin Counties, but spread throughout the western and central parts of the district. The total Hispanic population in the district is approximately 105,000, some 10% of the district's residents.

There are proportionately fewer African Americans residing in the district and current information places the number of these residents at 12,000, or 1.1% of the population.

d. Economy

The area covered by the district is primarily an agricultural one, with principal emphasis on dry-land grain and irrigated fruit and vegetable crops, and lesser emphasis on livestock. Historically, extractive industries, particularly timber and mining, have been significant, but are declining in relative importance. Manufacturing and fabrication also account for a significant part of the economies of the more urban areas, but those areas are also declining in consequence in favor of growing service economies, particularly in the health care area.

---

[3] 1990 Census data used throughout.

e. Federal Installations

The district is the location of a major Department of Energy nuclear reservation which contains both nuclear electrical generation plants and weapons production facilities. The reservation is the focus of considerable current concern regarding toxic waste cleanup. The district is also the location of two large military installations, an Army firing range in Yakima County and Fairchild Air Force Base near Spokane.

Federal holdings in the district include, in addition, several million acres in six National Forests and part of one National Park, in the forest lands that generally circle the Columbia Basin. These holdings also include most of the hydroelectric generation and transmission facilities of the Bonneville Power Administration, which provides the larger proportion of the electrical power to the primarily publicly-owned electricity distribution entities within the state.

f. Other Demographic Factors Bearing on Civil Litigation in this District

Washington's principal male penal institution is located within the district as are several smaller correctional facilities. The design capacity for the state prison at Walla Walla is 2011, but it currently houses 2225 inmates. The pre-release facility at Pine Lodge near Spokane has a current inmate population of 400. The State of Washington has two new penal institutions under construction in the district, located at Connell and near Spokane at Airway heights, which will have a combined inmate population of 1,714.

The district is also the site of 3 nuclear generating plants constructed under the auspices of the Washington Public Power Supply System, a public entity created by state law to build and operate electrical generating facilities. A bond default by WPPSS, and major construction and operations problems experienced by the entity with individual plants, have spawned litigation involving claims in the hundreds of millions of dollars in both state and federal courts.

2. Organization and Staff of the Court

The district is served by four active district court judges and two full-time magistrate judges. The four judges are assigned an equal random draw of civil and criminal cases throughout the district. Courtrooms are available in Spokane, Yakima, Richland and Walla Walla, Washington. One magistrate judge position is located in Spokane and the other in the Yakima courthouse. The magistrate judges take an equal share of random prisoner case assignments and provide on-site judicial support for criminal cases in those two locations in the district.

Each of the active judges has a staff support of two full-time law clerks, a court reporter, a courtroom deputy and a legal secretary. Magistrate judges are provided staff support which includes one full-time law clerk, a courtroom deputy and a legal secretary.

The Court Clerk's Office provides support to the public and the court in two locations in the district. In Spokane, the Clerk's Office is served by a staff of twenty-three. The office is organized into the following departments: intake department (responsible for case assignment, case openings and primary contact with the public, attorneys and litigants); criminal department;

civil department; administrative department (consisting of finance, automation, personnel and jury); and courtroom deputies. The Yakima Clerk's Office is served by four staff positions including a deputy in charge, courtroom support for Judge Alan A. McDonald, courtroom support for the magistrate judge and a deputy clerk assisting with docketing and jury responsibilities.

The Court has been active in installing automated docketing systems throughout the Clerk's Office and providing access to each of the judges' chambers and staff. These computer systems provide updated records and access to case information and data so that the Court can more actively monitor and manage the case flow. The automated docketing system, installed in 1989, proved to be extremely successful in the pilot operation and has now been installed throughout the federal courts in the country. Much of the data and several of the reports used by the Civil Justice Reform Act Advisory Group have been generated by the integrated case management system.

3. Analysis of Court's Docket

The Eastern District of Washington has experienced a significant decrease in civil case filings. In the past ten years, civil case filings have decreased approximately 38%.[4] In 1983 there were 1,016 civil cases filed. Civil filings peaked in 1987 at 1,145 and since have declined to 631 filings in 1992.[5] Social security, student loans and veteran's filings have accounted for the lion's share of this decrease.[6]

At the same time criminal case filings rose explosively from 187 in 1982 to 485 in 1992. The criminal caseload per judge in this district rose to twice the national average, fourth in the Ninth Circuit, and eighth in the country.

a. Makeup of the Civil Docket

Prisoner filings, which have remained somewhat consistent over the years,[7] constitute the largest single group of filings and represent 38% of the civil docket.[8] Contract and personal injury cases represent 11% and 7% of the civil docket, respectively.[9] Student loans and veterans benefits, civil rights and social security cases each represent approximately 5-6% of the civil filings.[10] All other types of cases represent under 5% of the civil docket.

b. Weighted Cases

Although total number of cases filed and their respective type is useful information, the

---

[4]Filing Chart (Appendix C-11).

[5]Id.

[6]Filings by Case Types (Appendix C-11).

[7]See note 4.

[8]Id.

[9]Id.

[10]Id.

burden of each case type must be analyzed in order to appreciate the judicial resources required to deal with each type of case. Civil rights and prisoner cases were 17% and 14%, respectively, of all weighted case filings for the statistical years 1990-92.[11] Contract and personal injury cases were 12% and 7% of the weighted case filings for the same time period.[12] These four areas, civil rights, prisoner, contract and personal injury, represent both the highest number of cases filed and the largest percentage of weighted cases (59%).

c. Case Age at Determination

Paralleling the decrease in the number of civil filings over the past ten years is the decrease in the average length of time from filing to disposition. While the national average for case life expectancy is twelve months,[13] the Eastern District's average life expectancy of a civil case for the statistical year 1991-92 is between eight and nine months dependent upon the type of case.[14] This reflects a decrease in the average case life expectancy of between six and nine months over the past ten years.[15] Approximately 9% of all civil cases terminated in the past three years were three years or older.[16] The types of cases representing the oldest cases are asbestos, RICO and securities-commodities.[17]

d. Method of Case Disposition

For the statistical years 1989-92, 35% of all cases were dismissed or settled before an answer was filed.[18] Another 22% of all cases were dismissed or settled after an answer was filed and before pretrial conference.[19] Approximately 8% of all cases were dismissed or settled after a pretrial conference but before trial, while 17% of all cases were terminated by judgment on a pretrial motion.[20] With the inclusion of default judgments, approximately 87% of all cases in the Eastern District are settled or dismissed (including consent judgments and voluntary dismissals) before trial.

e. Criminal Docket and Trends

The number of criminal filings has dramatically increased in the Eastern District over the past ten years to over five hundred in 1992.[21] Consequently, the number of criminal trials increased from approximately 60 in 1986 to over 80 in 1991.[22] Criminal trials now represent

---

[11]Distribution of Weighted Civil Case Filings (Appendix C-13).

[12]Id.

[13]Guidance to Advisory Groups Memo, Sept. 21, 1992.

[14]Life Expectancy and Indexed Average Chart (Appendix C-15).

[15]Id.

[16]Cases Terminated in SY90-92 (Appendix C-17).

[17]Id.

[18]Cases Terminated in SY89-91 (Appendix C-16).

[19]Id.

[20]Id.

[21]Criminal Defendant Filings Chart (Appendix C-18).

[22]Id.

almost 90% of all trials in the Eastern District.[23] The actual drain on judicial resources is greater than the numeric increase in the number of trials due to the number of defendants in each trial.[24]

The percentage of drug-related cases as a proportion of criminal caseload increased from less than 10% in 1983 to 50% in 1988, but has since declined to 30% in 1992.[25]

D. THE COMMITTEE'S INFORMATION GATHERING PROCESSES

1. The Surveys of Lawyers, Litigants, and Prisoner Petitioners

a. Introduction to Research on the Civil Justice System

In order to study costs and delay members of the Advisory Committee of the U.S. District Court, Eastern District of Washington, chose filed cases as the focus of their study. Actual civil litigation circumstances represented by specific cases were viewed as being more instructive than would be the case if hypothetical situations were posited that would lack the specificity and the real consequences to provide first-hand information on the performance of the civil justice system. Although the cases to be studied were randomly selected; two factors narrowed the selection. First, particular kinds of cases were selected; second, specific time periods from which the data were drawn were designated. The actual consumers of the civil justice system involved in these cases were the subjects of study.

The Advisory Committee contracted with the Division of Governmental Studies and Services (DGSS) of the Department of Political Science, Washington State University, to design, administer and analyze the series of surveys which provided the basis for the committee's recommendations. Professors Nicholas P. Lovrich and Charles H. Sheldon directed the research, and enjoyed the able assistance of John L. Anderson and Linda Maule for legal research and Ruth Self for the management of student assistants.

(1) Cases Selected

An equal number of cases from four different categories were selected -- torts, contracts, labor and "complex" -- on the assumption that the legal issues have an effect on how long a case takes and the costs incurred. The statistics on docket filings indicate that these types of cases have, likely, a greater impact on delay and costs in the Eastern District than other kinds of legal disputes. The empirical base for the study, then, was to have 30 cases from each of the four categories, amounting to a total of a 120 cases.

Also, because of their influence over the timely consideration of civil cases, 75 randomly selected prisoner petitioner cases were added to the study. The need for understanding the circumstances and experiences of this group of litigants is clear. Not only is a substantial

---

[23] Id.

[24] Guidance to Advisory Groups Memo, Sept. 21, 1992.

[25] Id.

portion of the Court's time consumed with prisoner cases, but the high rate of growth of the jail and prison population in Eastern Washington is certain to continue to the immediate future. With new jail and prison facilities coming on line in the Eastern District, it is likely that numerous civil rights filings will be generated in connection with the "shake down" process of establishing organizational routines.

(2) Time Framework Focus of Study

To provide an evidentiary base for data on actual experiences with delay, each of the five categories of cases reported above were further divided into three separate time periods: those terminated within 12 months, those lasting between 12 and 24 months, and those taking longer than 24 months to resolve. The assumption was that if significant differences arose among the three time periods, clear causes for delay could be identified. A random selection process was used until 10 cases in each time period were identified (25 for the prisoner petitioners) amounting to the targeted 30 cases in each case category and 75 for the prisoners.

(3) Consumers of the Civil Justice System

Although all taxpayers are the ultimate consumers of the civil justice system by enjoying (however indirectly) its benefits as well as suffering (however slight) its costs, the focus in the research was on those intimately involved in the civil justice system. It is they who more than likely could discern the causes of delay and unnecessary costs, and could suggest meaningful reforms if needed. The consumers of the civil justice system involved in these cases and within those times periods, and who served as voluntary subjects of the surveys, were: (1) the attorneys on both sides of those pre-selected cases; (2) the plaintiffs and the defendants involved in these cases; (3) the plaintiffs and defendants selected from a separate set of more recent cases; (4) randomly selected prisoner petitioners; and (5) jurors who recently sat on district trials (see Appendix B for the results of the juror surveys). Information was gathered from those consumers of the civil justice system by means of interviews and mail surveys.

(4) Research Framework

Table 1 reports the sampling frame for the study.

Table 1

CASE SAMPLING FRAME

Cases	Tort	Contract	Labor	Complex
Time Periods				
1-12 Months	10	10	10	10
12-24 Months	10	10	10	10
Over 24 Months	10	10	10	10
Totals	30	30	30	30

b. Summary of Survey Activity

Studying civil litigation in the Federal District Court of Eastern Washington from several perspectives entailed a series of five individual surveys, with each effort presenting its own unique problems. Most of the difficulties encountered were associated with obtaining current addresses for the people involved in civil litigation. Nonetheless, the response rates from individuals in our samples have ranged from "marginally acceptable" to "exceptional."

(1) Lawyer Survey

The first survey was sent to attorneys involved in the 120 pre-selected cases noted in Table 1. The names and addresses of the lawyers involved were drawn from the docket files of those cases. The two mailings of the attorney questionnaires resulted in an initial response rate of 56.4% (180 surveys returned from a sample of 290). After another month, the lawyers who had not as yet responded to the first two mailings were contacted by telephone and urged to participate in the study. These calls, along with personal contacts from members of the Advisory Committee, brought in a small stream of additional completed questionnaires.

Throughout the process modest adjustments were made to the survey procedures. It was largely the response problems with attorneys that prompted overall adjustments in the surveys. Several of the lawyers listed on the docket were only nominally involved in the selected cases, thereby decreasing the sample size form 362 to 319. Some lawyers were dropped from the sample because they were no longer available, having moving without a forwarding address, left the practice of law, retired or died. Consequently, a few of the original 120 cases had to be replaced because of the impossibility of contacting attorneys from both sides of the dispute. The data ultimately collected came from 205 returned questionnaires out of a total of 290 viable attorney names; this constitutes an exceptional response rate of 71%, providing an opportunity for careful statistical analysis.

(2) Litigant Survey

The most perplexing problem encountered related to obtaining viable litigant addresses. Because of incomplete data or information missing from docket files, the survey of litigants rested upon lawyers providing the names and addresses of knowledgeable persons to contact at corporate headquarters as well as the current addresses of individual litigants. Initially, only 57 litigant questionnaires were mailed. Over 100 contacts by phone were made with attorneys to urge them to submit their litigants' addresses, producing but a few results.

Because the litigant information requested from attorneys was too often not forthcoming, a careful review of docket files yielded a few more viable contacts involved in the original 120 cases. Often the docket files listed the name and county location only of the parties in the case, and a search of telephone books became necessary to obtain a mailing address. Despite the difficulties, 98 completed litigant questionnaires were gathered out of 205 possible persons, constituting a marginally acceptable 48% response rate.

(3) Second Litigant Survey

When outcomes on the first survey of litigants proved to be only partially successful, an additional effort to assess litigant experiences in the court was mounted. The parties involved in a random set of recently terminated cases (1989-91) were identified from the court docket files. Although those among this group of litigants were not parties in the original 120 cases, were not divided into the three times periods, nor selected because of the type of case involved, it was nonetheless felt that their views on costs and delay arising from recent experiences would enhance the consumer data substantially. With this second group of litigants, 92 questionnaires out of a total of 212 were received, a marginal response rate of 43%. However, when their views are combined with the original case-orientated litigant group, the total of 190 responses provides a reliable insight into how litigants assess the civil justice system.

(4) Petitioner Survey

A large portion of every federal district court's docket has been filled with civil rights petitions from prisoners in state and local correctional facilities. In an effort to understand how petitioners viewed their experiences with the court and how this affects other litigation, the names of 25 petitioners were randomly drawn from each of the three case time frames. Three waves of questionnaires were sent to petitioners through the mailing procedures in place at the jails and prisons, with a red ink "Legal Mail" designation prominently displayed on the envelopes. However deaths, transfers of petitioners out-of-state, and S.R.A. (Sentence Reform Act) released petitioners made it impossible to contact some individuals sampled.

Knowing that most petitioner cases originated in the state penitentiary at Walla Walla, efforts were mounted to personally administer questionnaires at the prison. Two visits to the penitentiary were made with some success. The combined mailings and Walla Walla interviews brought in 66 completed petitioner questionnaires from the mailing list of 92 viable names, a more than acceptable 72% response rate. The spread of the petitioner cases over the three time categories for case duration was evenly balanced.

2. The Interviews with Judicial Officers

In addition to the data-gathering process involved in the surveying of selected lawyers, litigants, and prisoner petitioners who have had civil litigation before the court -individuals who are "consumers" of court "services" - the Committee undertook a systematic inquiry of services, district Article III judges and magistrate judges. That inquiry took the form of a series of formal interviews with each of the district judicial officers, conducted by three person teams comprised of Committee members designated by the chairman. While the dynamic interaction attending such interviews lends a dimension of subjectivity to information gained, in-person exchanges were chosen in preference to written questionnaires because of the flexibility inherent in interviews.

The judicial interviews were conducted during summer and early fall, 1992, in Spokane and in Yakima, each interview scheduled well in advance for a period of several hours. Judges were furnished with a written list of some twelve subject areas charting in a general fashion the scope of the interview several days in advance. Committee members conducting the interview worked from a written list of those twelve subject areas divided into numerous subsections and subquestions, but of course had the latitude to explore other areas that might arise in the exchange.[26]

The interviews with the judges were conducted primarily by two of the designated three-person interview team, with the third member acting as team reporter (the interviews with the judges sitting primarily in Yakima were conducted there, for the court's convenience, by two Advisory Committee members residing there.) A report of each interview was then submitted to the full Committee for its review.[27]

3. The Complex Case Panel

The third formal information-gathering approach used by the Committee involved an examination of a particular piece of highly complex litigation recently concluded by settlement in the district. The case, Washington Public Power Supply System v. General Electric, was a highly complicated action by the Supply System to recover several hundred million dollars it claimed it was required to expend in retrofitting a boiling water reactor containment system because of the GE's breach of contract. The suit was commenced in the district in 1985, proceeded through extended discovery, and was the subject of a six month jury trial conducted, out of the district because district jurors would likely be financially affected ratepayers, in mid-1990. The trial jurors in that trial were unable to reach a verdict, and a mistrial was declared. The parties settled on the eve of a second trial scheduled for February, 1992.

The WPPSS v. GE case was selected by the Committee for a detailed analysis of a case management in the district because the Committee felt that such a major piece of litigation would present in bold relief both (1) the problems and successes in litigation management approaches

---

[26]The written list of subject areas furnished judges, and the questionnaire developed by the Committee for judge-interviewers, are attached as Appendix D-1.

[27]The reports are collected in Appendix D-2.

used in the district, particularly as they concerned questions of cost and delay; and (2) the problems, successes and possibilities of alternative dispute resolution processes, both court-annexed and private.

The approach selected by the Committee for study of the WPPSS v. GE case was an extended panel presentation by management representatives of the parties, the parties' house counsel, and their trial counsel. Panelists' presentations, which occupied a full afternoon of a day-long Committee meeting, were addressed to an assessment of the case management methods used in the litigation, along with a comparison between Eastern District approaches to case management and approaches used in other districts in similar litigation; and to formal and informal case settlement mechanisms that were or might have been made available by the court.[28]

E. SUMMARY OF FINDINGS

1. The Surveys of Lawyers, Litigants, and Prisoner Petitioners

a. Attorneys' Views of Delay and Cost in the Civil Justice System

The attorneys involved in the 120 cases chosen for study were a major source and starting point for understanding the concerns for cost and delay underlying the Civil Justice Reform Act of 1990.

(1) Attorney Perceptions of Delay

Attorneys involved in the selected cases were asked to express their views on the longevity of their cases. After being informed of the number of months their case took from filing to termination, each respondent was asked: "Did [your] case take longer than it should?" and "How many months should this case have taken from filing to disposition [under ideal circumstances where no willful delay was introduced by any party]? Only 18% of the attorneys reported that their case took longer than it should. Nonetheless, according to the attorneys the difference between the actual time from filing to termination and what time it should have taken under ideal circumstances was nearly 8 months. This suggests that an understanding of the "ideal circumstances" where no willful delay was involved could well provide clues to civil justice reform. In a sense, reform in the civil justice system has eight months of opportunity to improve delay problems.

(2) Judicial Case Management and Delay

In some circumstances prolonged delay can be attributed to judicial case management. Procedures in the general course of civil litigation which are under the control of the judge or the magistrate judge may account for some of the problems with civil justice litigation. Each attorney respondent was introduced to a series of "case management" questions with these

---

[28]The summary report on the WPPSS vs. GE major case panel presentation prepared by the Committee member designated by the chair is attached as Appendix E.

instructions:

> *"Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures. Some law suits are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motion practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.*

This question then followed: "How would you characterize the level of case management by the court in the case noted on the cover letter?" The level of case management by the judges and judge magistrates avoided the extremes. Nearly 80% of the attorneys thought the judges' case management efforts avoided the extremes of "intensive" and "minimal" management.

To gain some sense of the circumstances, if any, where case management practices may have contributed to the delay the respondents were asked: "If the case actually took longer than you believed reasonable, please indicate the degree to which each of the following factors was responsible for the delay." The responses are reported in Table 2.

Table 2

CASE MANAGEMENT FACTORS RESPONSIBLE FOR DELAY

Too much time allowed for discovery	38 (66.7%)
Dilatory actions by counsel	26 (44.1%)
Dilatory actions by litigants	24 (42.4%)
Complexity of case	23 (39.7%)
Backlog of cases on court's calendar	21 (35.6%)
Delay in entry of judgment	8 (14.3%)
Failure to complete limited discovery	8 (14.0%)
Delay in or failure to enter scheduling order	8 (14.0%)
Trial date not set at early state	8 (14.0%)
Personal or office inefficiencies	8 (14.0%)
Too little case management	7 (12.1%)
Excessive case management	7 (11.9%)
Court's failure to rule promptly on motions	7 (11.9%)
Unnecessary discovery	5 (8.8%)
Dilatory actions by insurance carriers	2 (3.4%)

Except for limits placed on discovery, most of the case management causes of delay were the responsibility of either the attorneys or litigants themselves, or due to the complexity of the case or resulted from calendar backlog. These are problems largely beyond the direct control of a presiding judge. Only 14% of the lawyer respondents were critical of those aspects of case management under the direct control of the judge (e.g., delay in entry of judgment or failure to set an early trial date).

(3) Case Complexity and Delay

Common sense suggests that the complexity of a case would add to delay. Respondents were asked if their case was difficult or complicated, and then asked "Did the complication add significantly to the delay?" Forty-four percent of the attorneys viewed their cases as being either "complicated" or "highly complicated", and yet only 29% felt the complications added significantly to delay.

(4) Attorneys' Perceptions of Costs

Costs of litigation can be divided into overall litigation costs and attorneys' fees. Each attorney was asked: "Apart from the causes, were the costs to your client much too high, slightly too high, about right, slightly too low, or much too low?" and "Were the attorneys' fees much too high, slightly too high, about right, slightly too low, or much too low." Only a few (18%) of the attorneys felt the costs to clients were high, and even fewer (12%) thought their fees were excessive.

The causes of high costs and fees, according to the comments of the attorneys, varied but tended to focus on problems with discovery and filing of frivolous or unwarranted cases. For example, attorneys regarded their costs high because of "extensive document review, appraisals and travel for discovery", "everyone remotely associated was deposed", "travel and number of depositions", and "travel required in discovery". Also some attorneys thought that many cases should not have been filed or unwarranted delaying tactics tactics extended the litigation. For example, "prosecuting of frivolous law suit", "weak case", "government trying to get blood from a turnip", and "plaintiff's counsel was uncooperative", "questionable tactics", or "other side blocked discovery". A few attorneys mentioned that the bifurcation of issues prevented the timely termination of the case.

Stricter enforcement of Rule 11 was mentioned on several surveys as a solution to problems of cost. Earlier settlement conferences and mediation, a modified English plan (fees and costs may or may not be granted to the prevailing party), "bold" rulings at summary judgment stage, firm trial date, and time limits on discovery were all mentioned more than once as solutions.

(5) Complexity and Costs

Although the complexity of the case seemed not to add significantly to case delay, it did contribute to added costs. Forty-four percent of the attorney respondents reported that complicated cases indeed added to costs.

(6) Factors Significantly Associated with Costs and Delays

A major objective of the study was, of course, to isolate factors which contribute to unnecessary delay and excessive costs. To that end the responses to several of the key questions were statistically associated with other views of the attorneys.

Labor cases were regarded frequently as taking too long, while complex cases (as defined

by the Federal Judicial Center) were viewed as not involving excessive delay. In those cases that took too long, the judges tended not to set early and firm trial dates, they tended to delay entering or failed to enter scheduling orders, and they failed to set a trial date at an early stage. Attorneys' fees were also often regarded as too high in those cases that took too long to resolve.

Attorneys in those cases in which the costs were regarded as excessive tended to feel that their fees were either much too high or slightly too high, that judges had not set early and firm trial dates, and that the delay resulting from unnecessary discovery contributed to cost overruns. The complicated cases (as identified by attorneys) were viewed as contributing to the high costs of litigation and to excessive delay. Tort cases tended to be the more common kind of case that attorneys felt involved high costs to their clients, while in contrast, labor and complex cases were viewed as entailing relatively lower costs to clients.

For the most part the attorney's general comments were favorable. For example, "this case was handled expeditiously," "if it ain't broke, don't fix it", "Eastern District does a fine job", "managed very well, perhaps the best in the state, state or federal," and "from the judge to the court support staff, they are fair and accommodating."

Nonetheless, suggestions for improvement concerning cost and delay were evident. It was often noted that an "early and firm trial date is the key to resolution". The California "fast track" system was recommended as a solution to delay. One lawyer cautioned that: "Time and costs will sky-rocket if the propsed rule regarding production of documents which 'bear significantly' on the case is adopted." "Early trial date, strict discovery schedule and early referral to mediation or arbitration should help." One respondent's comment was representative of many of the general views of the attorneys:

> What is needed is an early status conference followed by a trial setting approximately 12 months from filing. Discovery cut-offs are optional because in most instances, counsel deal with one another on a regular basis and have their own discovery understanding. We need to know what the court's desires and needs are with respect to motion practice so that timely motions can be filed. Ultimately, we need court sponsored alternative dispute resolution procedures, particularly mediation, so that relatively early disposition can be accomplished. Noramlly these cases [FELA] will not try. The vast majority of them settle... It is believed the court should continue to limit written discovery. Strict limitations on numbers of interrogatories and requests for production should be enforced.

b. Summary of Survey of Prisoner Petitioners

Although lay-persons do not ordinarily regard petitions by incarcerated criminals in state facilities as part of the federal justice system, since Congressional legislation permits civil rights complaints to be ultimately heard by district courts, this area of the civil docket has exploded. Petitioners are indeed consumers of the civil justice system, necessitating consideration.

Each petitioner was asked whether the final decision in his case was made by the judge (magistrate), by a jury, or terminated for other reasons. In turn, each was asked "in whose

favor" was the decision made? Only 13.1% of the cases went to trial, almost half (44.4%) felt that most issues were resolved adequately by the court without a trial, and the petitioners won almost as often as they lost their case.

The petitioner complaints tended to fit into four categories. First and foremost, the complaints involved rectal probes and strip searched (which were viewed as cruel and unusual punishments), rape, unreasonable search and seizure, or invasion of privacy. Second, a number of First Amendment complaints were filed. Prevention of religious practices, lack of access to law library, or confiscation of legal materials were examples. A third set of issues dealt with medical practices such as disregarding diet problems, withholding of medicines or misprescribing of drugs. A fourth grouping of complaints focused on retaliation from the staff or guards.

Petitioners were asked: "Would you be willing to accept resolution of your dispute by an independent hearing board made up of persons outside the prison set up to decide such cases?" Also, as a check on the feasibility of such a board the next question was: "If a decision by such an independent hearing board was not in your favor, would you still file your case in federal court?" The vast majority (90%) favored an independent review board, but 73% would still appeal their case to the courts should they lose. Two-thirds of the petitioners felt that their cases took too long to resolve. The petitioners laid the blame for delay on a number of factors, but were convinced (63%) that the government gained an advantage by the delay. According to the petitioner clients, the government and the court shared the responsibility for the delay in the petitioner cases. The court is blamed for not ruling promptly on motions and for setting a late trial date. The government, which means the State Attorney General's office, was felt to purposely delay resolution of the petition.

The prisoner petitioners were the most negative critics of the civil justice system. They intended to believe -- rightly or wrongly -- that the formal Department of Corrections system of grievance and complaint processing duly established for resolving inmate/staff disputes was at very best ineffective, and at worse a systematic enterprise for retaliation against those challenging prison authorities. Generally speaking, the prison petitioners view the court quite favorably. For most prisoner petitioners the court remains a trusted source of external authority, and they would like to see a process whereby the internal prison hearing process is more closely tied to the Court's operation and less under the control of the prison administration.

c. Summary of Results of Survey of Litigants

The two sets of litigants studied (Litigant 1 was the case-focuses set and Litigant 2 was the random sample of recently completed cases) were evaluated on the basis of five key questions: (1) Level of Case Management Employed; (2) Costs Incurred vs. Expectations; (3) Time Required to Resolve Dispute; (4) Satisfaction with Attorney Fees; and (5) Satisfaction with the court.

A large majority of both litigant groups viewed "case management" as "about right." Only 43% of Litigant 1 parties regarding the costs "about as expected or lower" while two-thirds in the Litigant 2 group agreed. Again, only 43% in Litigant 1 group but 55% of Litigant 2 parties thought the time to resolve the dispute was "about right" or less. From nearly two-thirds to three-fourths of both litigant groups were fairly satisfied with the attorneys' fees. Both groups

of litigants were overwhelmingly "satisfied" with the court in their cases.

Litigant 1 respondents involved in the four types of cases constituting the basis for the study varied in their responses to the questions of case management, costs, delay, satisfaction with fees and with the court. Contract labor and complex cases enjoyed "about right" levels of management while torts suffered with only a 47% positive rating. Costs were as expected or less with most labor cases, but only 29% of the litigants thought costs in contract cases were as expected. Delay problems were more evident in labor disputes and less a problem in contracts. A majority of the litigants involved in all four types of disputes had no complaints about attorneys' fees. Litigants were most satisfied with the court's handling of contract cases, and least satisfied with labor disputes. The data show there is a clear association between type of case and litigants' regard for the civil justice system.

The litigants in group 1 involved in each of the time periods evaluated their experiences with regard to case management, etc. as outlined above. It is clear that a very important influence upon litigant consumer evaluations of the civil justice system is the duration of litigation. On most categories, the longer the case took to resolve, the litigants became less satisfied. Only their views toward attorneys' fees failed to follow exactly the duration patterns set by the other categories.

As expected, losers are clearly inclined to provide a lower rating of major aspects of the civil justice system than are either winners or parties to a settlement. It is also clear that settlement parties are nearly as favorable toward the civil justice system as are winners. This finding provides some degree of support for efforts to build more ADR and/or early settlement conference efforts into case management processes as a means of improving civil justice system performance.

Defendants quite clearly react more favorably to the services they consumed in the civil justice system than do plaintiffs. In every aspect of assessment plaintiffs express significantly less positive feelings about the civil justice process than do defendants. The results noted are nearly identical for both the Litigant 1 Group and the Litigant 2 Group, indicating a "robust" finding. The common fear that it is "too easy to sue" and the courts and juries are too ready to accord awards to plaintiffs would seem rather out of place for the U.S. District Court for Eastern Washington.

d. The Analysis of Within Case Pairings of Litigants and Lawyers

Although the subjects of the study are varied and indeed view their experiences from difference perspectives, a focus upon those involved in a single case pulls those perspectives together. In a single case, the lawyers, plaintiffs and defendants, although coming at the dispute from different directions, are all subject to the same stimuli that generate their reactions. Consequently, the focus on the participants in the 43 cases out of the 120 in which data on the attorneys and litigants are complete provides the opportunity for a more careful measure of consumer reactions. The summary that follows is based on cases wherein a litigant's responses are compared to his or her attorney's views on the same issues in the same case.

The results of this case-by-case analysis suggest that the aggregate differences which appeared in the comparison of lawyer and litigant consumer survey responses reported above -- with lawyers being more positive on cost and delay aspects than litigant consumers -- were replicated at the case level. Within case-based pairings, the attorneys were inclined to think that cases did not take too long (9 attorneys vs. 25 clients thought the case took too long), the costs of cases was "about right" (10 attorneys vs. 22 clients though costs were higher than expected), and attorney fees were "about right" as well. Their respective clients, however, were more inclined than the lawyers to perceive delay and unexpected costs -- specially in cases that take longer than one year; that is particularly true of complex cases.

Negative responses from the litigants which did not coincide with their attorneys' view far exceeded positive management responses. For example, an attorney might have felt the case did not take "too long" while the client felt the case did take "too long". Or, according to the attorney, fees were "about right" but the client was "dissatisfied" with the fees. the contract cases recorded 8 negative client responses out of 27 opportunities for disagreement, a 30% negative rating. Labor cases experienced only 24% negative responses, torts 50%, and complex 47%. Obviously, complex cases and torts have the greatest potential for client dissatisfaction.

It should be noted that the short-term cases which were terminated within a year recorded a rate of 35% negative responses from the clients, the mid-term cases experienced a 49% negativity rate, and the long term cases (involving more than 24 months) recorded a 39% negative response rate. How long the case takes to resolve is not a serious problem vis-s-vis agreement on delay and costs between clients and attorneys.

Ultimately the analysis of the causes and recommended cures for cost and delay in the civil justice system must reconcile a number of client/attorney differences. For now, however, our attention is directed toward comparable survey responses which show high agreement between attorneys and their clients or those which show noteworthy differences.

e. Overall Summary

The results from the several surveys presented here sketch out a complex picture of consumer viewpoints. In general, however, it can be said that the "professional consumers" (attorneys) are rather favorable in their views regarding costs and delay problems, ascribing to the Court quite high marks in both areas. As for pro se litigators bringing cases from jail or prison, although they are the least favorable in their assessments of any group they too are inclined to be favorable to the Court, as compared to Department of Corrections dispute resolution processes. The "lay consumers" -- litigants in plaintiff and defendant roles -- are also inclined to be somewhat favorable to the Court with defendants being more satisfied with Court services than plaintiffs. From these several different surveys it seems apparent that the consumers of U.S. Federal District Court services are generally satisfied with the court's performance and hold the judges and staff of the court in rather high esteem. From the standpoint of the Eastern Washington district's civil justice consumers, the problems commonly ascribed to civil litigation in the federal courts are less pressing here than elsewhere in the country. Without doubt there is room for improvement in the civil justice system generally and in the U.S. District Court for Eastern Washington specifically; the customer survey results contain a number of implications for improvement, especially from the perspective of litigants

involved in complex or long lasting cases. The more effective and earlier resolution of prisoner petitioners, for example, would do much to permit the redirection of court resources to its remaining civil caseload. Of the customer-oriented surveys it can be said that they provide both a reaffirmation of the existing performance level of the court and some useful feedback on further efforts that might be made to improve the effectiveness of civil justice proceedings in U.S. District Court.

2. Findings from Other Information Sources

a. Formal Interviews with Article III Judges and Magistrate Judges

As an additional and focally important part of the information gathering process, members of the CJRA committee formally interviewed the Article III judges and magistrate judges for the Eastern District. The judges were specifically asked to share their views and recommendations on case management and discovery, alternative dispute resolution, and pro se prisoner litigation, as well as any other issues currently affecting excessive cost and delay in federal civil litigation. Their comments and recommendations are outlined below.

(1) Case Management and Discovery

(a) Active Case Management

Judicial officers shared the view that active case management by the trial judge assigned to the proceeding reduces excessive cost and delay. The current system of assigning the trial judge to a case at the initial filing allows that judge to more efficiently manage that case administratively while it is pending. It also allows for the judge to become well informed with the issues involved, to set realistic and firm deadlines, and to intelligently preside over the trial.

Methods used to achieve the case management levels desired varied among the judges. Several judges regularly use informal case management methods to reduce excessive cost and delay, such as telephone conference calls with counsel to settle any matters including discovery questions or evidence concerns. All were receptive to considering other management measures that would improve efficiency while protecting the quality of decision-making.

(b) Special Masters

Special masters are primarily used when the necessary discovery for a case is so broad and detailed that the trial judge can not monitor it in addition to his or her regular caseload. Appointing a special master to oversee such extensive discovery reduces excessive cost and delay as well as limiting possible discovery abuses. Since parties must pay for the services of the special master, judges limit the use of such positions to cases where the special master can be best utilized.

(c) Expert Witnesses

The current rules governing the use of expert witnesses are effective in reducing excessive cost and delay. Using an expert will always increase the costs of litigation, but the

local rules, combined with the fact that the hiring party must pay for all the expert's fees incurred during the litigation, are ordinarily effective in limiting excessive use of experts.

(d) Discovery Procedures and Abuses

Current discovery procedures are generally effective in limiting excessive cost and delay. Judges expressed a concern about placing limitations on discovery beyond those currently in place. Most expressed the opinion that there was limited abuse of the process, occurring primarily in very large cases involving many attorneys. Some judges expressed the opinion that this abuse was driven by the economics involved with large law firms. The appointment of special masters to more closely monitor the discovery has proved an effective measure thus far. Otherwise, the sanctions currently available in Civil Rules 11 and 37 were effective in limiting abuse.

(e) Status Conference

The status conference is a useful method of case management which limits excessive cost and delay. Holding a status conference early in the litigation provides the court with an opportunity to set a firm trial date, and then work backwards to set discovery cut off dates and schedule motion practice. The time spent by the attorneys and the court preparing for and participating in a status conference also helps ready the case for earlier settlement negotiations.

(2) Alternative Dispute Resolution

(a) Settlement Conferences

Each judge has a preferred method for handling settlement conferences. Some judges preside over their own, some allow the litigants to choose whom they wish to preside, and others believe the conferences should only be presided over by a magistrate. All agree, however, that the settlement conferences are effective in driving an earlier settlement. Holding such a conference requires the attorneys to assess their case's weaknesses as well as strengths, thereby enabling them to give their clients a complete view of the case's potential. Settlement conferences also allow the parties to assess the opposing side's case more clearly.

(b) Mediation

Mediation, although not currently extensively used in this district, does have great potential in reducing excessive cost and delay. Judges felt that attorneys, particularly less experienced attorneys, may not communicate all of the weaknesses in a case to their clients. A strong mediator can communicate such weaknesses and explain to the party the likely outcome, facilitating settlement negotiations.

Judges did express concerns with using volunteer mediators, believing that paid mediators were likely to be better trained and more experienced. The judges also believed that, since successful meditation requires a willingness by the parties to participate, mandatory mediation would not be successful.

(3) Pro Se Prisoner Litigation

The current method of disposing of prisoner petitions is burdensome and ineffective. All of the judges suggested the creation of an independent third party to handle such petitions, with the availability of judicial review. Possible solutions suggested include the creation of a separate state agency to hear such petitions, having a magistrate or special master hold hearings at the detention facility, or providing trained persons to assist the prisoners in completing the necessary documents and reviewing the documents prior to filing.

(4) Other Issues Raised by the Judicial Officers

(a) Pro Se Litigation

Pro Se litigation does cause delays because individuals are trying to prevail in a professional field in which they have no training and because of Ninth Circuit decisions that pro se litigants be allowed considerable leeway by the trial court during the proceedings. No judge expressed the opinion that pro se litigation was so problematic as to require rule revision.

(b) Criminal Filings

The number of criminal filings, particularly since criminal cases are driven by the speedy trial requirements, have a major effect on the civil docket. Judges must first handle the criminal cases, thereby delaying civil cases. However, since civil litigants are increasingly more willing to consent to the use of magistrates, the adverse effect on civil cases has been reduced.

(c) Federalization of Crimes and Other Matters

All judges expressed great concern at the current trend to federalize certain drug crimes and other matters previously left to the state courts. Because of harsher federal criminal sanctions and federal mandatory minimum terms associated with determinate sentencing, a substantial portion of criminal prosecutions previously pursued in state court are now filed in federal court. Several judges suggested that the United States Attorney should promulgate meaningful criteria to evaluate criminal matters being charged in federal as opposed to state court to make best use of all the resources.

(d) Mega Cases

The judges stated that mega cases, complex litigation involving a large number of litigants or issues or huge damages claims, are unusual proceedings and measures which might serve as appropriate to manage such litigation should not form the basis for changes in civil rules for the majority of cases.

b. Panel Presentation by Lawyers and Litigants of a Major and Complex Case

To gather the perspective of litigants and lawyers involved in "mega" cases prosecuted in the Eastern District, a panel comprised of key management personnel, members of the

litigation team, and corporate counsel for the litigants involved in Washington Public Power Supply System vs. General Electric, were interviewed by members of CJRA committee. The case, a $600 million plus breach of contract action was commenced in 1985, and settled in early 1992 after a jury trial produced a hung verdict. The panel, particularly the active litigators, made the following recommendations for reducing excessive cost and delay in such litigation:

1. Identify the complex case as soon as possible.

2. The trial judge should require frequent meetings with counsel. The panel suggested informal conferences would be more valuable than formal courtroom confrontations.

3. Early identification of the critical issues.

4. The establishment of a trial date early in the litigation.

5. Mediation or aggressive court supervised settlement discussions should be introduced at the earliest feasible stage.

6. The courts should treat unusual cases unusually as these cases "take on a life of their own" as the litigation proceeds.

II. ADVISORY COMMITTEE FINDINGS AND RECOMMENDATIONS

A. AREA OF CASE MANAGEMENT AND DISCOVERY

GENERAL

FINDING NO. 1: THE CIVIL CASELOAD IN THE EASTERN DISTRICT HAS RECENTLY DECREASED, BOTH IN ACTUAL NUMBERS AND AS A PERCENTAGE OF TOTAL CASELOAD. THE CURRENT COMPOSITION OF THAT CASELOAD, HOWEVER, AND THE LAWYER AND LITIGANT SURVEY RESULTS, INDICATE A CAREFUL ANALYSIS OF CIVIL CASE MANAGEMENT PRACTICES.

An analysis of the case docket of the Eastern District over the past decade shows the number of criminal filings have more than doubled since 1983--from just over 200 in Statistical Year (SY) 1983 to over 500 in SY 1992--while civil filings have decreased markedly in that same period. Because the decrease in civil filings is largely attributable to a very significant reduction in routine government collection cases, the civil docket workload has not significantly changed.

The district is near the top of all districts in the country in criminal caseload per judge. The pressure of satisfying the speedy trial demands of that extensive criminal caseload dictates a careful review of civil case management practices. That review is also crucial to insuring expedition, reasonable cost and careful decision making for civil litigants.

FINDING NO. 2: WITHIN THE PAST FOUR YEARS, EASTERN DISTRICT JUDGES HAVE SIGNIFICANTLY REDUCED THE BACKLOG OF PENDING CASES, PARTICULARLY CASES THAT WERE PENDING FOR OVER TWENTY-FOUR MONTHS.

With the addition of two new judges in 1990, Eastern District judges were able to make a concerted effort to resolve litigation that had been pending for lengthy periods of time. Docket data reflects that the average age of cases on closure was 15 months in 1989, 19 months in 1990, 12 months in 1991, and 10 months in 1992.[29] The number of cases resolved in those four years was, respectively, 1014, 995, 735 and 668.[30] Those figures indicate that the district case backlog, particularly of the older and more complicated cases, was substantially reduced. The data reflect a clear movement in the direction of more expeditious determination of complex civil cases.

FINDING NO. 3: GENERALLY, LAWYERS AND LITIGANTS IN THIS DISTRICT DO NOT BELIEVE THAT LITIGATION OF THEIR DISPUTES IS UNDULY COSTLY OR TIME-CONSUMING.

---

[29]Data submitted to the Committee February 22, 1993 by Sally Phillips, Systems Manager, Automation Division, Clerk's Office, U.S. District Court, Eastern District of Washington.

[30]Id.

The Committee undertook several careful information-gathering approaches to assessing cost and delay in civil litigation in this district--empirical data-gathering in the several surveys, individual assessments in the judicial interviews and complex case panel presentation, and anecdotal on the part of committee members. None of the data gathered reflect a serious problem in this district with either undue delay or excessive cost; indeed, the available data suggest that civil litigation is being managed more time-efficiently now than previously.

Accordingly, no radical changes in general case management or discovery management are offered in these recommendations.

FINDING NO. 4: THE KEY TO ACHIEVING COST AND TIME EFFICIENCIES IS AGGRESSIVE AND INDIVIDUALIZED CASE MANAGEMENT, PARTICULARLY BY ARTICLE III JUDGES.

The data gathered from all sources uniformly suggest a clear correlation between aggressive case management on the part of individual Article III judges and significant achievements in greater efficiencies in time and cost. The assignment of all cases on filing to individual judges, rather than a master docket system, allows individual judges to take responsibility for driving cases to resolution at the earliest appropriate time. The Committee sees as one of its principle roles the encouragement of active case management by judges and reidentification of the mechanisms that facilitate and encourage strong case management measures on the part of all judges.

RECOMMENDATION NO. 1: JUDICIAL OFFICERS ARE ENCOURAGED TO CONTINUE TO TAKE A STRONG AND ACTIVE ROLE IN THE GENERAL CASE MANAGEMENT OF EACH CIVIL CASE ASSIGNED TO THEM.

FINDING NO. 5: THE RULE 16 STATUS CONFERENCE IS CURRENTLY REGULARLY AND APPROPRIATELY USED TO DEVELOP AN EARLY CASE MANAGEMENT PLAN; THAT CONFERENCE COULD READILY BE EXPANDED TO COVER IMPORTANT ADDITIONAL CASE MANAGEMENT CONCERNS SUCH AS DISCOVERY LIMITATIONS AND ADR AVAILABILITY.

Under both federal and local court rules, an early court status conference with lawyers and litigants is required. Local Rule 16 provides that such a conference be held not later than 90 days after the action is commenced; the federal rule provides that a scheduling order be issued not later than 120 days after filing. The importance of such a conference--scheduling, and managing the various stages of the proceeding to follow--is minimized in cases where the claim is uncontested and a decision is rendered by default, and a local rule eliminating the status conference requirement in uncontested cases would appear appropriate.

By current local practice, lawyers are required to submit prior to the initial status conference a proposed scheduling order covering various aspects of case management, such as the scheduling of dispositive motions, setting of discovery cut-off dates, appointment of referees or masters, if appropriate, the setting of a date for filing a proposed pre-trial order, and the setting of a trial date. Additional matters appropriate for review at that initial scheduling conference would be the rescheduling of, or the imposition of limitations on, discovery discussed

in greater detail below, and distribution of materials on ADR procedures offered by or through the court to clients as well as counsel.

Current local practice thus satisfies part of the plan content requirement of the Civil Justice Reform Act, specifically 28 U.S.C. §473(a)(2) regarding early and ongoing control of the pretrial process by a judicial officer. The recommendations regarding discovery management--phasing discovery, limiting it where appropriate--meet the requirement of 28 U.S.C. §473(c)(3) regarding management of discovery. Local practice also requires lawyers to present a management plan at the scheduling conference, and to be authorized to act on their client's behalf, satisfying 28 U.S.C. §473(b)(1) and (2).

While scheduling conferences are currently widely used in this district early in litigation, there are occasions when the conferences are not set within the 90 day period. Lawyers will commonly not press to set such conferences for their own reasons, and the court should insure that they are held within the 3-month time frame routinely.

RECOMMENDATION NO. 2: THE COURT SHOULD INSURE THAT SCHEDULING CONFERENCES ARE ROUTINELY HELD WITHIN 90 DAYS OF FILING, AND SHOULD CONSIDER AT THAT CONFERENCE THE APPROPRIATENESS OF DISCOVERY MANAGEMENT AND SHOULD APPRISE THE LAWYERS AND THE LITIGANTS OF AVAILABLE ADR PROCESSES.

FINDING NO. 6: NEITHER A DIFFERENTIAL CASE MANAGEMENT PLAN NOR A SPECIAL TRACKING SYSTEM FOR MANAGING AND MONITORING COMPLEX CASES IS AN APPROPRIATE CASE MANAGEMENT TOOL IN THIS DISTRICT.

Committee members discussed at considerable lengths the advantages and disadvantages of differential case management approaches, tracking systems, and selection of particular cases for special complex case treatment. A substantial part of one committee meeting involved a presentation by a Washington state court administrator of a state court system using an elaborate tracking approach with differential management aspects, and one entire meeting was devoted to exploring the unique demands of the "mega case". The committee concluded that, in part because the district already employs an individual case assignment approach, allowing an individual judge complete control over management of that case, because of the mix of civil cases and the caseload level, and because of the district's positive experiences with very major and complex cases, neither a differential case management system nor a separate tracking approach for complex cases would be useful or appropriate.

DISCOVERY

FINDING NO. 7: BECAUSE THE SUPREME COURT IS CONSIDERING A PROPOSED RULE PROVIDING FOR MANDATORY EXCHANGE OF INFORMATION BETWEEN LITIGANTS, A LOCAL RULE ON VOLUNTARY OR COOPERATIVE DISCOVERY WOULD BE PREMATURE.

The U.S. Supreme Court currently has before it for consideration this term, a recommendation of the Judicial Conference Advisory Committee Civil Rules amending the civil discovery rules so as to impose a mandatory disclosure obligation on the parties regarding certain basic case information. The section of the CJRA suggesting the consideration in each district's plan of a voluntary exchange of information rule has therefore effectively been pre-empted by subsequent events, and the Committee determined not to consider the matter further. Should the Court not promulgate such an amendment to the discovery rules, this Committee, which has a continuing advisory role, will revisit this question.

FINDING NO. 8: DISCOVERY IS NOT CURRENTLY A SIGNIFICANT CAUSE OF DELAY OR EXCESSIVE COST ON ANY GENERAL BASIS IN THE DISTRICT, IN PART BECAUSE OF ACTIVE DISCOVERY MANAGEMENT APPROACHES BY JUDGES.

Anecdotal evidence exists of discovery abuses in some litigation in this district, and survey data as well as judicial interviews confirm the occasional occurrence of such abuses. One judge attributed such instances to economics, i.e., lawyers' incentives to increase billable hours. Indeed, the attorney survey results identified "too much time allowed for discovery" as the case management factor most commonly responsible for delay. Survey information, judicial interviews, and panel observations by the WPPSS participants all indicated, however, that such abuses are relatively infrequent and can be and commonly are corrected by activist judges who closely monitor and manage civil case discovery. Shenanigans and bickering are minimized when courts manage discovery in a firm, predictable fashion. Accordingly, the district's cost and delay reduction plan should include measures calculated to encourage judges to give due weight to the importance of giving prompt attention and firm guidance to the discovery issues in pending cases. Judges should be mindful that 90% or more of the cases on their docket will never be tried, that a prompt and inexpensive resolution of these cases (the vast majority) will be promoted by firm control of discovery and predictable application of the discovery rules (including existing provisions for sanctions, where necessary to shift costs).

The Committee noted a certain conflict between the rule requiring that counsel "meet and confer" to resolve discovery disputes, and the proposition that the court should be closely involved in discovery management. While it is important that counsel communicate the grounds and sources of the differences that give rise to discovery disputes, and attempt to resolve them, an awareness on counsel's part that the court will quickly intervene and resolve those disputes will be the factor driving counsel discussions in a productive direction. Placing the emphasis on active court management of discovery, the Committee felt, is a precondition for the effectiveness of the "meet and confer" rules.

FINDING NO 9: EVEN THOUGH DISCOVERY DOES NOT CURRENTLY APPEAR TO BE A GENERAL FACTOR CAUSING EXCESSIVE COST OR DELAY, CERTAIN ADDITIONAL TECHNIQUES TO STREAMLINE AND FACILITATE DISCOVERY COULD REDUCE CURRENT TIME AND COST INEFFICIENCIES SURROUNDING DISCOVERY.

The Committee recommends against the establishment of any set of particular discovery management rules according to any rigid categorization of cases. Nonetheless, a number of

discovery management techniques exist which the court should consider on a case-by-case basis. Several of the techniques are suggested by the CJRA itself, such as limiting discovery volume [28 U.S.C. §473(a)(3)] or dividing discovery into phases (Id.). Other approaches--early exchange of witness lists and summaries of witness testimony--were proposed by members of the WPPSS panel. Still others, such as a limitation on the number of interrogatories, are already used in the district. The following is a non-exhaustive list of discovery management techniques any one or more of which a court might impose in an appropriate case:

a. Discovery limitations:

Limit number of interrogatories, number of requests for production, and requests for admission of fact, that can be propounded in each set of written discovery

Limit the number of sets of written discovery

Limit the number of depositions

Limit the length of depositions

b. Sequenced discovery (so-called "phased" or "staged" discovery):

Schedule, and set time limits for written discovery, followed by scheduled deposition discovery

Sequence discovery by claims/issues, e.g. liability, then damages; plaintiff's first claim and defendant's associated defenses, then second claims/defenses

Sequence discovery by proceeding with fact discovery first, then conducting expert discovery

Sequence discovery by party, beginning with plaintiff, then moving to defendant

c. Focused discovery (variation on b.):

Focus discovery, in time sequence, in a manner that leads to the narrowing of legitimate factual disputes between parties

Impose limitations on the scope of discovery appropriate to the nature of the case

d. Time limits on discovery:

Schedule and set cut-off date for written discovery

Schedule and set cut-off date for conduct of depositions

Schedule and set cut-off date for disclosure of expert witnesses

e. Limitations on expert witness evidence:

Limit number of expert witnesses

Provide for submission of expert testimony in writing

Provide for submission of expert testimony in writing in summary form

f. Assess disparate discovery burdens in cases of litigants of manifestly unequal resources.

RECOMMENDATION NO. 3: THE COURT SHOULD CONSIDER, AND IMPOSE ON A CASE-BY-CASE BASIS, DISCOVERY MANAGEMENT TECHNIQUES WHICH STREAMLINE DISCOVERY SO AS TO ACHIEVE COST AND TIME EFFICIENCIES SO LONG AS THOSE TECHNIQUES DO NOT INTRUDE ON BASIC INTERESTS OF THE PARTIES IN THE LITIGATION.

B. AREA OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS

FINDING NO. 10: THIS DISTRICT PRESENTLY HAS AN ADR RULE (LOCAL RULE 39.1) WHICH AFFORDS COUNSEL AND LITIGANTS ADR MECHANISMS, BUT THE RULE IS NOT BEING ADEQUATELY USED.

Local Rule 39.1 currently provides for a system of court annexed ADR procedures including settlement conference, mediation, special master and arbitration. The rule also provides that the judges of the district establish and maintain a register of minimally qualified attorneys to serve as mediators, special masters and arbitrators without compensation. The courts have been reluctant to encourage mediation, arbitration or other ADR procedures under this rule because it requires attorneys to serve in a substantial manner in civil litigation without compensation when the parties involved are frequently able to pay. Local Rule 39.1 should be amended in order that more extensive use be made of ADR procedures. According to the attorneys' responses to the survey, only 12% of their cases were referred to ADR.

FINDING NO. 11: ADR PROCEDURES, PARTICULARLY MEDIATION AND ARBITRATION, ARE MOST EFFECTIVE WHEN COMPENSATED MEDIATORS OR ARBITRATORS ARE USED.

The abilities associated with the successful mediator or arbitrator are a product of extensive and well designed training and certain interpersonal skills. For the past two decades, the process has been the subject of careful academic and professional study and a cadre of highly skilled mediators and arbitrators is coming into existence. The professional mediator or arbitrator by definition is not a volunteer and, while volunteer attorneys may occasionally possess some of the skills required, a program relying on volunteer practitioners necessarily has

shortcomings. A program that requires the mediator or arbitrator to be paid by the parties, if they are able, will result in a higher quality and more effective ADR process. If one or more of the parties is able to demonstrate to the court that they are unable to pay the mediator or arbitrator, the ADR services will be provided from the panel of qualified mediators or arbitrators on a pro bono basis to that party or parties.

RECOMMENDATION NO. 4: THE COURT SHOULD ACTIVELY ENCOURAGE LITIGANTS AND THEIR ATTORNEYS TO SUBMIT THEIR DISPUTES TO ADR. THE COURT SHOULD REQUIRE COUNSEL TO SUBMIT A CERTIFICATE STATING THAT HE OR SHE HAS FULLY EXPLAINED TO THE CLIENT THE VARIOUS ADR PROCEDURES AVAILABLE AND THE FACT THAT USE OF SUCH PROCEDURES MAY RESULT IN A SUBSTANTIAL SAVING OF TIME AND MONEY TO THE CLIENT. THIS CERTIFICATE SHOULD BE SUBMITTED TO THE COURT WITHIN THIRTY DAYS FOLLOWING THE FIRST STATUS CONFERENCE. IF A PARTY IS APPEARING PRO SE, A BROCHURE OUTLINING THE ADR PROCEDURES SHOULD BE MADE AVAILABLE TO THAT PARTY.

RECOMMENDATION NO. 5: THE COURT SHOULD, AT THE TIME OF THE PRETRIAL CONFERENCE OR AT ANY DATE PRIOR THERETO DETERMINED BY THE COURT, AND AFTER THE PARTIES HAVE COMPLETED SUBSTANTIAL DISCOVERY, SCHEDULE A CONFERENCE FOR THE PURPOSE OF DISCUSSING SETTLEMENT PROSPECTS OF THE CASE, WHICH THE PARTIES AND COUNSEL ARE REQUIRED TO ATTEND. AT THIS CONFERENCE THE COURT SHOULD AGAIN ADVISE THE PARTIES DIRECTLY OF THE ADVANTAGES OF ADR, AND ACTIVELY ENCOURAGE THEM TO SUBMIT TO ONE OF THE ADR PROCEDURES AVAILABLE.

FINDING NO. 12: THE SUMMARY JURY TRIAL IS AN EFFECTIVE ADR MECHANISM WITH WHICH THIS COURT HAS HAD FAVORABLE EXPERIENCE.

The summary jury trial is an ADR process that involves the parties presenting their case, in the form of summarizations of evidence, to a jury drawn from the regular jury source list. At the conclusion of the presentation of evidence, the jurors deliberate and reach an advisory verdict. The degree of formality of the process is determined by the parties and the court, with juror voir dire, exercise of challenges, giving of opening and closing statements, and the elaborateness of the court's instruction to the jury all subject to tailoring to the particular setting. The purpose of the summary jury trial is, as its name suggests, to condense the presentation but allow the jury sufficient grasp of the factual and legal issues that its advisory verdict is meaningful to the parties.

This district has utilized the summary jury trial approach successfully on at least one occasion and its broader use would likely aid in encouraging a larger number of settlements.

RECOMMENDATION NO. 6: THE COURT SHOULD ENCOURAGE PARTIES AND COUNSEL TO UTILIZE SUMMARY JURY TRIALS TO FACILITATE NEGOTIATED

SETTLEMENTS, AND ESTABLISH MECHANISMS APPROPRIATE TO MAKING SUMMARY JURY TRIALS ROUTINELY AVAILABLE.

FINDING NO. 13: EARLY NEUTRAL EVALUATION AND THE MINI TRIAL ARE TWO ADR PROCEDURES THAT HAVE NOT BEEN USED EXTENSIVELY IN THIS DISTRICT, BUT HAVE BEEN SUCCESSFULLY EMPLOYED ELSEWHERE.

Early Neutral Evaluation is an ADR approach which requires that counsel and the litigants have a formal conference early in the litigation with a court-designated neutral person, usually an attorney, who has substantial expertise in the areas of law implicated in the suit. The neutral evaluator then provides each counsel, separately and commonly confidentially, with an evaluation of the ranges and probabilities of likely outcomes, enhancing the likelihood of an early informed settlement. The approach is specifically mentioned in the CJRA[31], and is currently the study of extended experimentation in the Northern District of California.

The mini trial is a summary trial, like the summary jury trial discussed above, with the principal difference that the mechanism is largely private. In the usual mini-trial format, a summary presentation of the evidence is made to a panel of private judges, comprised of a representative of each of the parties, and an additional neutral judge selected by those representatives. The panel, as with the jury in a summary jury trial, renders an advisory decision, which the parties can accept or reject. The primary benefit of the mini trial is usually seen as the participation of a party-representative on the panel of judges, and the different perspective on the case that such a context encourages is often effective in driving settlement.

RECOMMENDATION NO. 7: THE COURT SHOULD ENCOURAGE EXPERIMENTATION WITH THE USE OF EARLY NEUTRAL EVALUATION AND THE MINI TRIAL AS PROMISING ADR MECHANISMS.

FINDING NO. 14: THE DESIGN AND ADMINISTRATION OF AN EFFECTIVE ADR PROGRAM IN THIS DISTRICT WILL REQUIRE THE COMMITMENT OF ADEQUATE RESOURCES, PARTICULARLY STAFF RESOURCES.

The creation and administration of an effective ADR program will involve a number of staff intensive measures: identification of a various ADR techniques to be employed; preparation of brochures and other explanatory materials explaining the various processes; identifying the individuals who will be offering the professional ADR services; informing counsel and parties of the available ADR processes; handling scheduling and the like. The skills involved in managing these and numerous associated undertakings are not so much those of the skilled ADR practitioner as those of an administrator. With management by such an individual, an extensive ADR program in this district could be both fruitful and ultimately cost effective. In the absence of such a staff person, however, an ADR program would likely flounder.

---

[31] 28 U.S.C §473(b)(4).

RECOMMENDATION NO. 8: THE COURT SHOULD AMEND LOCAL RULE 39.1 TO IMPLEMENT THESE ADR PROPOSALS.

RECOMMENDATION NO. 9: THE COURT SHOULD COMMIT SUFFICIENT RESOURCES, MOST DESIRABLY IN THE FORM OF DEDICATED STAFF, TO THE ESTABLISHMENT, COORDINATION, AND ADMINISTRATION OF THE COURT'S ADR PROGRAM.

C. AREA OF PRO SE PETITIONER LITIGATION

GENERALLY

Federal courts are often the final avenue of redress for prisoners regarding habeas corpus relief and for violations of their civil rights. The purpose of this report is to devise and recommend procedures to resolve prisoner petitions and complaints more efficiently for the prisoner, prison authorities and for the federal courts. It is not our purpose to place additional barriers between the federal court and its access by prison inmates. Our goal is to conserve the resources of all of the parties concerned, not to eliminate the federal court as a forum for resolving prisoner disputes.

FINDING NO. 15: PRISONER LITIGATION HAS A SIGNIFICANT EFFECT ON THE EASTERN DISTRICT'S CIVIL CASELOAD.[27]

Available statistics clearly show the very substantial dimension of the pro se prisoner caseload :

1) Nationally, the number of Prisoner cases has increased by 26.3% between 1986 and 1990.
2) As a percentage of annual filings in the Eastern District in 1983, prisoner filings represented about 25% of all civil filings. In 1992, prisoner filings represented 38% of all civil filings.
3) During Statistical Year (SY) 1990-92, 35% of the pending cases terminated in the Eastern District were prisoner cases and 9.9% of those were three or more years old.
4) According to a weighted caseload table measuring the impact of different types of cases on judges' workload, prisoner cases represented 14% of the workload in the Eastern District during SY 1990-92.

WASHINGTON PRISON SYSTEM

FINDING NO. 16: THE PRISON POPULATION IN THE DISTRICT IS

[27]Because the Committee's recommendations in the Pro Se Prisoners litigation area are a product of consideration of both the prison system's institutional grievance procedures and the court's processes of handling prisoner's federal claims, they are presented together at the end of this section.

SUBSTANTIAL, AND WITH THE CONSTRUCTION OF NEW AND PLANNED FACILITIES, WILL GROW SIGNIFICANTLY IN THE NEAR FUTURE. THAT POPULATION INCREASE WILL LEAD TO AN INCREASE IN THE FILING OF PRO SE PRISONER CASES.

There are approximately 2460 prisoners currently housed in the various units at the penitentiary at Walla Walla. The institution at Connell, Coyote Ridge, recently opened and has approximately 283 inmates (capacity 400). The facility at Airway Heights when fully opened will house 1424 prisoners. (The current population of the Airway Heights Minimum Security facility is approximately 300.) The total prisoner population in the Eastern District is now approximately 3460.

At present, the prison system in the State of Washington is at 150% of capacity. The state Office of Management and Budget compiles statistics for the DOC and also projects the future prison population for the statewide prison population for the Washington Department of Corrections are that by 1995 prisoner population will increase 20%, 30% by 1997, and by 40% before the year 2000.

The Department of Corrections is operating beyond its planned capacity and its resources will be stretched thinner with the opening of the two new institutions here in the Eastern District. (The issues discussed in this report pertain only to the prison population in Eastern Washington.) Given the dramatic increase in prisoner population in the Eastern District over the next year and over the next decade, it is clear that the courts will experience an increase in the number of prisoner filings. It is unknown, however, just how many new filings will result from the increase in prisoner population in the Eastern District.

<u>FINDING NO. 17</u>: THE PRISON GRIEVANCE PROCEDURE CAN BE USED TO RESOLVE PRISONER DISPUTES WITHOUT RESORT TO LITIGATION, BUT IT CANNOT SOLVE NON-GRIEVABLE ISSUES.

The survey of prisoner litigants conducted by this CJRA Advisory Group[28] revealed that the prisoners surveyed have little faith in the current grievance process, and they fear retaliation from guards as a consequence for filing grievances and civil rights complaints. Because of problems locating prisoner litigants and in getting responses to mailed survey forms, many prisoners were interviewed in person. In spite of repeated efforts to turn the interviews towards the court process, the inmates would return to their concerns about retaliation from guards for filing grievances and lawsuits, and to their lack of faith in the prison grievance program.

The prisoners surveyed were individuals who have filed cases in the federal court. The Department of Corrections Offender Grievance Program generally resolves the overwhelming majority of grievable complaints. Only four percent of the grievances filed ultimately result in a filing in the federal court. Consequently, the inmates surveyed were a random sampling from that group of inmates who have objected to the results of the grievance process, and their

[28]The Eastern District of Washington is the only district that included prisoners in their attorney/litigant/juror surveys.

responses may not reflect the views of the majority of inmates at WSP.

From long-time and short-time prisoners alike, many expressed the desire to have their disputes resolved by a party who is independent from the state or prison administration. An overwhelming 80% indicated that they would accept a decision by an independent party, but then almost 60% indicated that they would still file a civil rights complaint if the decision of such an independent ombudsman was unfavorable to them.

In the six month period ending June 30, 1992, there were 1,160 formal grievances filed in the WSP Grievance Program (a 24% decrease from the same period in 1991). There have been 32,000 filed by prisoners between 1986 and 1992. During that same period, somewhere between 700 and 1400 (2-4%) have resulted in the filing of a suit by the prisoner in District Court.

The Civil Justice Reform Act Advisory Panel has been told by DOC Officials that there are counselors at each institution who process inmate grievances. The Department has announced that a modified procedure went into effect in November, 1992 which took one level out of the grievance procedure. Grievances now proceed as follows:

Level 0	Complaint Stage
Level I	A grievance is filed, and referred to the Grievance Coordinator;
Level II	The Grievance Coordinator's decision may be appealed to the Superintendent;
Level III	The Superintendent's decision may be appealed to the Director of the Division or Prisons (DOP).

It must be understood, however, that the grievance procedure can only help resolve "grievable" issues. Any prisoner problem which is not a grievable issue[29] will not be resolvable through the grievance process. Thus, improvements to the grievance process alone will not solve the whole prisoner litigation problem.

PRISONERS AND THE FEDERAL COURT

FINDING NO. 18: WHILE THE RESULTS OF THE COMMITTEE'S SURVEYS OF LITIGANTS AND LAWYERS SHOWED PRISONERS TO BE AMONG THE MOST CRITICAL REGARDING DELAYS IN RESOLUTION OF THEIR CASES, PRISONERS VIEW THE FEDERAL COURT AS A TRUSTED SOURCE OF EXTERNAL AUTHORITY, AND PREFER A DISPUTE RESOLUTION PROCESS MORE CLOSELY ASSOCIATED WITH THE COURT THAN WITH PRISON AUTHORITIES.

[29] "Not grievable" are situations that have a built-in appeals process, such as infraction and disciplinary hearings, classification decisions, tort claims, etc. Also non-grievable, are disputes regarding state and federal laws, Indeterminate Sentence Review Board (ISRB) decisions, and any other action taken by a person or body outside the jurisdiction of the institution.

Survey results showed the prisoners were by far the most negative critics of the federal civil justice system. They felt that their cases took far too long to resolve. On the other hand, they reacted quite favorably toward Judges, magistrate judges, and to the internal hearings process at district court. The inmates see the federal court as a trusted source of external authority, and, as discussed above, would like a dispute resolution process that is more closely associated with the court than with prison authorities. In addition, prisoners indicated a need for better access to legal materials and legal assistance. They commented that such access would help to weed out frivolous cases.

There appears to be a problem, although the committee could not determine its extent, with the lack of access of non English-speaking prisoners, particularly Hispanic prisoners, to interpreter services. Access to the court may be rendered meaningless if it is without interpreter assistance for those who neither speak nor write English.

The prisoner population at Walla Walla over the past number of years has fairly consistently filed 200-plus civil petitions annually in the United States District Court for the Eastern District of Washington. The majority of prisoner filings in the Eastern District are civil rights complaints, and approximately twenty five percent (25%) of prisoner filings are habeas corpus petitions. These cases take a great deal of court and staff time and resources to resolve, and some cases even result in trials. During the years 1991 and 1992 prisoner cases comprised more than ten percent of the civil cases tried.

Prisoner civil rights litigation arises out of constitutional claims usually filed against prison guards or officials. These complaints usually involve charges that the inmate has been mistreated either by a guard or other prison staff. Other complaints which result in prisoner litigation include, but are not limited to, due process violations at disciplinary or administrative segregation hearings, denial of access to courts, and the prison mail system.

FINDING NO. 19: RECENT UNITED STATES SUPREME COURT DECISIONS, WHILE THEY MAY ULTIMATELY REDUCE THE NUMBER OF HABEAS CORPUS FILINGS IN FEDERAL COURTS, ARE NOT LIKELY TO REDUCE THE TIME SPENT ON HABEAS CASES AT THE DISTRICT COURT LEVEL.

Recent cases decided by the United States Supreme Court may effect the future of prisoner litigation in the Eastern District. Though it may appear that the new case law will reduce the number of habeas corpus filings in federal courts, the changes are likely to increase the time spent reviewing and handling habeas filings by district court judges.

The Supreme Court has in its recent cases tended to limit federal court habeas corpus review of state criminal convictions. *McCleskey v. Zant*, 111 S. Ct. 1454, 113 L. Ed. 2d 706 (1991); *Coleman v. Thompson*, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991); and *Ylst v. Nunemaker*, 111 S. Ct. 2590, 115 L. Ed. 2d 706 (1991). In *McCleskey*, the Court limited state prisoners to a single federal habeas corpus review of their state conviction unless the prisoner shows good cause for the failure to raise new issues in a previous filing and actual prejudice as a result, or unless the prisoner makes a showing of extraordinary circumstances. In *Coleman*, the Court decided that a prisoner's failure to comply with state procedural rules bars federal habeas corpus review unless again the prisoner shows cause and prejudice for the procedural

default, or extraordinary circumstances. In *Ylst,* the Court ruled that a district court could rely on a routine denial of review by the highest state court to conclude that the state court based its denial on procedural default (if a previous reasoned opinion relied on procedural default). Then, based on *Coleman*, the district court could deny federal habeas review.

These along with earlier Supreme Court rulings seem to limit federal court access for state prisoners. *See Teague v. Lane*, 109 S. Ct. 1060 (1990). However, the effect of *McCleskey,* which limits the state prisoner to only one chance at review, is likely to be that petitions for habeas corpus review will be exhaustive, including every possible issue. The district courts in their initial review of these petitions will have to evaluate all of the issues raised. In addition, the *Coleman* and *Ylst* decisions may cause district courts to spend more time determining whether default has occurred, and then whether there was cause and prejudice or if extraordinary circumstances exist that would justify habeas relief.

FINDING NO. 20: THE NUMBER AND COMPLEXITY OF PRISONER PRO SE CIVIL RIGHTS AND HABEAS CORPUS PETITIONS FILED WITH THIS DISTRICT MAKE A SCREENING PRO SE STAFF ATTORNEY TO ASSIST THE COURT A NECESSARY SUPPORT STAFF POSITION.

When a prisoner files a complaint in the Eastern District of Washington, it is reviewed by the Pro Se Law Clerk. The Pro Se Law Clerk then recommends to the Court whether the complaint meets a factual and constitutional muster. If it does not, the court may direct the inmate to amend the complaint in an order that also contains a description of the complaint's deficiencies. The prisoner then generally has two months in which to amend the complaint. On the other hand, if it appears that no amendment will cure the defects in the complaint, the court may dismiss it.

Those complaints that meet the legal and factual standards are served on defendants and are scheduled for a status conference just like any other civil proceeding. In this District, each of the judges and magistrate judges is assigned an equal share of the prisoner cases, and each moves them to resolution in his or her own way.

FINDING NO. 21: BECAUSE OF THE NUMBER AND COMPLEXITY OF PRO SE PRISONER CASES AND THE INTERCONNECTION BETWEEN THE INSTITUTION'S GRIEVANCE PROCESS AND THE COURT'S FUNCTION IN DECIDING FEDERAL CLAIMS, THE ADDITION TO THE COURT'S STAFF OF A PRISONER OMBUDSMAN/MEDIATOR WOULD LIKELY RESULT IN A MORE EFFICIENT RESOLUTION OF PRISONER COMPLAINTS.

A great deal of federal district court money, resources, and time are expended in adjudicating pro se prisoner litigation. The Committee strongly felt money would be saved in the long run by hiring an ombudsman (to be paid by the federal government out of the court's budget) with the skill and authority to deal with prisoner complaints. Such an individual would be able to attend to prisoner complaint cases in a direct and immediate fashion, and would not be tainted with the perception of bias that affects Department of Corrections staff.

FINDING NO. 22: CONDUCT OF A LARGER SHARE OF PRO SE PRISONER CASES BY MAGISTRATES WOULD EXPEDITE DISPOSITION OF PRISONER CASES.

Magistrate judges could probably take a greater share of prisoner cases, and conduct so-called "Spears" hearings at Walla Walla. (*Spears v. McCotter,* 766 F.2d 179 (5th Cir. 1985), involved a magistrate judge holding evidentiary hearing to determine factual basis of prisoner's claims at a prison facility.) Some judges now occasionally go to the institutions, eliminating the need for the state to transport both prisoners and witnesses away from the prison, but others hear the matters in courtrooms.

FINDING NO. 23: CONDUCT OF PRISONER PROCEEDINGS INVOLVING WALLA WALLA INMATES IN A COURT FACILITY LOCATED IN THAT COMMUNITY WOULD PERMIT GREATER SECURITY, AND WOULD BE TIME AND RESOURCE EFFICIENT.

RECOMMENDATIONS

The Committee urges the court to adopt the following recommendations, and with regard to recommendation 15, the court should encourage the establishment of a task force to work with the Washington State Department of Corrections in discussing the recommendations and to develop an implementation plan.

RECOMMENDATION NO. 10: THE COURT SHOULD REQUEST FUNDING TO IMPLEMENT A PILOT PROGRAM THAT WOULD ESTABLISH AN OMBUDSMAN POSITION TO EVALUATE AND MEDIATE ALL PRISONER RIGHTS PETITIONS THAT ARE FILED IN THE FEDERAL COURT. THE OMBUDSMAN WOULD MEET DIRECTLY WITH THE PRISONER AND STATE OFFICIALS AFTER THE COMPLAINT IS FILED TO DETERMINE WHETHER THE CASE COULD BE SETTLED, DIVERTED, OR WHETHER OTHER ISSUES COULD BE RESOLVED. THE RECOMMENDATIONS FROM THE OMBUDSMAN WOULD BE FORWARDED TO THE JUDGE OR MAGISTRATE JUDGE THAT HAS BEEN ASSIGNED THE CASE.

RECOMMENDATION NO. 11: THE COURT SHOULD RECOMMEND TO THE JUDICIAL CONFERENCE OR TO THE ADMINISTRATIVE OFFICE OF THE COURTS THAT THEY ESTABLISH SOME KIND OF NETWORK OR CENTRAL CLEARING HOUSE METHOD OF CONSOLIDATING INFORMATION (FROM THE VARIOUS DISTRICT COURTS) REGARDING DEVELOPMENTS IN THE AREA OF PRISONER LITIGATION.

RECOMMENDATION NO. 12: THE COURT SHOULD CONSIDER ASSIGNING MORE OF THE PRISONER RIGHTS CASES TO THE MAGISTRATE JUDGES.

RECOMMENDATION NO. 13: THE COURT SHOULD CONSIDER EITHER UPDATING THE CURRENT FEDERAL COURTROOM LOCATED IN THE POST OFFICE BUILDING IN WALLA WALLA OR BUILDING A JOINT-USE

COURTROOM AT THE WALLA WALLA COUNTY COURTHOUSE. AN ADEQUATE FACILITY FOR TRYING PRISONER CASES WOULD BE USED BY THE COURT AND THE OMBUDSMAN. SUCH A SECURE FACILITY IN WALLA WALLA WOULD ALSO MINIMIZE THE ADDITIONAL TRANSPORTATION AND SECURITY COSTS THAT ARE PRESENTLY REQUIRED.

RECOMMENDATION NO. 14: THE COURT SHOULD CONTINUE TO REVIEW THE COMPLAINTS THAT ARE FILED IN FEDERAL COURT TO DETERMINE WHETHER THE GRIEVANCE HAS BEEN COMPLETELY EXHAUSTED WITH THE DEPARTMENT OF CORRECTIONS.

RECOMMENDATION NO. 15: THE COURT SHOULD ENCOURAGE THE DEPARTMENT OF CORRECTIONS TO CONVENE A TASK FORCE TO EVALUATE THE ISSUE OF PRISONER GRIEVANCES AND LITIGATION AND TO DEVELOP AN IMPLEMENTATION PLAN. TASK FORCE MEMBERS MIGHT INCLUDE REPRESENTATIVES FROM A PRISONER ADVOCATE GROUP, THE LEGISLATURE, THE WASHINGTON STATE ATTORNEY GENERAL'S OFFICE, THE COURT AND THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS.

THE COURT SHOULD RECOMMEND THAT THE TASK FORCE REVIEW SEVERAL AREAS OF CONCERN REGARDING PRISONER LITIGATION SUCH AS:

A) WHETHER ADDITIONAL COMPLAINTS COULD BE RESOLVED BY THE PRISONER GRIEVANCE PROCEDURES (DISPUTES INVOLVING WHAT ARE CURRENTLY CONSIDERED NON-GRIEVABLE ISSUES);

B) WHETHER THE DEPARTMENT OF CORRECTIONS SHOULD HIRE INDEPENDENT PROFESSIONAL GRIEVANCE HEARING EXAMINERS SKILLED AND TRAINED IN MEDIATION AND ADJUDICATORY TECHNIQUES WHO REPORT DIRECTLY TO EITHER ANOTHER DEPARTMENT WITHIN STATE GOVERNMENT OR REPORT AT LEAST TO THE STATE-WIDE GRIEVANCE COORDINATOR;

C) EVALUATING ACCESS TO LAWYER SERVICES, HOW ALL INMATES COULD RECEIVE ACCESS TO LEGAL MATERIAL SO INMATES WILL BE ABLE TO DEVELOP THEIR CASES MORE EFFECTIVELY IN FEDERAL COURT, HOW ACCESS TO LEGAL MATERIALS IS HANDLED AND HOW PRISONERS' LEGAL MATERIALS ARE KEPT IN THEIR CELLS;

D) CONSIDERING METHODS OF MONITORING THE RETALIATION CONCERNS THAT THE PRISONERS HAVE RAISED WITH REGARD TO FILING OF PRISONER RIGHTS MATTERS IN FEDERAL COURT, AND STUDY RETALIATION ISSUES AND MAKE APPROPRIATE RECOMMENDATIONS REGARDING PROCEDURES OR POSSIBLE SOLUTIONS TO RETALIATION COMPLAINTS;

E) STUDYING HOW INTERPRETERS MAY BE PROVIDED TO THE INMATES WHEN THERE IS A LANGUAGE PROBLEM WITH RESPECT TO COMPLETING THE PROPER LEGAL FORMS IN PRESENTATION OF THEIR CASE TO THE FEDERAL COURT.

D. OTHER AREAS FOR STUDY

FINDING NO. 24: THE INCREASED VOLUME OF CRIMINAL PROSECUTIONS IN THE EASTERN DISTRICT, TOGETHER WITH DETERMINATE AND MANDATORY MINIMUM SENTENCING FOR FEDERAL CRIMES, HAVE HAD AND CONTINUES TO HAVE A SUBSTANTIAL EFFECT ON THE COURT'S HANDLING OF CIVIL LITIGATION.

Court docket statistics for the past ten years reflect a substantial growth in criminal prosecutions and criminal trials, a trend that has significantly altered the balance of the court's civil/criminal work load. That expansion of criminal caseload, which because it was not accompanied by any corresponding increase in court resources has caused a proportionate reduction in court time available for civil litigation, is a function of a pronounced federalization of crime, at least in the drug enforcement area, and of constitutional rule requiring that the court accord criminal matters precedence.

New federal crime legislation over the past decade has added to the court's criminal work, but probably the largest share of the increase in criminal caseload over that period is attributable, if indirectly, to the Sentencing Reform Act of 1984, which introduced determinate and minimum mandatory sentencing into federal prosecutions. That legislation made federal sanctions for drug offenses much harsher than corresponding state sanctions for similar offenses, and has had the effect, probably unintended, of drawing those prosecutions into the federal judicial system. That sentencing legislation has also made criminal matters more protracted, perhaps forcing a larger percentage of criminal cases to trial, but in any event making change of plea and sentencing hearings more complicated and more elaborate. The effects of these developments are naturally intensified by the operation of the speedy trial rule, which in effect requires that all criminal proceedings be accorded priority over civil matters.

FINDING NO. 25: A MECHANISM IS NEEDED TO PROVIDE EARLIER AND BETTER ASSESSMENTS OF THE EFFECTS OF NEW LEGISLATION ON THE FEDERAL TRIAL COURT SYSTEM. THE RECENTLY CREATED JUDICIAL IMPACT OFFICE OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS MAY FILL THAT NEED.

The Committee was particularly mindful of these developments, and of the importance of Congress' factoring the effects of legislation under consideration on the court system, when it discussed the mandate under the Civil Justice Reform Act that Advisory Groups "examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts".[30] Recent proposals further expanding the ambit of federal crimes

---

[30] 28 U.S.C. §472(c)(1)(D).

into areas such as domestic violence, and all crimes committed with firearms transported in commerce, could, if enacted without accompanying funding for increased resources, cripple the court's ability to adjudicate civil litigation expeditiously and with a high quality of justice.

An increase in the case workload of federal trial judges creates not just a need for additional judicial officers, although that is of course crucial, but a need for additional resources throughout the system: additional judicial, clerical and administrative staff; additional computers and other hardware; additional facilities. But beyond the issue of whether legislation increasing federal trial court workload is properly assessed so that it is accompanied by resources adequate to the new tasks lies another and perhaps more important question, having to do with the nature and function of the federal courts in the American legal system. Management and disposition of a high volume of routine cases is not the function for which the federal court structure was created, and it is not the function it has served. It should not be altered to serve that end, at least without a conscious national choice.

Adequate assessments of the impacts of proposed legislation on federal trial courts are beyond the reach of individual advisory groups, by definition, but this Committee and other advisory groups around the country can serve as useful sounding boards and sources of information for the Judicial Impact Office of the Administrative Office of the United States Courts, created in 1991 to furnish Congress with judical impact assessments regarding proposed legislation. The Committee should establish a subcommittee to study legislation being assessed by the Judicial Impact Office, as requested, and furnish information to that office and to the local congressional delegation, as appropriate, which will assist in influencing legislation favorable to the administration of justice. While this proposal is not a recommendation to this court, as it would not be part of any cost and delay reduction plan the court might adopt, it is one the Committee supports and deems it important to articulate. Indeed, the CJRA itself, by asking the Committee to examine the issue, seems to be inviting such a proposal.

FINDING NO. 26: THE COURT'S FUNCTIONING AND ITS ABILITY TO MANAGE AND ADJUDICATE CIVIL LITIGATION EXPEDITIOUSLY AND WITHOUT UNDUE COST TO LITIGANTS, MAY BE SERIOUSLY AFFECTED BY BUDGET REDUCTIONS CURRENTLY UNDER CONSIDERATION; THE ADVISORY COMMITTEE SHOULD REMAIN INFORMED ON THE ISSUE OF THE CONTINUING ADEQUACY OF COURT RESOURCES, AND SHOULD TAKE SUCH STEPS AS ARE APPROPRIATE TO ITS ROLE TO INSURE THE ADEQUACY OF COURT FUNDING.

While at the writing of this report the precise contours of the federal budget for the next fiscal year are not known, budget shortfalls in recent years provide reason for serious concern as to whether federal trial court support services will continue to be funded at sufficient levels. Adequate funding for jury services, both civil and criminal, for administrative, clerical, and judicial support services, for system hardware and software acquisition and maintenance, and for other costs associated with proper functioning of the court, is jeopardized at a time when national budget constraints will cause consideration of budget reductions at every level of governmental services.

As is the case with assessing the impact of new legislation on the court system, this area of concern does not touch on programs the court might adopt in any cost and delay reduction plan, and the matter of reviewing the adequacy of funding of the federal court system is not the subject of a Committee recommendation. It is an appropriate area of Committee concern, however, and given the Committee's continuing oversight responsibilities, the adequacy of funding and resources for the judicial tasks the federal trial court structure must discharge is, on a local level at least, a subject on which the Committee should continue to inform itself, and on which it should take action appropriate to its role.

APPENDIX A

Members of the
Civil Justice Reform Act Advisory Group
U.S. District Court
Eastern District of Washington

Members of the Civil Justice Reform Act Advisory Group

EUGENE I. ANNIS
Attorney At Law
West 717 Sprague Ave. #1600
Spokane, WA 99204

WILLIAM BLAIR
402 North 4th St, Ste 101
Yakima, WA 98901
509-248-6688

JAMES P. CONNELLY
Attorney At Law
P.O. Box 3528
Spokane, WA 99220
509-838-6131

DAVID DORSEY
Attorney At Law
P. O. Box 2136
Wenatchee, WA 98807
509-662-3551 FAX 509-662-9074

WILLIAM L. FIRST
South 731 Lincoln Place, Suite 4
Spokane, WA 99204
509-456-8752

JAMES J. GILLESPIE
Attorney At Law
North 901 Adams
Spokane, WA 99201
509-326-3502

ROBERT B. HENDERSON, Chairman
Attorney At Law
1015 Washington Mutual Building
Spokane, WA 99201
509-623-2900 FAX 509-623-2910

WILLIAM D. HYSLOP
United States Attorney
P. O. Box 1494
Spokane, WA 99210
509-353-2767 FAX 509-353-2766

JAMES R. LARSEN
Clerk of Court
P. O. Box 1493
Spokane, WA 99210
509-353-2150 FAX 509-353-2394

WALTER G. MEYER
Attorney At Law
P. O. Box 22680
Yakima, WA 98907
509-575-8500 FAX 575-4676

MARY ANN MURPHY
West 1950 Clarke
Spokane, WA 99201
509-624-4644 OFFICE 623-7501

DOUGLAS PRINGLE
Yakima Valley Bank
522 East Yakima Avenue
Yakima, WA 98907
509-453-1515

TERRIE SCOTT
Washington State
University - Spokane
West 601 First
Spokane, WA 99201
509-456-3275

LESLIE L. WEATHERHEAD
Attorney At Law
1100 U S Bank Building
Spokane, WA 99201
509-624-5265

JAMES J. WORKLAND
Attorney At Law
714 Washington Mutual Bldg.
Spokane, WA 99201
509-455-9077

JOHN WORKLAND
Hotel Employees & Restaurant Employees
Union Local 400
North 1727 Atlantic
Spokane, WA 99205
509-328-6090

Reporter

MARK E. WILSON, Professor of Law
Gonzaga University School of Law
Spokane, WA 99220-3528
509-484-6091 509-328-4220
FAX 484-2810

BRIAN BETHKE
Research Assistant
Gonzaga University School of Law
Spokane, WA 99220-3528
509-747-9100

Liaison

CHARLES SHELDON
Professor
Washington State University
Dept of Political Science
Pullman, WA 99164-4870
509-335-8929 or 509-335-2544 FAX 335-7990
Home 334-4330

Resource

NICHOLAS P. LOVRICH, JR.
Professor
Washington State University
Director, Div of Government Studies &
Services
Dept of Political Science
Pullman, WA 99164-4870
509-335-3329

APPENDIX B

Summary of Surveys of Consumers of the Civil Justice System
Division of Governmental Studies and Services,
Department of Political Science,
Washington State University

SUMMARY OF SURVEYS OF CONSUMERS OF THE CIVIL JUSTICE SYSTEM

Prepared by
John L. Anderson
Nicholas P. Lovrich
Linda Maule
Charles H. Sheldon

INTRODUCTION

The Civil Justice Reform Act of 1990 required that each U.S. District Court appoint an advisory committee to study the civil justice system within its jurisdiction.[1] The U.S. District Court for the Eastern Washington District contracted with the Division of Governmental Studies and Services (DGSS) of the Department of Political Science, Washington State University, to conduct a series of surveys.[2] The purpose of the surveys was to gather data from the consumers of the civil justice system concerning perceptions of the degree of delay occurring and extent of excessive costs being incurred in the civil justice system, and to isolate causes and recommend solutions for these problems.[3]

Focus of Study

In order to study costs and delay, members of the Advisory Committee of the U.S. District Court, Eastern District of Washington, chose **filed cases** as the focus of their study. Actual civil litigation circumstances represented by specific cases were viewed as being more instructive than would be the case if hypothetical situations were posited that would lack the specificity and the real consequences to provide first-hand information on the performance of the civil justice system. Initially, a group of randomly selected recently terminated eastern district cases were chosen for study. To provide an evidentiary base that would assure survey responses following from actual experiences with delay, cases from three separate time periods were included: those terminated within 12 months, those lasting between 12 and 24 months, and those taking longer than 24 months to resolve. The assumption, of course, was that if significant differences arose among the three time periods clear causes for delay in protracted cases might be identified. Additionally, a like number of

---

1. The Eastern District's Advisory Committee had its first meeting in September, 1991. A late start on the study resulted from a delay in the appointment and confirmation of two new judges and one new judge magistrate.

2. Over a span of 15 months, the funding awarded DGSS for the surveys, their analysis and report totalled $12,385. See Malcom Feeley, **Court Reform on Trial** New York: Basic Books, 1983 for an analysis of the difficulties in reforming the criminal justice system. Some of his points apply to civil systems. See also C.H. Sheldon, "Comes Now the Civil Justice Reform Acto of 1990: Can We Expect Serious Reform?" **10 SKCBA Bar Bulletin 14** (February, 1992) for a discussion following Feeley's analysis of difficulties encountered in reforming the civil justice system.

3. For the most complete annotated bibliography on civil justice reform see P. Carrington (ed) "Empirical Studies of Civil Procedure, Part 1 & 2" **Law and Contemporary Problems** (Summer, Autumn 1988).

cases from four different categories were selected -- torts, contracts, labor and "complex"[4] -- on the assumption that case type can affect costs and delay. The empirical base for the study, then, was to have data from at least 10 cases from combinations of each of the time periods and from each case category, constituting a total of 120 cases. Also, because of their influence over the timely consideration of civil cases, 75 randomly selected prisoner petitioner cases were added to the study.[5] Table 1 reports the sampling frame for the study.

Table 1

CASE SAMPLING FRAME

Case Type	Tort	Contract	Labor	Complex	Petitioners
Time Periods					
1-12 Months	10	10	10	10	25
12-24 Months	10	10	10	10	25
Over 24 Months	10	10	10	10	25
Totals	30	30	30	30	75

The consumers of the civil justice system involved in these cases, and who served as voluntary subjects of the surveys, were: (1) the attorneys on both sides of those pre-selected cases; (2) the plaintiffs and the defendants involved in the sample cases; (3) the plaintiffs and defendants selected from a separate set of more recent cases; (4) randomly selected prisoner petitioners; and (5) jurors who recently sat on district trials.[6]

I

SUMMARY OF SURVEY ACTIVITY

Studying civil litigation in the Federal District Court of Eastern Washington from several perspectives has entailed a series of five individual surveys, with each effort presenting its own unique problems. Most of the difficulties encountered were associated with obtaining current addresses for the people involved in civil litigation. In spite of those difficulties, the response rates from individuals in our samples have ranged from "marginally acceptable" to "exceptional."

---

4. "Complex" was defined by the Federal Judicial Center. Those cases so designated were anti-trust, banking, RICO, patent, SEC, economic stabilization act, environment, energy allocation act, and constitutionality of state statutes.

5. Over the past several years prisoner petitions have constituted nearly a third of the total docket of the Eastern District. Consequently, prisoner petitioners represent an important segment of the committee's study.

6. The surveys designed by the Advisory Committee of the Southern District of Florida provided the initial format for the attorney questionnaires.

Lawyer Survey

The first survey was sent to attorneys involved in the 120 pre-selected cases noted in Table 1.[7] The names and addresses of the lawyers involved were drawn from the docket files of those cases. An initial mailing of questionnaires was sent on April 10, 1992. This effort netted a response from about 40% of the 319 lawyers surveyed. A second wave of surveys was mailed on April 24. The second wave increased the response rate to 56.4% (180 surveys returned from a sample of 319). After another month, acting upon the advice of the Advisory Committee, the lawyers who had not as yet responded to the first two mailings were contacted by telephone and urged to participate in the study. These calls, along with personal contacts from members of the Advisory Committee, brought in a small stream of additional completed questionnaires.

Throughout the process modest adjustments were made to the survey procedures. Several of the lawyers listed on the docket were only nominally involved in the selected cases, thereby decreasing the sample size from 362 to 319. Some lawyers were dropped from the sample because they were no longer available, having moved without a forwarding address, left the practice of law, retired or died. Consequently, a few of the original 120 cases had to be replaced because of the impossibility of contacting attorneys from both sides of the dispute. After these adjustments the survey of attorneys was completed in October 1992. The data ultimately collected came from 205 returned questionnaires out of a total of 290 viable names; this constitutes an exceptional response rate of 71%, providing an opportunity for careful statistical analysis.

Litigant Survey

The most perplexing problem encountered related to obtaining viable litigant addresses. Because of the often rather dated, incomplete or missing information contained in docket files, the survey of litigants rested upon lawyers providing the names and addresses of knowledgeable persons to contact at corporate headquarters as well as the current addresses of individual litigants. In many instances lawyers did not answer such requests even though they responded to their own lawyer survey. Because relying on lawyers for locating litigants proved to be rather problematic, litigant surveys had to be mailed on a piecemeal basis as addresses became available. By June 9, 1992 enough addresses had been located to send out 57 litigant questionnaires. Over 100 contacts by phone were made with attorneys to urge them to submit their litigants' addresses. These phone calls produced only a few results, but it became apparent that many lawyers were either reluctant or unable to provide the needed litigant contacts largely because locating and reviewing files was, to them, not worth the effort. Also, lawyers often did not have the current address of litigants, and several attorneys would not release their clients' addresses for reasons of attorney-client confidentiality.

Because the litigant information requested from attorneys was too often not forthcoming, a careful review by the DGSS staff of docket files made available by the Clerk of Court's office yielded a few more viable contacts involved in the original 120 cases. Often the docket files listed the name and county location only of the parties in the case, and a search of telephone books became necessary to obtain a mailing address. The problems associated with finding accurate and current addresses, and with litigants being unwilling or unable to supply information about their cases, meant lower return rates than with other consumers of the civil justice system. Nonetheless, 98 completed litigant questionnaires out of 205 possible persons constitutes an acceptable 48% response rate.

---

7. The most complete and recent data on lawyers and their practice is Richard L. Abel, **American Lawyers**. New York: Oxford, 1989.

Second Litigant Survey

When outcomes on the first survey of litigants proved to be only partially successful, the Advisory Committee requested an additional effort to assess litigant experiences in the Court. In order to assure a better return from litigant consumers, parties involved in a random set of recently terminated cases (1989-91) was identified from court docket files. Although this group of litigants did not fall into the cases originally chosen, it was anticipated that their views on costs and delay from recent experiences would enhance the consumer data substantially. With the second group of litigants 42 questionnaires out of a total of 212 were received from the first mailing. Second ande third mailings were sent in November and December, netting 50 additional completed responses. This represents 32 complete responses out of 212 good addresses, a marginal response rate of 43%. When their views are combined with the original case-oriented litigant group, the total of 190 responses provide a reliable insight into how litigants assess the civil justice system.

Our telephone contacts with numerous individual and corporate litigants led to inferences that our low returns were the result of either the fragmentation of organizational knowledge on the part of litigants or that litigants relied so heavily on their attorneys that they were left with little understanding of the litigation and case specifics. Many litigants were simply not well informed about case management matters, and therefore they were unwilling to respond to the court's questionnaires.[8]

Petitioner Survey

A large portion of every Federal District Court's docket has been filled with civil rights petitions from prisoners in state and local correctional facilities. In an effort to understand how petitioners viewed their experiences with the Court, the names of 25 petitioners were randomly drawn from each of the three case timeframes. Three waves of questionnaires were sent to petitioners through the mailing procedures in place at the jails and prisons, with a red ink "Legal Mail" designation prominently displayed on the envelopes. Excellent support from the Clerk of Court's office and the Department of Corrections was forthcoming, but deaths, transfers of petitioners out-of-state, and S.R.A. (Sentence Reform Act) released petitioners made it impossible to contact some individuals sampled.

Knowing that most petitioner cases originated in the state penitentiary at Walla Walla, efforts were mounted to personally administer questionnaires at the prison. The initial trip to Walla Walla provided 24 complete surveys out of 37 petitioners contacted. Several inmates either declined or claimed that they had not been involved in petitioning. Another on-site interview-survey session with Walla Walla petitioners was conducted in July. This effort garnered 12 completed surveys out of 25 possible petitioners.

The combined mailings and Walla Walla interviews brought in 66 completed petitioner questionnaires from the mailing list of 92 viable names, a 72% response rate. The spread over the three time categories for case duration was ideal. Twenty-two civil rights cases came from those that took less than one year. Another 23 questionnaires were completed by petitioners whose cases were settled within the one-to two-year period, and 21 questionnaires were completed by petitioners whose cases lasted longer than two years. The 72% returns to the petitioner surveys was a more then acceptable response rate.

---

8. For an analysis of litigation management by attorneys in their relations with litigants, see: J.A. Heinz and E.O. Laumann, **Chicago Lawyers: The Social Structure of the Bar**. New York:Sage, 1982.

Figure One on Next Page

Juror Survey

With the full cooperation and capable assistance of the District Court staff, current addresses were made available for nearly all of the jurors from nine recent (1991-2) civil cases and nine recent criminal cases over the same time period.[9] Sixty jurors, including alternates, involved in civil trials and 123 jurors and alternates in criminal trials (a total of 183) provide the source for an analysis of the civil justice system from the perspective of the juror consumers of court services. After three waves of mailed questionnaires, 169 usable responses were received, constituting a 88% response rate. The return rates for civil and criminal jurors were both above the 80% level. This response rate was exceptional for mail surveys, suggesting in itself a high degree of interest on the part of the jurors in the work of the committee and a sincere concern for the justice and efficiency of their legal system.

II

ATTORNEYS' VIEWS OF DELAY AND COST IN THE CIVIL JUSTICE SYSTEM

Although the litigants in civil cases constitute the prime consumers of the civil justice system, their attorneys are the litigation managers and they shape significantly the process and outcome of civil litigation. Consequently, the attorneys involved in the 120 cases chosen for study were a major source for understanding the concerns for cost and delay underlying the Civil Justice Reform Act of 1990. The following summary is based upon responses to questions involving the attorneys of record in these 120 cases.

Attorney Perceptions of Delay

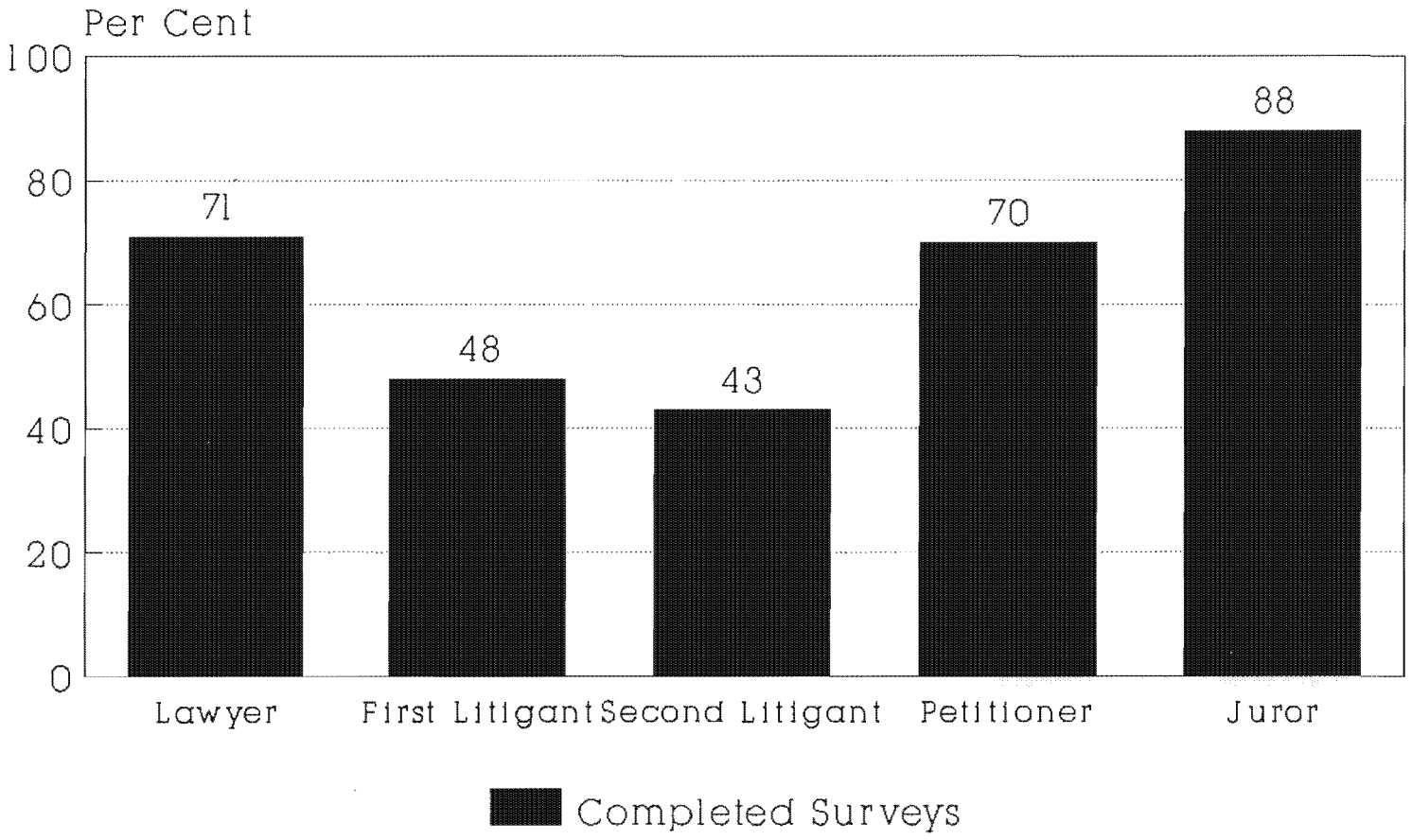
Attorneys involved in the selected cases were asked to express their views on the longevity of their cases. After being informed of the number of months their case took from filing to termination, each respondent was asked: "Did [your] case take longer than it should?" and "How many months should this case have taken from filing to disposition [under ideal circumstances where no willful delay was introduced by any party]?" Table 2 reports the responses:

Table 2

CASE TOOK LONGER	ACTUAL TIME	IDEAL TIME
Yes = 34 (17.8%) No = 157 (82.2%)	18.8 months (average)	10.9 Months (average)

9. The most recent and most complete study of civil jurors is reported in John Guinther, **The Jury in America.** New York: Facts on File, 1988. Some of the questions in the Eastern District juror survey were taken from this study, conducted by the Roscoe Pound Foundation.

Figure 1
Survey Response Rate



Civil Justice Reform Act Study

Although only about one in five of the attorneys thought their case took longer than it should have taken, according to the attorneys the difference between the actual time from filing to termination and what time it should have taken under ideal circumstances was nearly 8 months. This suggests that an understanding of the "ideal circumstances" where no willful delay was involved could well lessen the time needed to resolve civil cases. The discussions among members of the Advisory Committee at its meetings and with the DGSS staff have clearly indicated that the Committee has taken seriously the need to search for additional means to bring about these ideal circumstances.

Respondent Comments on Delay

The lawyers' comments concerning the time involved in the case fell into two general categories. Many lawyers simply commented that the case "did not take an unreasonable time," or the case "proceeded expeditiously," or was "timely handled and settled." Actually, the favorable comments regarding delay outweighed the critical comments by a two-to-one margin. Some respondents who saw problems with delay felt it had been caused by the complexity of the case. This tended to mean two things. First, the nature or actions of the parties tended to add to the complexity by "class action cases," adding or dropping litigants and attorneys, consolidating cases, transferring "to multi-district litigation proceedings," "foreign defendants," litigants filing for bankruptcy, or illness of litigants. Second, a few attorneys viewed complexity as a product of the type of case, especially medical malpractice suits (e.g., "medical malpractice cases are complicated").

Judicial Case Management and Delay

In some circumstances prolonged delay can be attributed to judicial case management. Procedures in the general course of civil litigation which are under the control of the judge or the judge magistrate may account for some of the problems with civil justice litigation. To test out this possibility, each attorney respondent was introduced to a series of "case management" questions with these instructions:

> *"Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures. Some law suits are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motion practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested."*

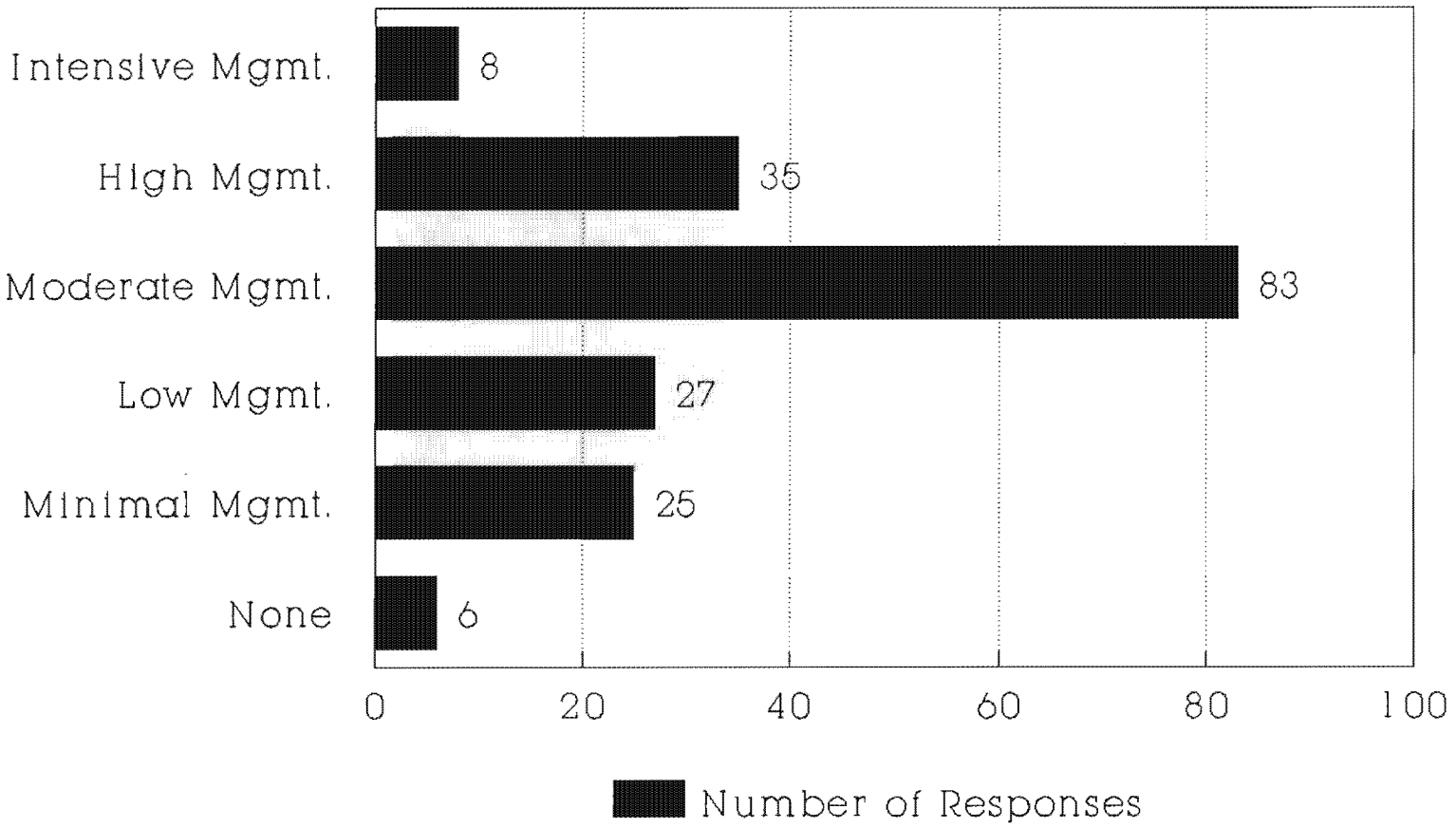
This question then followed: "How would you characterize the level of case management by the court in the case noted on the cover letter?" The results from this questions are reported in Table 3.

Table 3

LEVEL OF CASE MANAGEMENT

Intensive Management	8	(4.3%)
High Management	35	(19.0%)
Moderate Management	83	(45.1%)
Low Management	27	(14.7%)
Minimal Management	25	(13.6%)
None	6	(3.3%)

Figure 2
Level of Case Management



The level of case management by the judges and judge magistrates avoided the extremes. Nearly 80% of the attorneys thought the judges' case management efforts fell within the "high" to "low" categories. However, without more information further appraisal of levels of case management is risky. Some litigation simply may require intensive management while other cases may dictate a "hands-off" management policy.

To gain some sense of the circumstances, if any, where case management practices may have contributed to delay the respondents were asked: "If the case actually took longer than you believed reasonable, please indicate the degree to which each of the following factors was responsible for the delay." The responses are reported in Table 4.

Table 4

CASE MANAGEMENT FACTORS RESPONSIBLE FOR DELAY

Too much time allowed for discovery	38	(66.7%)
Dilatory actions by counsel	26	(44.1%)
Dilatory actions by litigants	24	(42.4%)
Complexity of case	23	(39.7%)
Backlog of cases on court's calendar	21	(35.6%)
Delay in entry of judgment	8	(14.3%)
Failure to complete limited discovery	8	(14.0%)
Delay in or failure to enter scheduling order	8	(14.0%)
Trial date not set at early stage	8	(14.0%)
Personal or office inefficiencies	8	(14.0%)
Too little case management	7	(12.1%)
Excessive case management	7	(11.9%)
Court's failure to rule promptly on motions	7	(11.9%)
Unnecessary discovery	5	(8.8%)
Dilatory actions by insurance carriers	2	(3.4%)

Except for limits placed on discovery, most of the case management causes of delay were the responsibility either of the attorneys or litigants themselves, or due to the complexity of the case or resulted from calendar backlog. These are problems largely beyond the direct control of a presiding judge. Only 14% of the lawyer respondents were critical of those aspects of case management under the direct control of the judge (e.g., delay in entry of judgment or failure to set an early trial date).

Case Complexity and Delay

Common sense suggests that the complexity of a case would add to delay. Respondents were asked if their case was difficult or complicated, and then asked "Did the complication add significantly to the delay?"[10] Table 5 sets forth the survey results on this question.

---

10. The degree to which a case was "complicated" was left to the respondent to decide. No guidelines or categories were included in the set of questions dealing with how complicated a case might be.

Figure 3
Case Management
Factors Responsible for Delay

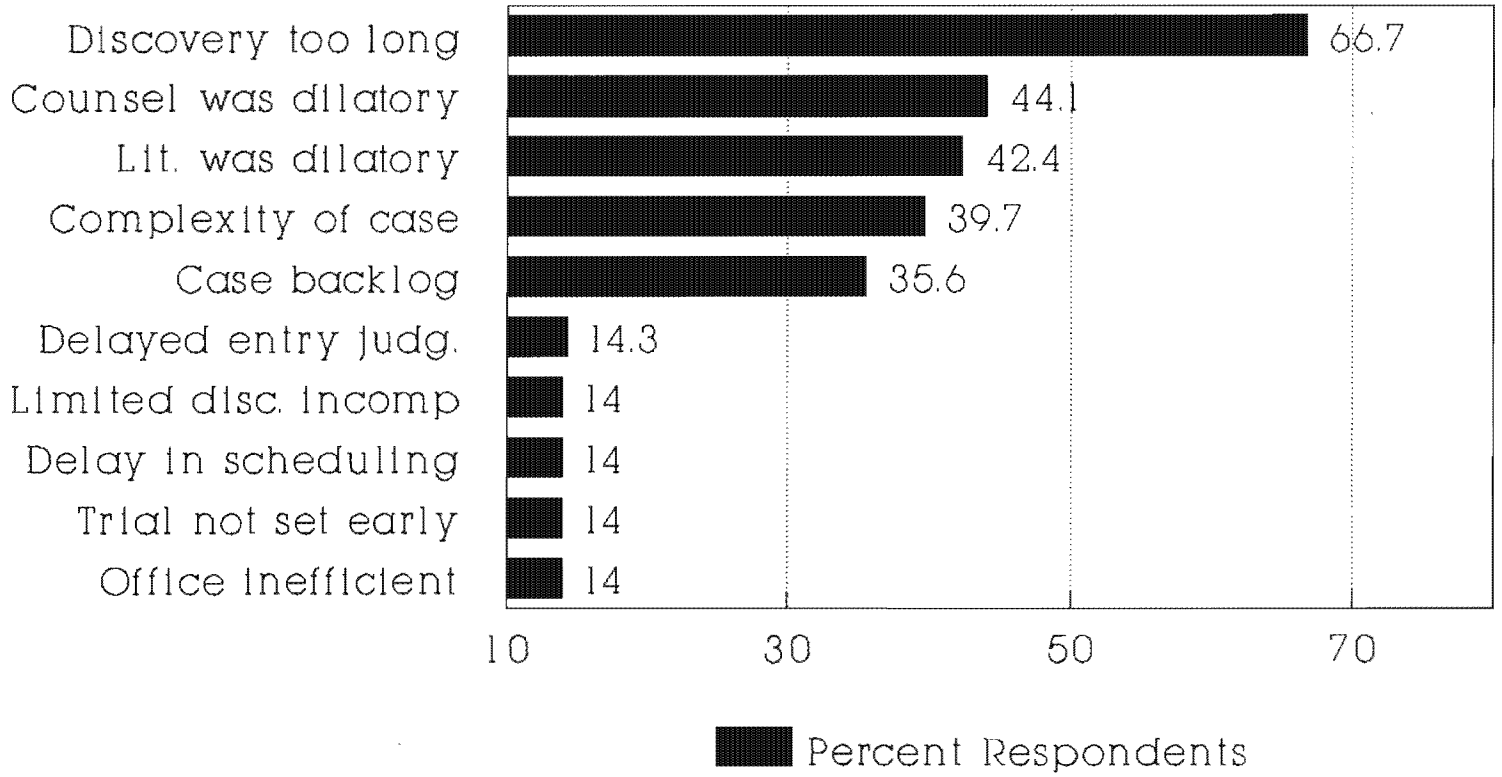


Table 5

CASE COMPLICATED?		DID COMPLICATION ADD TO DELAY?	
Highly complicated	18 (9.3%)	Yes = 39	(28.7%)
Complicated	67 (34.5%)	No = 97	(71.3%)
Average	63 (3.07%)		
Not very complicated	28 (14.4%)		
Not complicated	18 (9.3%)		

Forty-four percent of the attorneys viewed their cases as being either "complicated" or "highly complicated," and yet only 29% felt the complications added significantly to delay. Perhaps the term "significantly" explains the unanticipated low correlation between complexity and delay, or perhaps such cases are viewed as necessarily taking more time and thus didn't "add" further to more delay.

Comments on Nature of Complexity

The attorneys' comments as to the causes of the complications which added to delay and costs fell into several distinct categories. Forty percent of the attorneys who commented on the complexity problem felt it was caused either by the nature of the legal issue involved or by the type of case. The number or nature of the parties constituted 19% of the comments, factual or evidence issues were mentioned in 15% of the comments, and discovery issues caused concerned among 7% of the attorneys. Another 19% of the lawyers gave diverse reasons for the complications.

Attorneys' Perceptions of Costs

Costs of litigation can be divided into overall litigation costs and attorneys' fees. Each attorney was asked: "Apart from the causes, were the costs to your client much too high, slightly too high, about right, slightly too low, or much too low?" and "Were the attorneys' fees much too high, slightly too high, about right, slightly too low or much too low?" The results on these two questions are presented in Table 6.

Table 6

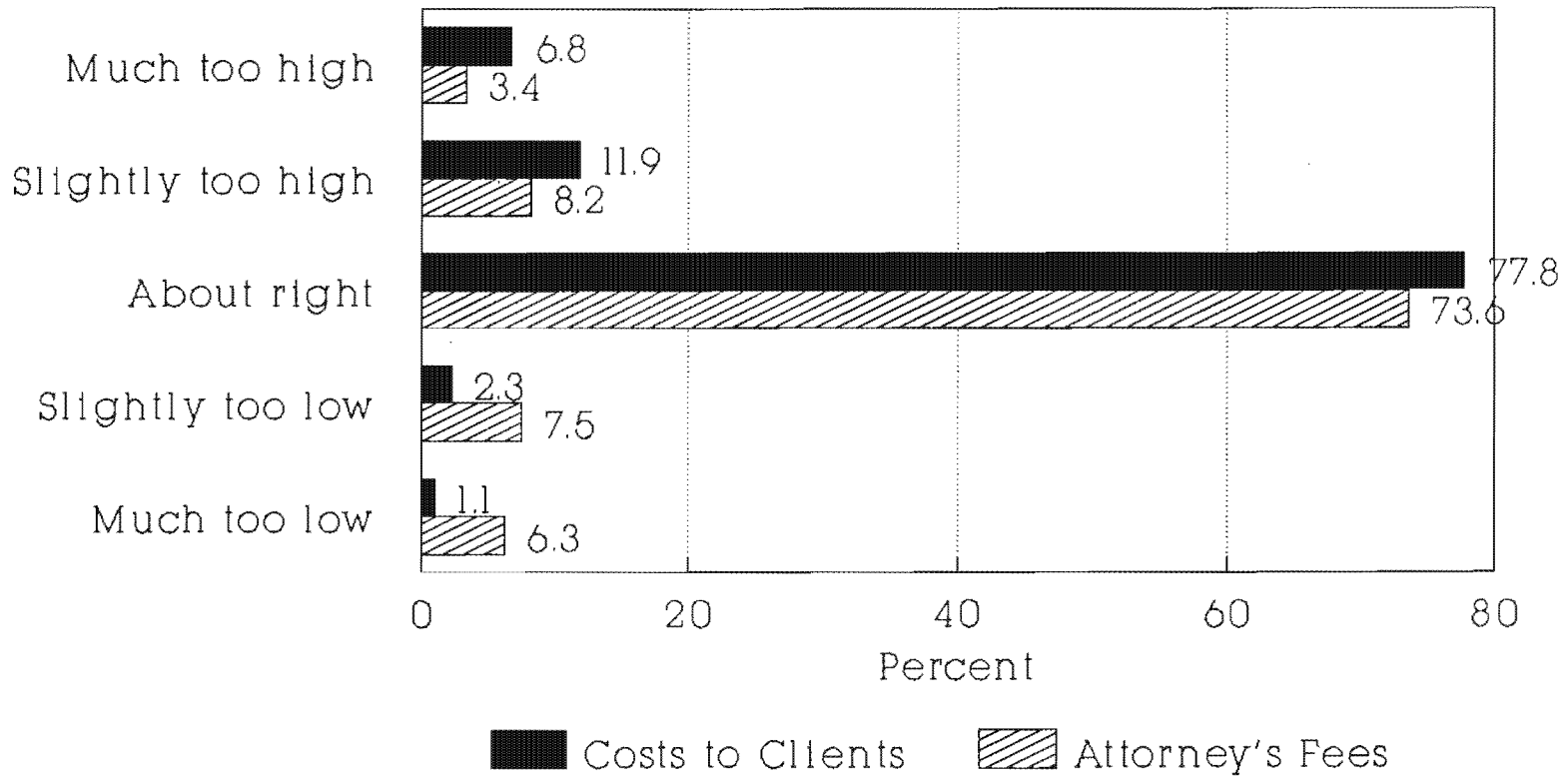
COSTS TO CLIENT		ATTORNEYS' FEES	
Much too high	12 (6.8%)	7	(3.4%)
Slightly too high	21 (11.9%)	13	(8.2%)
About right	137 (77.8%)	117	(73.6%)
Slightly too low	4 (2.3%)	12	(7.5%)
Much too low	2 (1.1%)	10	(6.3%)

Only 18% of the attorneys felt the costs to clients were high, and even fewer (12%) thought their fees were excessive.

Comments on Costs and Fees

The causes of high costs and fees, according to the comments of the attorneys, varied considerably -- tending to cluster around problems with discovery and the filing of frivolous or unwarranted cases. For example, costs were high because of "extensive document review,

Figure 4
Assessments of Costs to Clients and Attorney's Fees



appraisals and travel for discovery," "everyone remotely associated was deposed," "travel and number of depositions," and "travel required in discovery." Also, some attorneys thought that many cases should not have been filed or unwarranted delaying tactics extended the litigation. For example, "prosecution of frivolous law suit," "weak case," "government trying to get blood from a turnip," and "plaintiff's counsel was uncooperative," "questionable tactics," or "other side blocked discovery." A few attorneys mentioned that the bifurcation of issues prevented the timely termination of the case.

Several solutions to cost overrun were suggested by the respondents. Stricter enforcement of Rule 11 was mentioned on several surveys. Earlier settlement conferences and mediation, a modified English plan (fees and costs may or may not be granted to the prevailing party), "Bold" rulings at summary judgment stage, firm trial date, and time limits on discovery were all mentioned more than once.

Complexity and Costs

As reported in Table 5, the complexity of the case seemed not to add significantly to case delay. However, the complicated cases may contribute to added costs. The lawyers were asked, "Did the complication add significantly to the costs in this case?"

Table 7

CASE COMPLICATION AND COSTS

Added to Cost	Yes = 60 (44.8%)
Did Not Add to Cost	No = 74 (55.2%)

Although little delay was attributed to complicated cases, added costs seemed a product of case complications. Costs associated with such factors as expert witnesses, depositions and extended discovery necessary in such cases account for cost increases.

Factors Significantly Associated with Costs and Delays

A major objective of the study was, of course, to isolate factors which contribute to unnecessary delay and excessive costs. To that end the responses to several of the key questions were statistically associated with other views of the attorneys.[11]

Differences Across Case Time Durations

The study was designed to identify differences which may exist between cases that were quickly terminated and those that took a long time to resolve. For example, it was anticipated that some avoidable aspect evident in the long term cases (that lasted over 24 months) is absent from the middle term (12-24 months) and short term cases (resolved in less than 12 months).

Not surprisingly, attorneys involved in long term cases tended to express the view that their cases "took longer than necessary," a view expressed with much less frequency by attorneys in the short term cases. Attorneys for the short term cases tended to isolate

11. The assumption made here is that the cases and the attorneys constitute a representative sample of the broad range of civil cases and attorneys involved in the work of the Court. This assumption permits a simple chi-square statistic to estimate the degree of association obtaining between characteristics of the cases or of the attorneys and their views toward case management practices, cost factors and sources of delay. [A margin of error of 5% is used to identify statistically significant relationships.]

"excessive case management" as a cause of delay, while middle and long term case attorneys gave less credence to this factor as a cause of avoidable delay.

According to the attorneys the complexity of cases added more to the costs and to the delay in the long term cases, but was less significant in the other time periods. Quite expectedly, more money was at stake in the long term cases than in the cases of shorter duration.

Differences Regarding "Whether Case Took Too Long"

Attorneys tended to feel that labor cases took too long, while complex cases (as defined by the Federal Judicial Center) were not regarded as taking longer than necessary. Judges tended not to set early and firm trial dates in the cases that "took too long." When judges delay in entering or fail to enter scheduling orders, they tend to contribute to the attorneys' feeling that the cases "took too long." Also, when judges fail to set a trial date at an early stage, they are viewed as contributing to the life of the case. Attorneys' fees were also often regarded as too high in those cases that took too long to resolve.

Differences Concerning Costs to Clients

When the views of those attorneys who felt that the costs to their clients were excessive are compared with those who felt the costs were not too high, several significant associations arise. Attorneys in those cases in which the costs may have been excessive tended to feel that their fees were either much too high or slightly too high. The respondents in the cases with appropriate costs tended to disagree.

Judges not setting early and firm trial dates, according to the lawyers who felt costs to the client were high, was seen as an avoidable case management problem. Delay caused by unnecessary discovery was more closely associated with the cases lawyers felt cost their clients too much than to cases where costs were deemed appropriate. The complicated cases were viewed as tending to contribute to the high costs of litigation to clients and to the incidence of delay in resolving cases.

Respondents who felt their case involved high costs to the client also viewed their opposition as gaining from the delay. Finally, tort cases tended to be the more common kind of case that attorneys felt involved high costs to their clients, while labor and complex cases (as defined by the Federal Judicial Center) were viewed as entailing relatively low costs to clients.

General Comments on Costs and Delay

Each respondent was asked to "add any comments or suggestions regarding the time and cost of litigation in federal courts. Also add any further comments you may have on specific questions."

For the most part the general comments were favorable. For example, "this case was handled expeditiously," "if it ain't broke, don't fix it," "Eastern District does a fine job," "managed very well, perhaps the best in the state, state or federal," and "from the judge to the court support staff, they are fair and accommodating." Assigning a specific judge on the case at the outset was usually appreciated. Flexible scheduling in particular cases was cited as an attribute of good case management, but the lack of predictability bothered a few lawyers. For example, one respondent wrote that "excessive and inflexible scheduling imposes hardships on all but the rich" and another observed "we were pleased that the court did not force an expedited schedule upon the parties." In contrast, a critic of scheduling practices wrote that "the court is inconsistent in enforcing the [scheduling] order, sometimes strict and sometimes lenient. The lack of predictability causes difficulty in negotiating settlements."

Suggestions for possible solutions to the cost and delay problems of the U.S. District Court were numerous. It was often noted that an "early and firm trial date is the key to resolution." The California A.C.T. ("fast track") system was recommended as a solution to delay. The attorney noting this process pointed out that 90% of his California cases were

settled while in the Eastern District only about half were. The lawyer added: "Time and costs will sky-rocket if the proposed rule regarding production of documents which 'bear significantly' on the case" is adopted. The lawyer continued: "Early trial date, strict discovery schedule and early referral to mediation or arbitration should help." Apparently the California system works because of "early status/scheduling conferences, pre-trial conferences, settlement conferences."

One respondent's comment was representative of many of the general views of the attorneys:

> What is needed is an early status conference followed by a trial setting approximately 12 months from filing. Discovery cut-offs are optional because in most instances, counsel deal with one another on a regular basis and have their own discovery understanding. We need to know what the court desires and needs are with respect to motion practice so that timely motions can be filed. Ultimately, we need court sponsored alternative dispute resolution procedures, particularly mediation, so that relatively early disposition can be accomplished. Normally these cases [FELA] will not try. The vast majority of them settle.... It is believed the court should continue to limit written discovery. Strict limitations on numbers of interrogatories and requests for production should be enforced."

Miscellaneous Associations

A few additional statistically significant relationships among the attitudes of the attorneys worthy of note. For example, attorneys who practiced labor law, when contrasted with those not in that field, tended to feel cases took longer than necessary. Attorneys in banking practice tended, more than their non-banking counterparts, to feel costs to clients were inappropriately high. As expected, sole practitioners and small firm members relied more on contingency fees than large firm attorneys who used billable hours as a fee system.

The attorneys who tended to feel their fees may have been inappropriately high were more likely to be found among the less experienced lawyers (practicing for 4 to 10 years) than among the more experienced members of the profession. More mid-career attorneys (11-21 years) tended to be among those who regarded attorney fees as being too low.

Other plausible associations simply were not statistically significant, which can be important, of course. For example, it was expected that important differences in attitudes toward civil justice reform would exist between sole practitioners and members of large law firms. However, the practice organization seemed to make little difference. It was also expected that the intensity of case management by the judges would differ across kinds of cases. Actually, the intensity, according to the attorneys, was spread fairly evenly among labor, contract, tort and complex cases. According to these attorneys, tort cases did attract a good bit of case management attention from the judges, while contract litigation attracted slightly less attention.

Much more analysis is needed, especially from the case focus which was the original intent of the research. Nonetheless, as reported here, some important clues about measures to be taken to confront the cost and delay problems of civil litigation are provided by the attorneys involved in these selected cases.

III

SUMMARY OF SURVEY OF PRISONER PETITIONERS

Efforts to survey a random sample of prisoner petitioners proved to be difficult beyond expectation. The need for understanding the circumstances and experiences of this group of litigants is clear, of course; a substantial portion of the Court's time is consumed with prisoner cases, and the high rate of growth of the jail and prison population in Eastern Washington is to continue well past the year 2000.[12] With new jail and prison facilities coming on line in the Walla Walla and Spokane areas, these new public agencies will be tested by prisoners -- some of whom have considerable experience and occasional success at challenging jail and prison policies and practices in the District Court.

After two trips to the Walla Walla facility, where most prisoner petitioners in our sample were located, and after four mailings we collected a total of sixty-six questionnaires from these pro se litigants. About one third of these questionnaires were completed in a personal interview setting; some of the parties interviewed had modest reading and writing skills.

Each petitioner was asked whether the final decision in his case was made by the judge (magistrate), by a jury or terminated for other reasons. In turn, each was asked "in whose favor" was the decision made? Table 1 reports the results:

Table 8

WHO MADE FINAL DECISION AND WHO WON

	(N=66)		(N=59)
Case Terminated by		Decision Favored	
Judge	40.7%	Petitioner	40.4%
Jury	3.4%	Government	42.3%
Other	55.9%	Both sides	17.3%

Only 13.1% of the cases went to trial, and almost half (44.4%) felt that most issues were resolved adequately by the Court without a trial.

Comments on Issues Leading to Petitions

The petitions tend to fall into four categories. First, and foremost, were comments on rectal probes viewed as cruel and unusual punishments, rape, unreasonable search and seizure or invasion of privacy. For example, "abusive strip searches and the amount of searches," or "Use of sexual type of search to punish and intimidate" were typical comments of this type. Second were complaints regarding First Amendment issues such as prevention of religious practices, lack of access to law library, or confiscation of legal materials. For example, "Religious right denial; denial of religious publications," or "confiscation of publications without due process." A third set of issues dealt with medical practices. Inmates petitioned about diet problems, withholding of medicines or misdiagnosis of drugs. A fourth category of issues leading to petitions focused on retaliation, being picked on, staff had it in for him, etc.

---

12. For an analysis of prisoner rights see B. Chilton, **Prisons Under the Gavel**. Columbus:Ohio State U. Press, 1991

Views on Independent Hearing Process

Forty-three percent of the petitioners requested arbitration, mediation, grievance process, or other third party resolution while another 44% petitioned the Court without going through the prison's formal grievance process.

As a follow-up to the ADR and grievance questions, petitioners were asked: "Would you be willing to accept resolution of your dispute by an independent hearing board made up of persons outside the prison set up to decide such cases?" Also, as a check on the feasibility of such a board the next question was: "If a decision by such an independent hearing board was not in your favor, would you still file your case in federal court?" Table 22 reports the responses to these inquiries.

Table 9

FEASIBILITY OF INDEPENDENT HEARING BOARD

	(N=59)		(N=52)
Favor Independent Board	89.8%	Would Appeal	73.1%
Did not favor Board	10.2%	Would Not Appeal	26.9%

Although the vast majority of the petitioners favored an independent board to hear their petitions, nearly three-quarters of them would appeal to the courts if they lost. But assuming that many of the grievances were valid and the independent board would so rule, those who would actually take advantage of the appeal process would be much less than the 73%.

Views on Case Management and Delay

The level of case management varied from "intensive" to "none," but the tendency was to respond between the extremes. The petitioners overwhelmingly felt that their cases took too long to resolve.

Table 10

VIEWS ON DELAY OF CASE

Case took:	(N=66)
Much or slightly too long	66.6%
About Right	26.3%
Slightly or much too short	7.0%

The petitioners laid the blame for delay on a number of factors. However, they felt that the government gained an advantage by the delay, with 62.5% expressing such a view. Table 4 reports those management factors which the respondents felt were "mostly" or "somewhat" responsible for the delay in their case.

Table 11

CAUSES OF DELAY

(N=47)

Excessive case management by court	30.7%
Inadequate case management	29.8%
Dilatory actions by government	53.0%
Court's failure to rule promptly on motions	55.3%
Backlog of cases	49.0%
Complexity of case	26.1%
Discovery problems	29.8%
Failure to complete discovery	29.8%
Too much time allowed for discovery	29.7%
Scheduling order problems	44.7%
Trial date not set early	52.1%
Delay in entry of judgment	34.1%

According to the prisoner petitioner clients, the government and the Court share the responsibility for the delay in the petitioner cases. The Court is blamed for not ruling promptly on motions and for setting a late trial date. The government, which means the State Attorney General's office, is felt to purposely delay resolution of the petition.

Comments on Delay

Inmates complained often about the lack of guidance from the Court, para-legals, law library staff or other legally trained persons to assist in preparing proper papers. Access to copying machines was mentioned frequently in this regard. For example, "inmates forced to surrender evidence to staff for copying. This destroys privacy, allows respondents to read evidence." Communications between court and inmates regarding the status of cases and the like was often frustrating and entailed delay. Too often, according to the petitioners, the government, lawyer and court "played the waiting game." For example, "Attorney general pulled many tactics to stall case and was reprimanded by the judge for doing so." One inmate wrote: "there should be a board in prison casees upon initial filing to attempt resolution to save time, money, burden and delay." This comment is representative of a majority of feelings on delay and on the need for a more independent conflict resolution mechanisms than provided by the grievance procedures.

General Comments

Each petitioner was asked to "add any comments or suggestions regarding inmate litigation in the federal courts, or any comments explaining your answers to specific questions." These comments fell into several general categories. Dissatisfaction with the grievance procedures, fears of retaliation for filing grievances and complaints, and lack of access to people and materials to pursue their grievances dominated the general comments. One petitioner commented that "prisoners are without any type real protection from prison officials in regard to retaliation for filing lawsuits." Another inmate noted that: "If I was able to have assistance and the easy access to law books, I would have saved the court time and myself time." The grievance procedures were generally suspect: "The grievance system at

the prisons...is really a joke." Few had direct complaints against the Court. Actually, many felt that they received more attention from the federal courts than from their own state agencies. One inmate gave an extended but fairly representative comment:

> "I would like to see an informal board established in the Eastern and Western Districts to attempt resolution of prison cases at the initial filing of a case. Prison cases unnecessarily take up a lot of time for the court. This is largely due to the state's willingness to force litigation rather than make an attempt to resolve the issues fairly, reasonably and at a less cost and burden. In each case I have ever filed the state preferred to battle it out and manipulate the justice system rather than discuss fair resolution. ... Most prison cases can be solved by mediation and honest discussion rather than litigation."

Summary of Findings

The prisoner petitioners were the most negative critics of the civil justice system by far. With respect to issues of delay in particular, they are inclined to believe that their cases take far too long to resolve. More importantly, perhaps, they tend to believe -- rightly or wrongly -- that the formal Department of Corrections system of grievance and complaint processing duly established for resolving inmate/staff disputes is at very best ineffective, and at worse a systematic enterprise for retaliation against those challenging prison authorities. Generally speaking, the prisoner petitioners view the Court quite FAVORABLY vis-a-vis the internal hearings process, and are inclined to be particularly favorable to the judges and judge magistrates with whom they have had experience. For most prisoner petitioners the Court remains a trusted source of external authority, and they would like to see a process whereby the internal prison hearing process is more closely tied to the court's operation and less under the control of the prison administration. Their own suggestions for improvement -- i.e., reducing the number of cases in the District Court -- entail speedier attention to complaints by a more independent reviewer of facts more closely associated with the court than the prison. In addition, for those cases which carry a genuine constitutional claim, they argue that better access to legal materials and legal advise would serve to weed out the "feasible" from the likely failing cases early on in the civil complaint process.

IV.

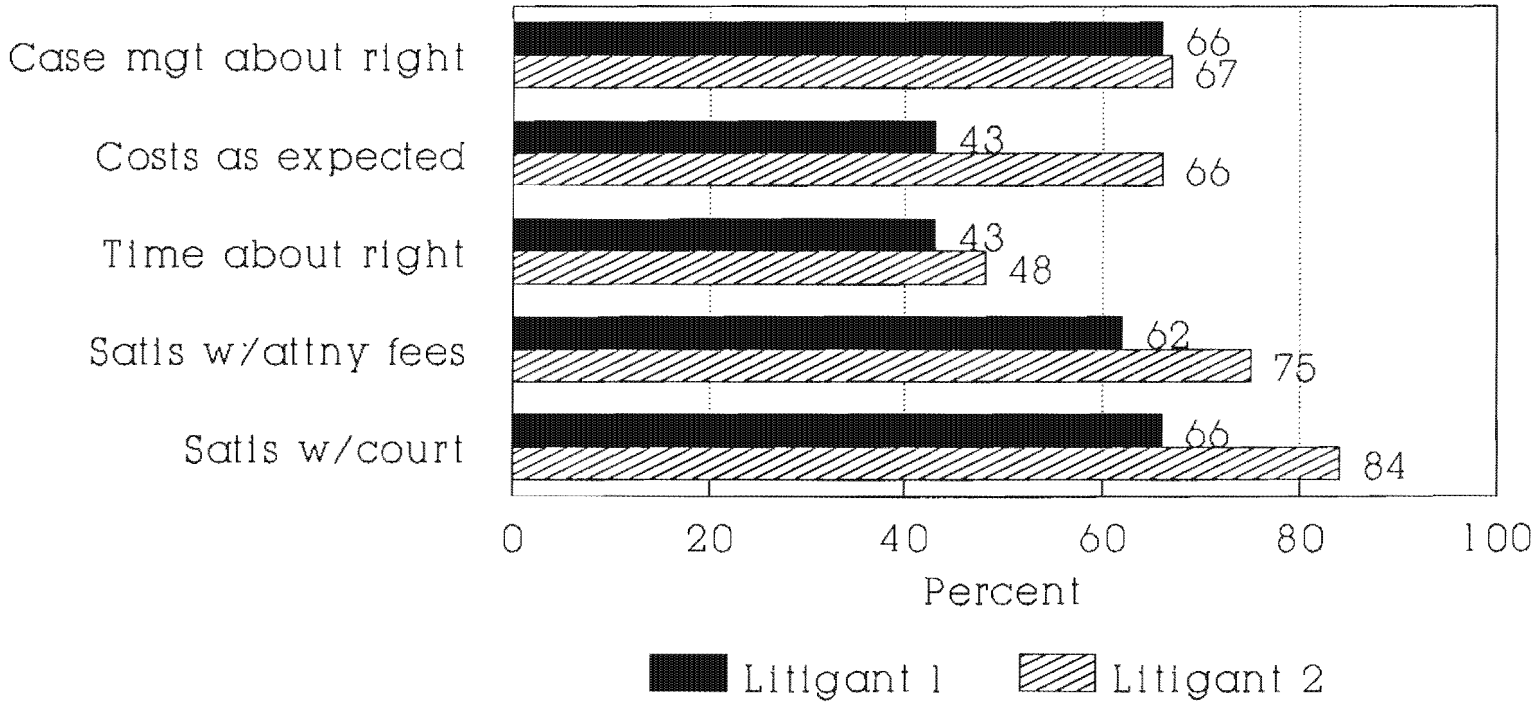
ANALYSIS OF RESULTS OF SURVEY OF LITIGANTS -- DIRECT CONSUMERS OF U.S. DISTRICT COURT CIVIL JUSTICE SERVICES

The two sets of litigants studied (Litigant 1 was the case-focused set and Litigant 2 was the random sample of recently completed cases) were evaluated on the basis of five key questions: 1) Level of Case Management Employed; 2) Costs Incurred vs. Expectations; 3) Time Required to Resolve Dispute; 4) Satisfaction with Attorney Fees; and 5) Satisfaction with the Court.[13]

---

13. The questions were as follows:
    1) Should the case management by the court in this case have been: Much Greater, Somewhat Greater, About Right, Somewhat Less, and Much Less.
    2) Considering the parties involved and the complexity of the case, were the costs incurred by you

Figure 5
Comparison of Litigant Samples for Selected Questions



The percentages are computed from 98 completed questionnaires from the first sample and 92 from the second sample.

Table 12

LITIGANT COMPARISONS

Evaluation Dimensions	Litigant 1 Group	Litigant 2 Group
	(N=98)	(N=92)
Case Management % "about right"	66%	67%
Costs vs. Expectations % "about as expected or lower"	43%	66%
Time to Resolve Dispute % "about right or less time"	43%	48%
Satisfaction with Attorney Fees % "neutral, sat. or very sat."	62%	75%
Satisfaction with Court % "neutral, sat. or very sat."	66%	84%

A wide range of opinion obtains among these customers of the court -- most of whom (4 of 5) have been involved in 2 or more cases of civil litigation. The "average" recent case produces better consumer outcomes than the more comprehensive case-typed oriented sample, which over-represents the "complex" cases which produce poorer delay and cost evaluations. The several factors underlying this variation in assessments of the civil justice system noted here are explored in the following analyses.

---

on this matter: Much Higher Than You Expected, Slightly Higher Than You Expected, About What You Had Expected, Slightly Lower Than Expected, Much Lower Than Expected.

3) Was the time it took to resolve this matter (circle: Much Too Long, Slightly Too Long, About Right, Slightly Too Short, Much Too Short.
4) Apart from the final outcome of the case, How satisfied were you with attorney fees? and
5) How satisfied were you with the court's handling of your case?: Very Satisfied, Satisfied, Neutral, Dissatisfied, Very Dissatisfied.

Table 13

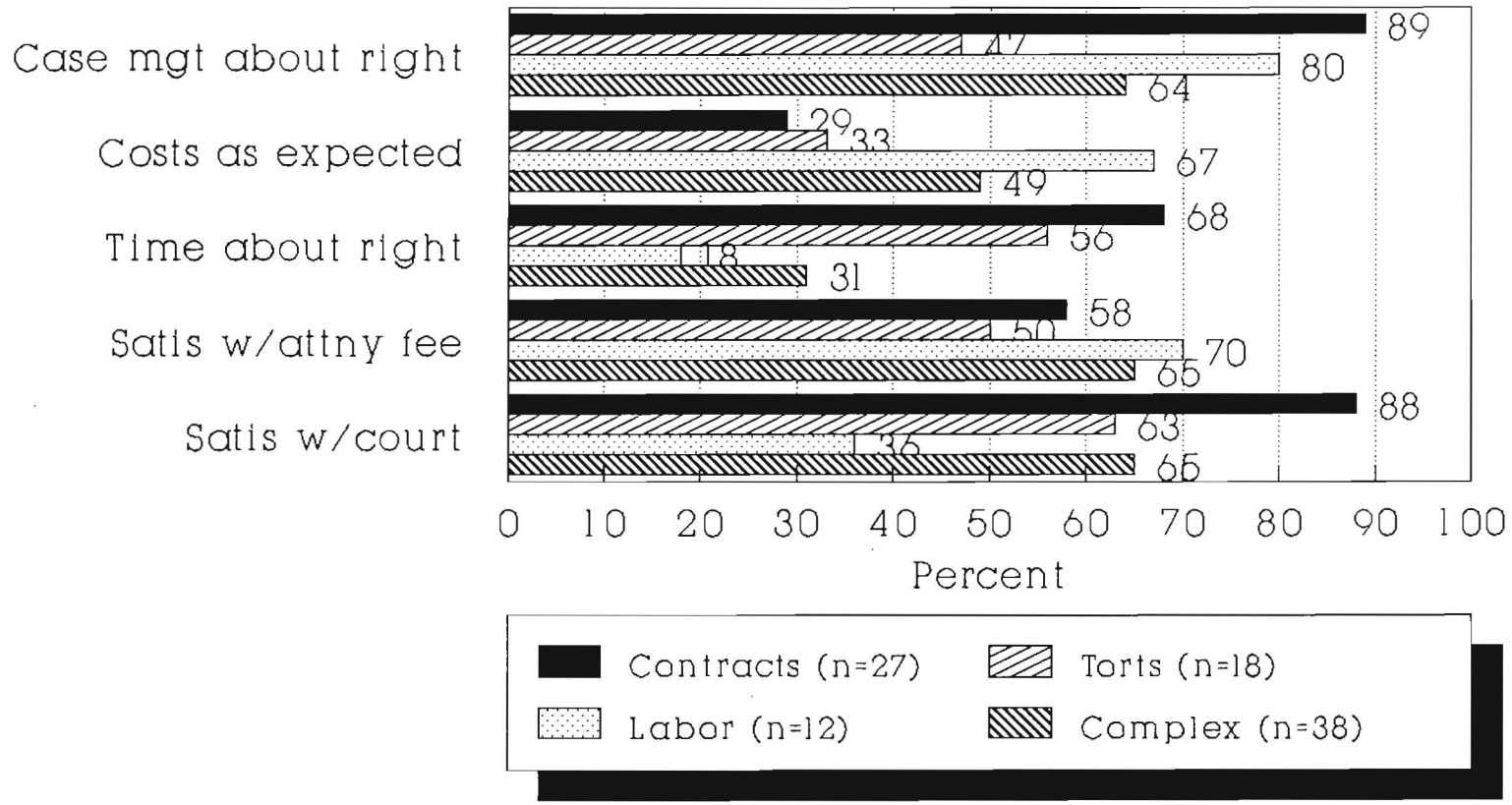
ANALYSIS OF CASE TYPE EFFECTS UPON LITIGANT CONSUMER EVALUATIONS OF U.S. DISTRICT COURT CIVIL JUSTICE SERVICES

LITIGANT 1 GROUP
(N = 98)

	Type of Case			
Evaluation Dimensions	**Contracts** N = 27	**Torts** N = 18	**Labor** N = 12	**Complex** N = 38
Case Management % "about right"	89%	47%	80%	64%
Costs vs. Expectations % "as expected or less"	29%	33%	67%	49%
Time to Resolve Dispute % "about right or less time"	68%	56%	18%	31%
Satisfied with Attorney Fees % "neutral, satisfied or very satisfied	58%	50%	70%	65%
Satisfied with Court % "neutral, satisfied or very satisfied	88%	63%	36%	65%

There is a clear association between type of case and litigants' regard for the civil justice system. Each of the particular dimensions of evaluation is affected differently by case type. For complex cases the time needed to dispose of issues in dispute is rated quite low. The costs vs. expectations dimension is given a low rating in tort and contract cases.

Figure 6
Analysis of Case Type Effects upon Litigant Evaluations of U.S. Dist. Court



This data is derived from the first litigant survey (n=98).

Table 14

ANALYSIS OF CASE DURATION EFFECTS UPON LITIGANT CONSUMER EVALUATIONS OF U.S. DISTRICT COURT CIVIL JUSTICE SERVICES

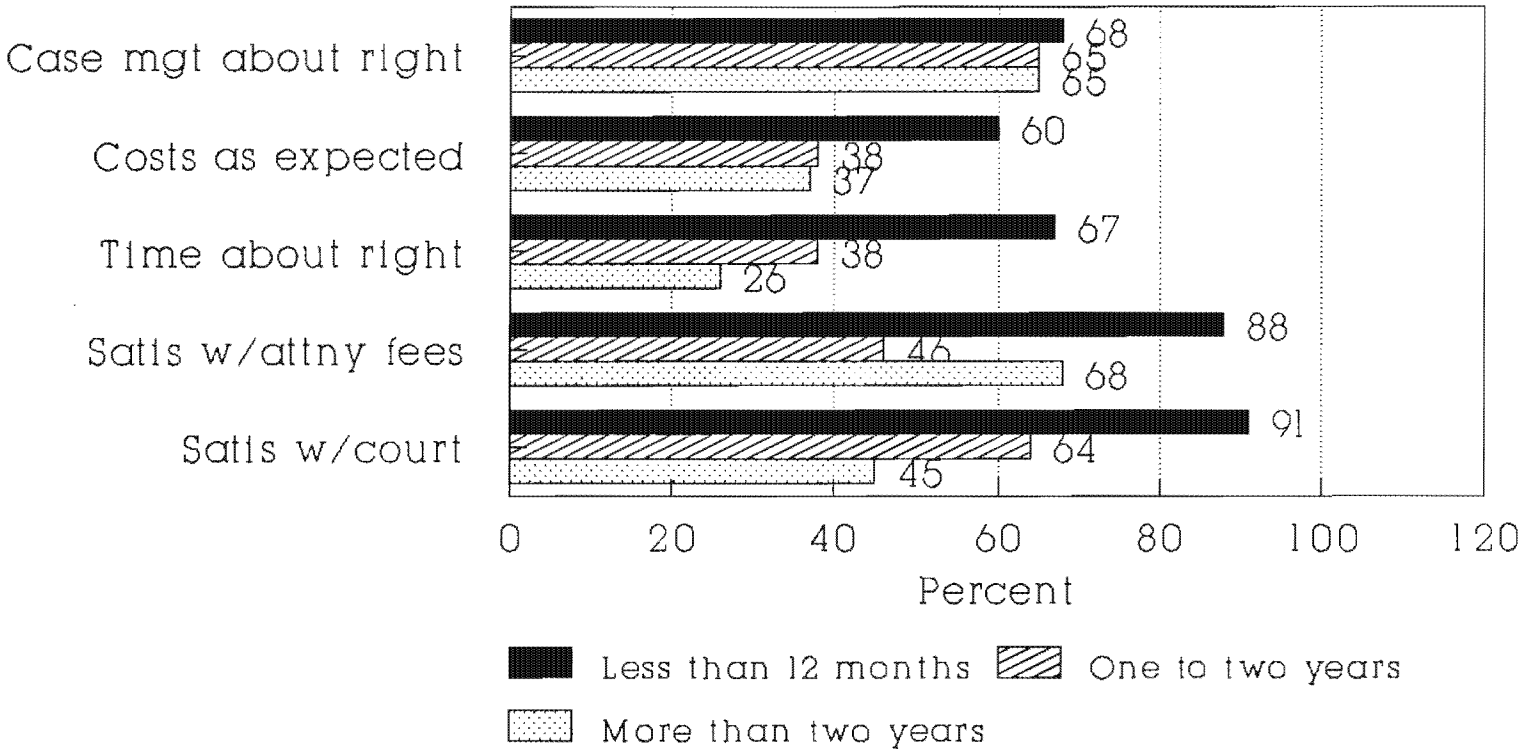
LITIGANT 1 GROUP
(N = 98)

	Duration of Case		
Evaluation Dimensions	**< 12 Months** N = 32	**12 to 24 Months** N = 39	**24 + Months** N = 27
Case Management			
% "about right"	68%	65%	65%
Costs vs. Expectations			
% "as expected or less"	60%	38%	37%
Time to Resolve Dispute			
% "about right or less time"	67%	38%	26%
Satisfied with Attorney Fees			
% "neutral, satisfied or very satisfied"	88%	46%	68%
Satisfied with Court			
% "neutral, satisfied or very satisfied"	91%	64%	45%

A very important influence upon litigant consumer evaluations of the civil justice system is DURATION of litigation. The longer the case takes to resolve, the lower the favorability accorded to the process by the litigant consumers involved. [Attorney fees satisfaction is the sole exception to this pattern of results.]

Figure 7

Analysis of Case Duration Effects upon Evaluations of Court Services



(n = 98)

Table 15

ANALYSIS OF THE EFFECTS OF WINNING, LOSING, OR MAKING A SETTLEMENT UPON LITIGANT CONSUMER EVALUATIONS OF U.S.DISTRICT COURT CIVIL JUSTICE SERVICES

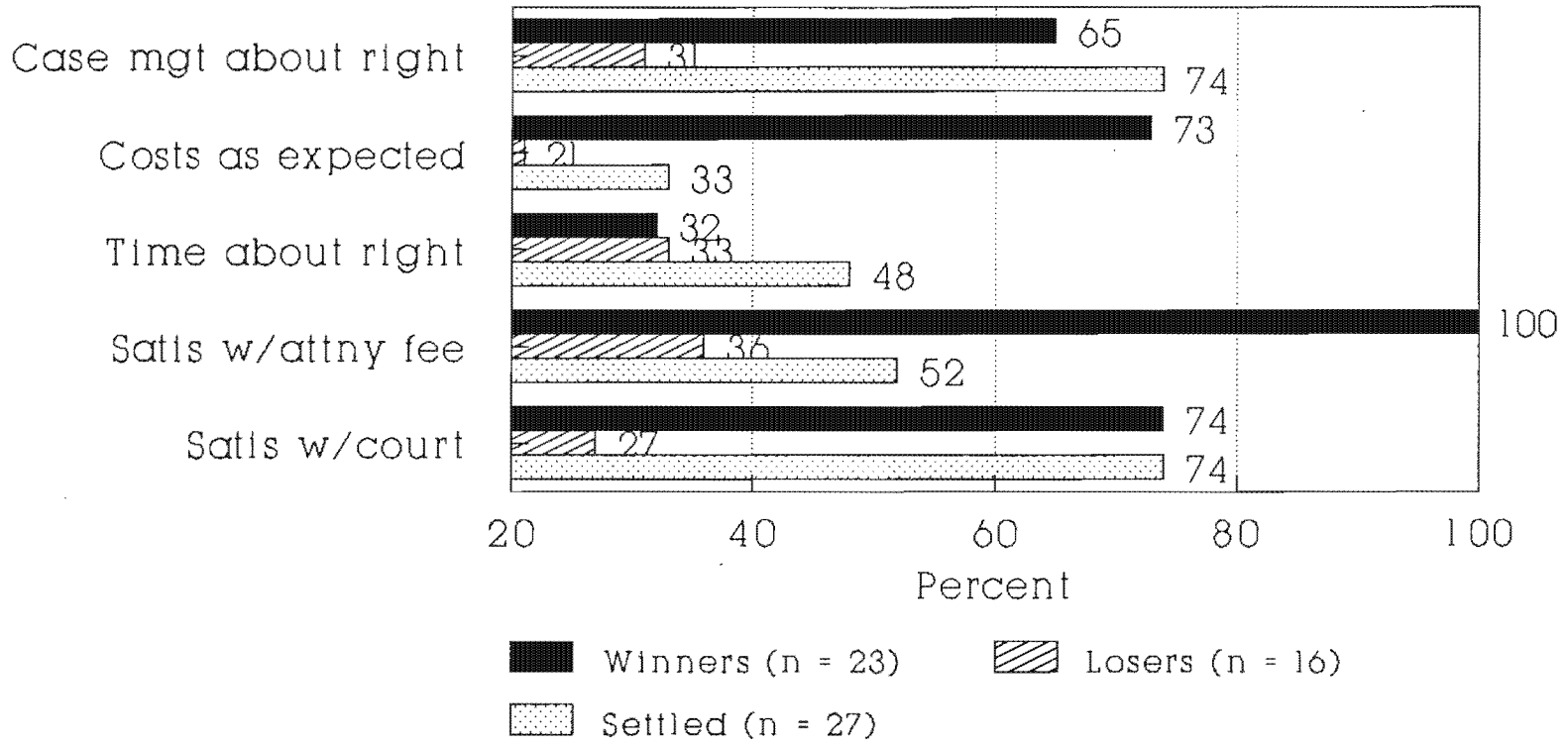
LITIGANT 1 GROUP
(N=66)

	Outcome of Case		
Evaluation Dimensions	**Winners** N=23	**Losers** N=16	**Settled** N=27
Case Management % "about right"	65%	31%	74%
Costs vs. Expectations % "as expected or less"	73%	21%	33%
Time to Resolve Dispute % "about right or less time"	32%	33%	48%
Satisfied with Attorney Fees % "neutral, satisfied or very satisfied	100%	36%	52%
Satisfied with Court % "neutral, satisfied or very satisfied"	74%	27%	74%

As expected, losers are clearly inclined to provide a lower rating of major aspects of the civil justice system than are either winners or parties to a settlement. It is also clear that settlement parties are nearly as favorable toward the civil justice system as are winners. This finding provides some degree of support for efforts to build more ADR and/or early settlement conference efforts into case management processes as a means of improving civil justice system performance.

Figure 8

Analysis of Effect of Winning, Losing or Making a Settlement on Evaluation



(N = 66)

Table 16

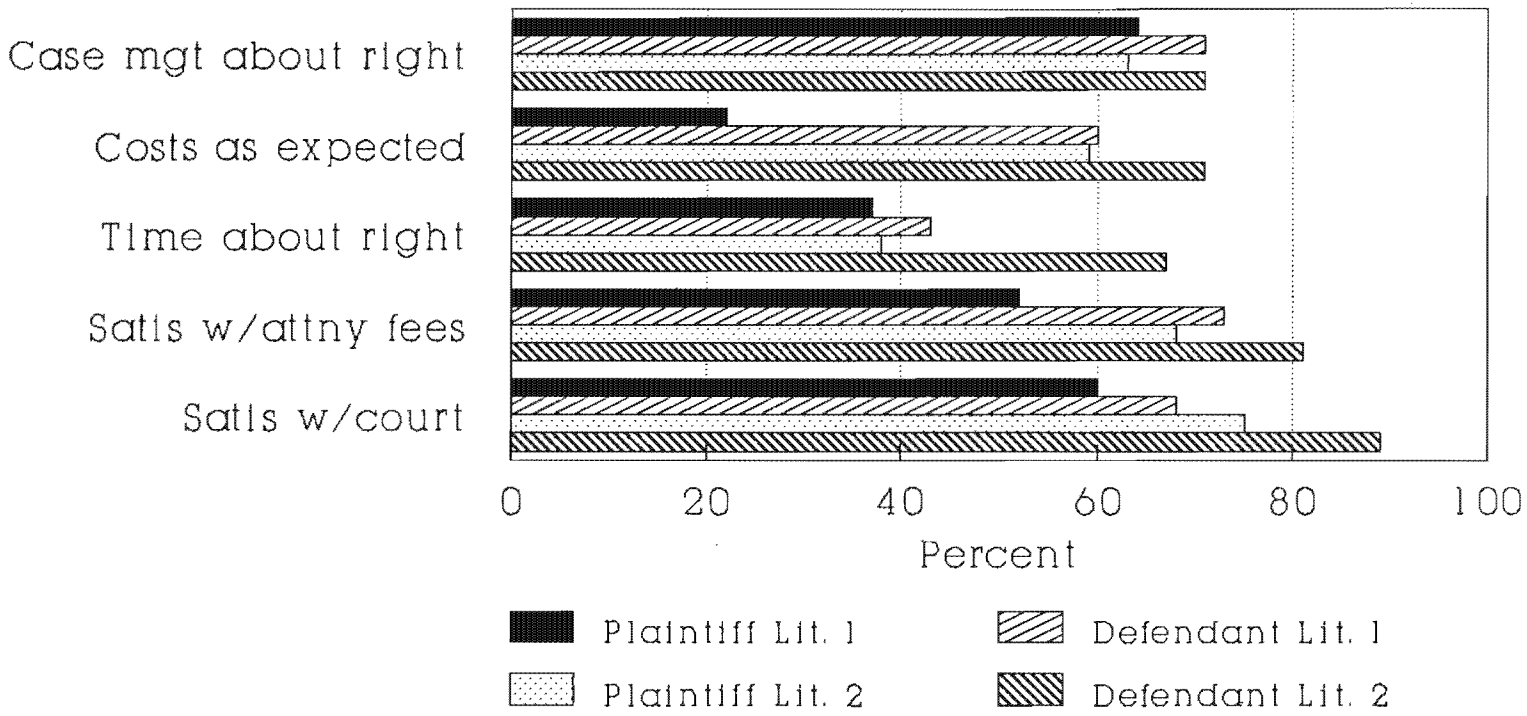
ANALYSIS OF EFFECTS OF PLAINTIFF AND DEFENDANT CLIENT STATUS ON LITIGANT CONSUMER EVALUATIONS OF DISTRICT COURT CIVIL JUSTICE SYSTEM SERVICES

	LITIGANT 1 GROUP (N=98)		LITIGANT 2 GROUP (N=92)	
	Litigant Status			
Evaluation Dimensions	Plt. (n=43)	Def. (n=47)	Plt. (n=37)	Def. (n=54)
Case Management % "about right"	64%	71%	63%	71%
Costs vs. Expectations % "as expected or less"	22%	60%	59%	71%
Time to Resolve Dispute % "about right or less time"	37%	43%	38%	67%
Satisfied with Attorney Fees % "neutral, satisfied or very satisfied	52%	73%	68%	81%
Satisfied with Court % "neutral, satisfied or very satisfied"	60%	68%	75%	89%

Defendants quite clearly react more favorably to the services they consumed in the civil justice system than do plaintiffs. In every aspect of assessment plaintiffs express significantly less positive feelings about the civil justice process than do defendants. The results noted are nearly identical for both the Litigant 1 Group and the Litigant 2 Group, indicating a "robust" finding. The common fear that it is "too easy too sue" and that courts and juries are too ready to accord awards to plaintiffs would seem rather out of place for the U.S. District Court for Eastern Washington.

Figure 9

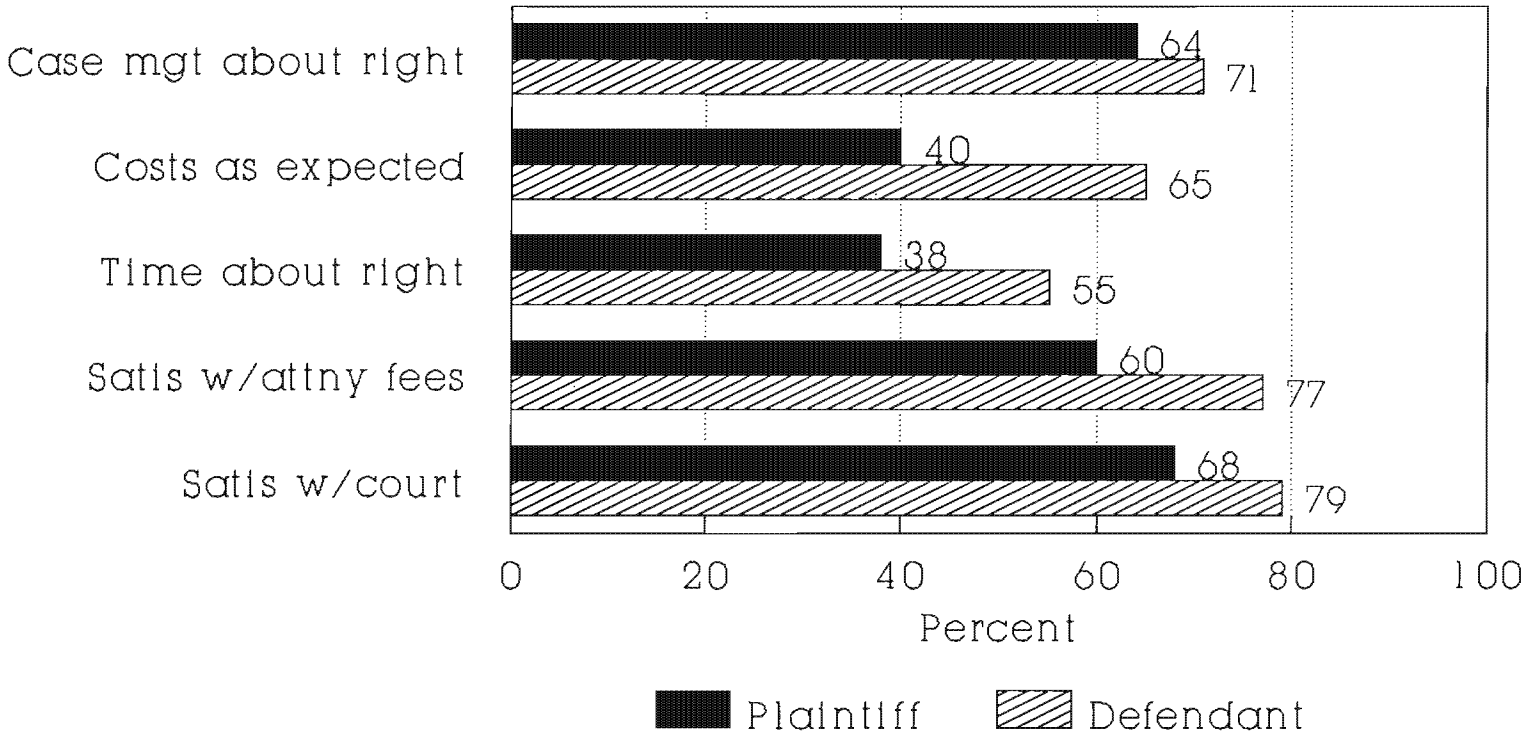
Analysis of Plaintiff and Defendent Status on Evaluation of Court Services



Lit. 1 Group: Plaint (n=43); Deft (n=47)
Lit. 2 Group: Plaint (n=37); Deft (n=54)

Figure 9a

Analysis of Effects of Plaintiff and Defendant Status on Court Evaluation



This graph combines both lit. surveys.
(n = 190)

V.

THE ANALYSIS OF WITHIN CASE PAIRINGS OF CONSUMER CLIENTS AND THEIR ATTORNEYS

(N = 43 cases)

Preface

It is possible for the vagarities of sampling and the biases in response rates to produce "aggregate" comparisons which may distort what happens at the level of the individual case. For example, it is possible that those attorneys who were inclined to bill their clients more conservatively than others were more likely to return their surveys than were their colleagues. Suppose as well that those litigants who had unfavorable experiences with the civil justice system were more inclined than more fully satisfied parties to return their questionnaires. Were these plausible factors at play in what has been reported in Section V., it is indeed possible to have skewed aggregate comparisons from the survey data collected.

In order to control for the intervention of such potential biases it is necessary to investigate the contrast between attorney and litigant consumer views on cost and delay aspects of civil justice litigation at the level of the INDIVIDUAL CASE. What follows, then, is an analysis based on locating cases wherein a litigant's responses are compared to their own attorney's views on those same issues **in the same case**.

Table 17

COMPARISON OF ATTORNEY/CLIENT PAIRINGS IN SAME CASES

Contract Cases

Duration = Less Than 1 Year

	Time to Resolve Case (Too Long?)	Costs of Case	Attorney's Fees
Case #1			
Attorney	No	About Right	About Right
Client	No	About What Expected	Satisfied
Case #2			
Attorney	No	About Right	About Right
Client	No	About What Expected	Satisfied
Duration = 12 to 24 Months			
Case #3			
Attorney	Yes	About Right	About Right
Client	Yes	About What Expected	Satisfied
Case #4			
Attorney	No	About Right	About Right
Client	No	Higher than Expected	Neutral

Case #5			
Attorney	No	About Right	About Right
Client	Yes	Much Higher than Expected	Dissatisfied
Duration = 24+ Months			
Case #6			
Attorney	Yes	Much Too Low	Much Too Low
Client	Yes	Much Higher than Expected	Very Dissatisfied
Case #7			
Attorney	Yes	Much Too High	About Right
Client	Yes	About What Expected	Satisfied
Case #8			
Attorney	No	About Right	About Right
Client	Yes	Much Higher than Expected	Very Satisfied
Case #9			
Attorney	No	About Right	About Right
Client	No	About What Expected	Neutral

Labor Cases

	Time to Resolve Case (Too Long?)	**Costs of Case**	**Attorney's Fees**
Duration = Less Than 1 Year			
No Cases			
Duration = 12-24 Months			
Case #1			
Attorney	No	About Right	About Right
Client	No	About What Expected	Neutral
Case #2			
Attorney	Yes	About Right	About Right
Client	No	About What Expected	Neutral
Case #3			
Attorney	Yes	Bit Too High	About Right
Client	Yes	About What Expected	Neutral
Case #4			
Attorney	No	About Right	About Right
Client	Yes	About What Expected	Neutral

Case #5			
Attorney	Yes	Bit Too High	Bit Too High
Client	Yes	Bit Higher Than Expected	Neutral
Case #6			
Attorney	No	Bit Too High	Bit Too Low
Client	Yes	About What Expected	Neutral
Case #7			
Attorney	Yes	About Right	About Right
Client	Yes	Bit Higher Than Expected	Dissatisfied

Duration = 24+ Months

No Cases

Tort Cases

	Time to Resolve Case(Too Long?)	**Costs of Case**	**Attorney's Fees**
Duration = Less Than 1 Year			
Case #1			
Attorney	No	About Right	About Right
Client	No	About What Expected	Neutral
Case #2			
Attorney	No	About Right	About Right
Client	No	Much Lower Than Expected	Very Satisfied
Case #3			
Attorney	No	About Right	Much Too Low
Client	Yes	Much Higher Than Expected	Dissatisfied
Case #4			
Attorney	No	About Right	About Right
Client	No	About What Expected	Satisfied
Case #5			
Attorney	No	Bit Too High	About Right
Client	Yes	Much Higher Than Expected	Very Dissatisfied.
Case #6			
Attorney	No	Much Too High	Bit Too Low
Client	Yes	About What Expected	Satisfied

Case #7			
Attorney	No	About Right	About Right
Client	No	Much Higher Than Expected	Dissatisfied
Case #8			
Attorney	No	About Right	About Right
Client	No	Much Higher Than Expected	Dissatisfied
Case #9			
Attorney	No	About Right	About Right
Client	No	Bit Higher Than Expected	Dissatisfied

Duration = 12-24 Months

No Cases

	Time to Resolve Case (Too Long?)	**Costs of Case**	**Attorney's Fees**

Duration = 24+ Months

Case #10			
Attorney	Yes	About Right	About Right
Client	Yes	Much Higher Than Expected	Very Dissatisfied.
Case #11			
Attorney	No	Much Too Low	About Right
Client	No	Much Too High	Neutral
Case #12			
Attorney	No	Much Too High	Way Too High
Client	Yes	Much Too High	Neutral

Complex Cases

	Time to Resolve Case (Too Long?)	**Costs of Case**	**Attorney's Fees**

Duration = Less Than 1 Year

Case #1			
Attorney	No	About Right	About Right
Client	No	About What Expected	Very Satisfied
Case #2			
Attorney	No	About Right	About Right
Client	Yes	Much Higher Than Expected	Neutral
Case #3			
Attorney	No	About Right	About Right
Client	No	Bit Lower Than Expected	Satisfied

Case #4			
Attorney	No	About Right	About Right
Client	Yes	Bit Lower Than Expected	Satisfied
Case #5			
Attorney	No	About Right	About Right
Client	Yes	Much Higher Than Expected	Dissatisfied
Case #6			
Attorney	No	About Right	About Right
Client	No	About What Expected	Satisfied
Duration = 12-24 Months			
Case #7			
Attorney	No	Bit Too High	Bit Too High
Client	Yes	Much Higher Than Expected	Very Dissatisfied.
Case #8			
Attorney	No	About Right	About Right
Client	Yes	Much Higher Than Expected	Very Dissatisfied.
Case #9			
Attorney	No	About Right	Bit Too High
Client	Yes	Much Higher Than Expected	Dissatisfied
Case #10			
Attorney	No	Bit Too High	Bit Too High
Client	Yes	About What Expected	Neutral
	Time to Resolve Case (Too Long?)	**Costs of Case**	**Attorney's Fees**
Case #11			
Attorney	No	About Right	About Right
Client	Yes	Much Higher Than Expected	Dissatisfied
Duration = 24+ Months			
Case #12			
Attorney	No	About Right	About Right
Client	Yes	Much Higher Than Expected	Very Dissatisfied.
Case #13			
Attorney	No	About Right	Bit Too Low
Client	No	About What Expected	Satisfied

Case #14			
Attorney	No	About Right	About Right
Client	No	About What Expected	Satisfied
Case #15			
Attorney	Yes	Much Too High	Way Too High
Client	Yes	Much Higher Than Expected	Neutral

The results of this case-by-case analysis suggest that the aggregate differences which appear in the comparison of lawyer and litigant consumer survey responses -- with lawyers being more positive on cost and delay aspects than litigant consumers -- are replicated at the case level. Within case-based pairings, the attorneys are inclined to think that cases don't take too long (9 attorneys vs 25 clients thought the case took too long), the costs of cases is "about right" (10 attorneys vs 22 clients thought costs were higher than expected), and attorney fees are "about right" as well. Their respective clients, however, are more inclined than the lawyers to perceive delay and unexpected costs -- especially in cases that take longer than one year; this is particularly true of complex cases.

Negative responses from the litigants which did not coincide with their attorneys' view far exceeded positive management responses. For example, an attorney might have felt the case did not take "too long" while the client felt the case did take "too long." Or, according to the attorney, fees were "about right" but the client was "dissatisfied" with the fees. The contract cases recorded 8 negative client responses out of 27 opportunities for disagreement, a 30% negative rating. Labor cases experienced only 24% negative responses, torts 50% and complex 47%. Obviously, complex cases and torts have the greatest potential for client dissatisfaction.

It should be noted that the short-term cases which were terminated within a year recorded a rate of 35% negative responses from the clients, the mid-term cases experienced a 49% negativity rate, and the long term cases (involving more than 24 months) recorded a 39% negative response rate. How long the case takes to resolve is not a serious problem vis-a-vis agreement on delay and costs between clients and attorneys.

Ultimately the analysis of the causes and recommended cures for cost and delay in the civil justice system must reconcile a number of client/attorney differences. For now, however, our attention is directed toward comparable survey responses which show high agreement between attorneys and their clients OR those which show noteworthy differences.

VI

ANALYSIS OF JUROR SURVEY

Introduction

The Advisory Committee's study of civil and criminal trial jurors was undertaken for two reasons. First, as somewhat detached observers of the courtroom process, jurors could provide some insights that may have remained unnoticed by other courtroom participants. Second, as consumers of the civil justice system and as representatives of the public, jurors' views on how well or poorly the system works should be added to those of the litigants, lawyers and judges in order to have a truly comprehensive study of the civil justice system.

Although jury trials of both civil and criminal cases are indeed rare, with settlements and guilty pleas short-circuiting the full litigation process, juries nonetheless play important roles beyond the actual courtroom situation. It can be argued that a large number of the settled cases are affected by what the attorneys and litigants (and judges) think the results would be in the event the case goes before a jury. Additionally, a jury trial is often threatened in order to reach a settlement.[14] Also, two important latent functions are performed by juries. First, juries provide a protective structure between the excesses of the government and the sometimes helpless public. Second, the jury experience constitutes one of the rare opportunities for ordinary citizens to participate directly in important governmental responsibilities. Jurors' reaction to their participation is an important indication of how well judges and court staff are doing their jobs as determined by the lay public representatives called into temporary service to their government.

In more concrete terms, the jurors' experiences are directly relevant to delay in the litigation process. Waiting to be called, the *voir dire* process, the trial itself as well as the jury deliberations contribute to delay in the courts. The reaction of the jurors to the award, if any, in the case bears directly on costs in the civil justice system. Finally, collecting data on both criminal and civil juries permits an appraisal of the differences between these two forms of jury service, possibly leading to some recommendations for reform.[15]

The Responses

Only infrequently did the criminal and civil jurors disagree on matters of cost, delay and case management issues. Nonetheless, the combined and on occasion the separate responses to several relevant questions provide interesting insights into the jury process and into the public perspective on the civil justice system.

The Voir Dire Process

Neither sets of jurors surveyed regarded the *voir dire* process as taking too long, and consequently -- from their perspective -- it was not a contributing factor to litigation delay. Only 12% (13) of the criminal and 6% (3) of the civil jurors felt the jury selection process "took too long." It was obvious to 50% of both sets of jurors that the attorneys "were looking for a particular kind of juror," favorable to one side or another rather than one who was fully disinterested. Twenty-one percent of the civil jurors were asked questions about "how they might view a monetary award at stake?" One quarter of the civil and 36% of the criminal jurors felt that questions that "were relevant to the case and may have influenced [their] decision" were not asked during the jury selection process. Nonetheless, only one quarter of the civil jurors thought the *voir dire* process failed in posing the relevant questions pertaining to essential objectivity.

Voir Dire Comments

The civil juror comments tended to focus on the perceived biases of the attorneys. For example, "Attorney for the Defendant was looking for 'rednecks,' Republicans and

14. As pointed out by Guinther, "The availability of the jury in most civil cases plays a major role in reducing the number of suits that go to trial. The reason lies in the belief held by lawyers and by insurance companies that juries are more unpredictable than judges; consequently, when one side or the other files for a formal demand for a jury, it is acting to force the opposition to negotiate seriously,..." Guinther, **The Jury in America**, p. 44.

15. See R Hastie, S. Penrod and N. Pennington, **Inside the Jury**. Cambridge: Harvard University Press, 1983, for an analysis of the criminal jury. This volume also contains an excellent bibliography on jury studies.

conservatives." "They wanted intelligent people," or "Someone who would help their side." One of the criminal jurors commented that "The [Defendant's] lawyer wanted someone who was liberal in their way of thinking! It caused problems [later] on," "I felt that the defense attorney did not want anyone connected with law enforcement, judicial system, or a prison system on the jury." Another juror observed: "Defendant's attorney was looking for as many laissez fair type of jurors as possible. [Strict] minded jurors were challenged."

Views of the Trial Process

The following table reports results on the level of juror interest that was sustained throughout the trial.

Table 18

JUROR INTEREST IN TRIAL

	Civil (N = 54)	**Criminal** (N= 115)
Extremely interesting	56%	53%
Sometimes interesting	37%	44%
Boring	6%	3%

Three-fourths of the civil jurors felt that the judge's control over the trial was "firm but appropriate," and another 17% viewed the judge's control over the trial as "not firm but appropriate." Even more of the criminal jurors (90%) agreed that the judge's control was "firm but appropriate," and another 9% felt that "not firm but still appropriate" was how they saw their particular case managed. Obviously, the juror laypersons were quite favorably impressed with the judicial management they witnessed.

The attorneys were viewed as somewhat at fault for delay in the trials. Nearly one third of the civil (32%) and one sixth (16%) of the criminal jurors felt that attorneys had "caused unnecessary delay." The plaintiff's attorney in the civil trial and the defendant's attorney in the criminal trial were seen as largely responsible for delay. The jurors who were concerned with the attorneys' causing unnecessary delay isolated the following causes:

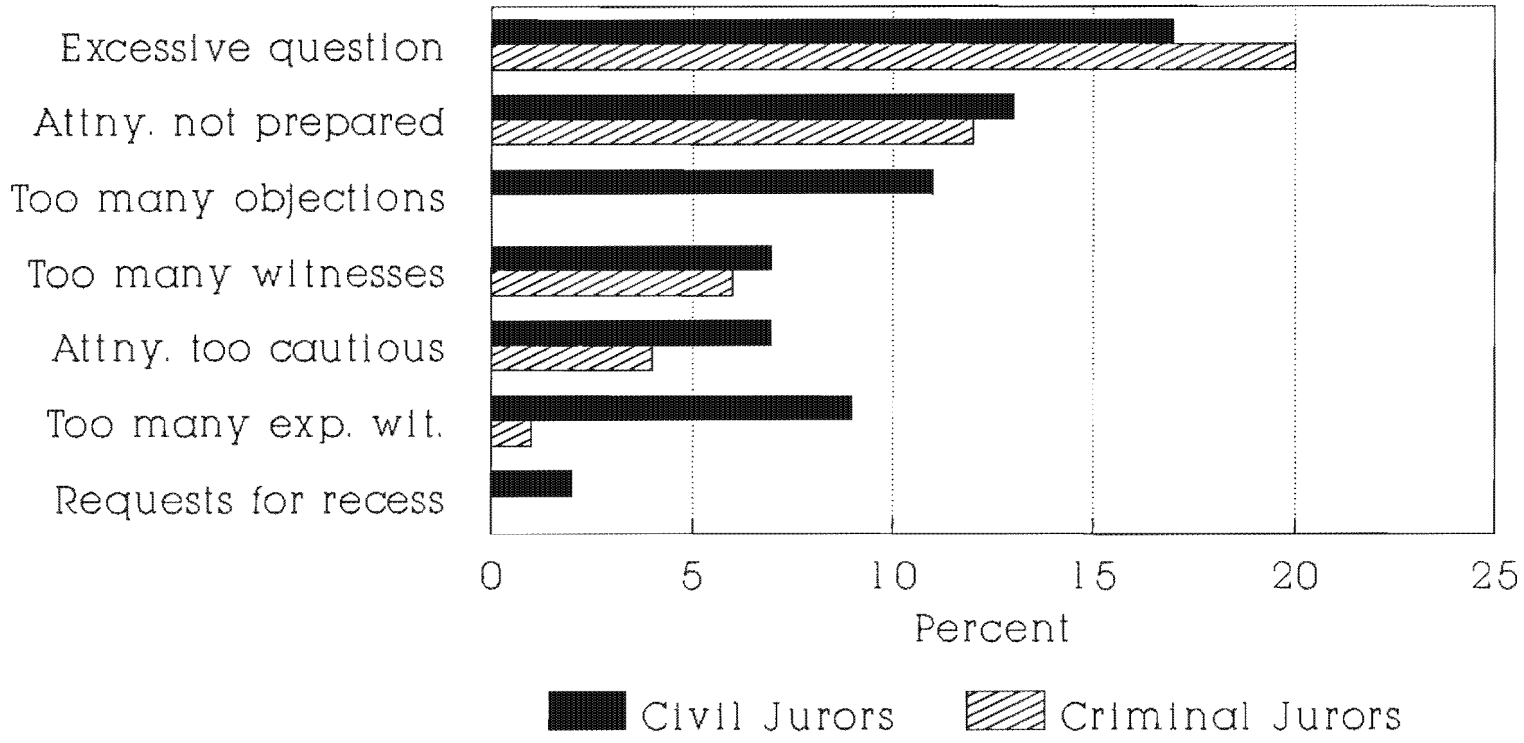
Table 19

ATTORNEY ACTIONS LEADING TO DELAY

Actions	**Civil** (N = 54)	**Criminal** (N = 115)
Excessive questioning	17%	20%
Attorneys not prepared	13%	12%
Too many objections	11%	0%
Too many witnesses	7%	6%
Attorneys too cautious	7%	4%
Too many expert witnesses	9%	1%
Requests for recesses excessive	2%	0%
Motions for continuances excessive	0%	0%

A number of critics of the jury system have argued that legal issues, arguments and the judge's charge at trial are too complicated for the ordinary citizen to understand. The

Figure 12
Juror Perceptions of Attorney Actions Leading to Delay



(n=51)

survey revealed that 41% of the civil and 30% of the criminal jury members regarded their case as "complex." However, when asked to note their level of understanding, as indicated below, most felt they had grasped the legal and factual complexities adequately.

Question: "After both sides had completely presented their sides of the case, but before you began the jury deliberations, did you feel that you had a good idea of what had really happened?"

Table 20

JURORS' PERCEPTIONS OF WHAT WAS AT ISSUE

	Civil	**Criminal**
Yes (Clear Perception)	65%	79%
Fairly good	33%	17%
No (Issues Not Clear)	2%	3%

Despite critics, the jurors felt they were on top of the issues and the law involved in the cases they helped settle.

Some judges permit notetaking by the jurors. Of the civil jurors that were permitted to take notes, 81% felt them useful and 61% of the criminal jurors agreed. However, most of those who were not permitted to take notes thought notes would not have helped them. Most (53%) of those jurors who were permitted to submit questions during a criminal trial felt the practice useful, and of those not allowed to pose questions, 31% wanted to do so. Only 25% of the few civil jurors who could have asked questions thought it was useful, but 59% of those who were not permitted to ask questions of witnesses in civil trials would have liked to have had the opportunity.

Guinther's Roscoe Pound study found that 48% of the civil jurors would have liked to have taken notes during the trial and 80% would have liked to have asked questions during the trial.[16] What is suggested by this and the Eastern District jurors' response is that note taking and questioning would add to the jury deliberations, but it likely depends upon the type of case.

Comments on Note Taking

The comments on note taking and questions were split on their value: "I would dwell on my notes, rather than over the trial," "If notes were taken then you would not be listening 100%," "Helped you remember the points of the case," and "One remembers what one writes, even if you never look at it again."

Some studies have shown that judges' instructions to juries are often confusing; not so with the Eastern District.[17]

---

16. Guinther, p. 295 and p. 310.

17. "Jurors ...are 'doused with a kettleful of law, during the charge, that would make a third-year law student blush.' [This] point -- according to a panoply of judges, lawyers, and jury researchers -- is well taken." Guinther, p. 70-1

Table 21

JURORS' UNDERSTANDING OF JUDGES' INSTRUCTION

	Civil	Criminal
Understood all of it	56%	77%
Understood most of it	43%	23%
Understood only part	0%	0%
Understood not very much	0%	0%

With respect to attorneys' attempts to set the framework for their case in the opening statements, preparing the jury for their view of the proper outcome, and in their closing statement efforts to plant a favorable conclusion in the minds of the jury -- how successful were they?

Table 22

IMPORTANCE OF OPENING AND CLOSING STATEMENTS

	Civil (N=54)		Criminal (N=115)	
	Opening	*Closing*	*Opening*	*Closing*
Persuasive	25%	2%	44%	18%
Not persuasive	75%	36%	56%	22%
Helped me understand issues		56%		57%

Closing arguments were helpful to jurors in both civil and criminal cases, but opening statements were really not all that persuasive in civil trials.

Each juror was asked: "Just before jury deliberations began, had you already reached a decision, even though that might not have been your final decision?" One third of the civil jurors and 50% of the criminal jurors had made up their minds before the jury deliberations. Ninety percent of these criminal jurors had accepted the government's view of the case. Although 69% of the civil members had accepted the defendant's case, they tended to have more favorable "feelings" toward the plaintiff than to the defendant.

Twelve percent of the jurors hearing a criminal case thought the defendant "was at a disadvantage." Reasons for the disadvantage were varied, but gender, race or ethnicity of the defendant were not seen as important. The social background, trial demeanor and appearance were only minor factors, and poor legal representation was viewed as adding to the disadvantage by 7% of the respondents.

Jurors' Comments on Trial Process

Both sets of jurors were impressed by how the trial process proceeded. For example, "Judge maintained control, and [attorneys] were well [behaved]," "Very well done in a dignified manner. Also, both attorneys' conducted themselves in a dignified manner. I was impressed with the professionalize of the entire process," "There were times when the attorney for the defendant started on a line that wasn't pertinent to the case and the judge asked for a point to be made or cut it short," or "Kept the trial headed in the right direction. No sidetracking."

Jury Deliberations

Participants in both the criminal and civil trials overwhelmingly regarded the jury deliberations as open and full. Nonetheless, few of the jurors changed their minds or made their decision as a result of the jury deliberations. However, the deliberations, as reported in Table 12, had a greater influence on the civil juror than the criminal case juror.

Table 23

INFLUENCE OF JURY DELIBERATIONS ON DECISION

	Civil	**Criminal**
Already made up mind	9%	17%
Made me think, but not change	57%	71%
Changed point of view or convinced me	35%	11%

Civil juries are ordinarily composed of six members, with perhaps alternates, while criminal juries have 12 members with alternates. Only 12% of the civil jurors felt their deliberations would have been enhanced had the number been increased to 12, and only 11% felt decreasing criminal juries to six would improve their deliberations.

The role the jury foreman assumed was crucial. Although he or she tended to lead the discussions, they typically refrained from trying to influence the other jurors. In response to "What sort of role did the jury foreman play during the deliberations?" the following answered "Yes."

Table 24

ROLE OF THE JURY FOREMAN

	Civil	**Criminal**
Led the discussion	41%	60%
Attempted to remain neutral	22%	32%
Attempted to persuade others	8%	7%
Not more active than others	40%	32%
Foreman remained passive	4%	2%

Reactions To The Jury Experience

Most of the jurors looked forward to their service on the jury. Before serving, 74% of the civil jurors "looked forward to their jury service." Of the criminal jurors, 60% looked forward to their service. After they had served, 85% (civil) and 92% (criminal) of the respondents thought the jury system was a good system."

Most encouraging were the responses to the question: "How satisfied were you with your experience."

Table 25

JUROR SATISFACTION WITH JURY SERVICE

	Civil	Criminal
Very satisfied	40%	59%
Satisfied	52%	37%
Unsatisfied	8%	4%

Most of the respondents looked forward to their jury duties, but after the experience they were even more enthusiastic about jury service.

Comments on Jury Experience

The advice of one civil juror was instructive. The judge should "Explain to jurists that turmoil and conflict may well be an expected part of the deliberation process and that this is normal. Do not try to avoid it or get [to] upset if it occurs. It is a normal part of good decision making." A criminal juror wrote: "I feel everyone needs to serve on a jury in order to fully understand the experiences and the system."

How Representative Are The Jurors?

It is generally understood that juries do not represent a cross-section of the public within any particular jurisdiction. As a result of voting registration, mailed questionnaires, jurors being excused and because of the *voir dire* process, juries tend to have a mid-America bias. The young and the old, ethnic minorities, the rich and the poor, highly and poorly educated and women tend to not be equally represented in juries. Is this the case with the Eastern District?

Table 26

AGE OF JURORS

	Civil	Criminal
20-29	7%	6%
30-39	36%	17%
40-49	11%	23%
50-59	16%	21%
60-69	27%	23%
70-79	3%	8%
80-89	0%	2%
Average Age	48	51

The civil jurors surveyed ranged from twenty to seventy-nine years in age, with 36% (16) of the respondents' ages ranging from thirty to thirty-nine years and 27% (12) ranging from sixty to sixty-nine years. The criminal jurors ranged in age from twenty to eighty-nine years, with 23% (12) of the respondents' ages ranging from forty to forty-nine years, and another 23% (12) ranging from sixty to sixty-nine years. This suggests that jurors tended to be either middle-aged citizens or retirees. Thus, the young adult was not equally represented in juries. As expected, the average age of civil and criminal jurors did not differ significantly. Out of 110 respondents only one juror reported having a physical disability, and this juror did not request to be excused from jury duty.

Race

Race and ethnic background issues have permeated jury composition for years. A "jury of one's peers" does not mean an exact replication of the background of the person on trial, but the jury should come close to being representative of the constituency of the court. The Eastern District's juries were fairly representative of the county from which they were drawn.

Table 27

RACIAL COMPOSITION OF JURIES

	Civil	**Criminal**	**Spokane County** *(1990 Census)*
White	96%	96%	91.9%
Black	2%	0%	1.9%
Native American	2%	2%	2.0%
Asian	0%	2%	2.1%
Hispanic	0%	0%	2.1%

A disproportionate percentage (96%) of both types of jurors were Anglo-American. The make-up of the population of the Eastern District is overwhelmingly white when compared with the state population generally. However, tied as it is with the state's voter registration system and with the ethnic composition of Spokane County, the figures in Table 27 are about what would be expected. Nonetheless, with only one African-American and one Native-American and no Hispanics or Asians serving on civil juries and no African-Americans or Hispanics on criminal juries, the view that juries tend to be mid-American in composition is reinforced.

Education

The jury selection process has tended to winnow out the highly educated and those with little formal schooling. Is this also the case in the Eastern District?

Table 28

EDUCATIONAL LEVELS AMONG JURORS

Number of Years of School Attended:	**Civil**	**Criminal**
0-8	0%	7%
9-12	39%	33%
13-19	61%	60%

The Eastern District overrepresented the better educated with over 60% of the jury members having at least some college education. However, as expected, those with less than a high school education are indeed missing from the civil juries.

Occupation

The occupations of the jurors tended to reflect their education backgrounds, with a considerable number in a professional or semi-professional occupation.

Table 29

JUROR OCCUPATIONS

	Civil	Criminal
Professional/ Semi-professional	48%	50%
Self Employed	0%	6%
Clerical	21%	8%
Skilled/ Semi-Skilled	10%	26%
Unskilled	2%	4%
Farmer	7%	2%
Unemployed/ Student	0%	0%
Retired	7%	2%
Homemaker	5%	2%

The professional occupations tended to correlate with the jurors' reported education levels. Ten-percent of the civil jurors were skilled or semi-skilled workers. Twice as many criminal jurors held jobs requiring specific skills. A small percentage of the respondents were unskilled workers, farmers, homemakers, or retirees. None of the jurors reported being students. These data suggest that jurors tend to be middle to upper class, white-collar workers.

Over two-thirds of both sets of jurors were employed, and of those not employed most were of retirement age. Once again this suggests a middle-class bias.

Gender

Table 30

GENDER COMPOSITION OF JURIES

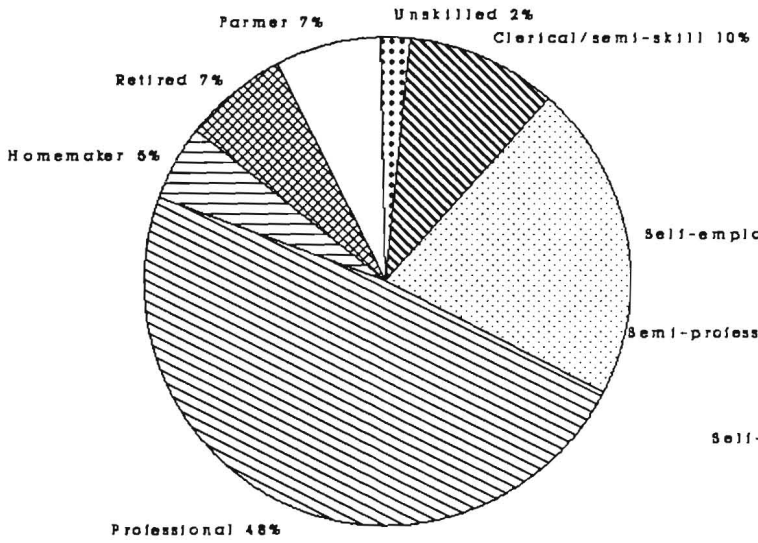
	Civil	Criminal
Female	48%	61%
Male	52%	39%

These data are inconsistent with the claim that women are underrepresented in juries. In fact, nearly half and well over half of the civil and criminal jurors, respectively, were women, documenting that there is an equal or balanced representation of men and women on juries. Few (9%) of the jurors asked to be excused, confirming that most people selected for jury service willingly fulfill their civic duty.

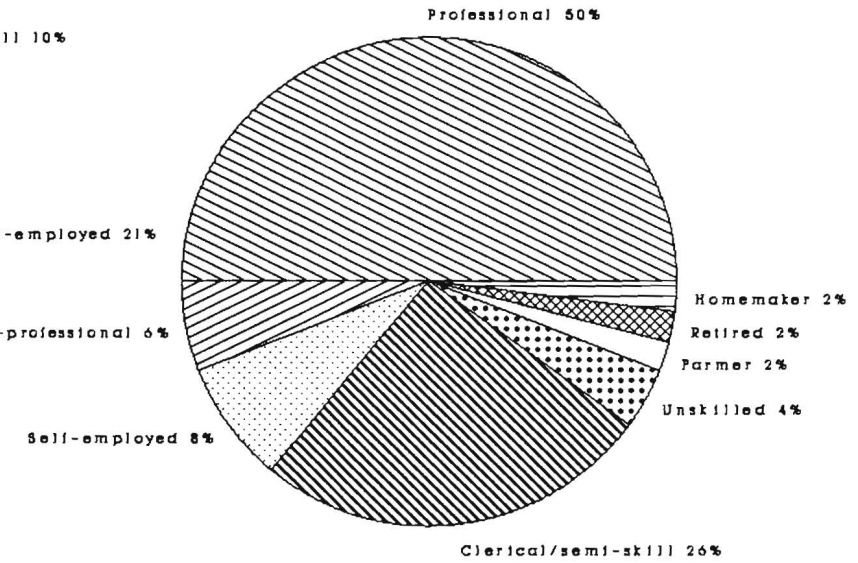
Summary

Juries appear to have a middle-class bias. The majority of the civil and criminal jurors surveyed were European-American, middle aged, college educated, professionals. It should be noted, however, that a gender bias does not exist. Nevertheless, minorities,

Figure 13
Juror Occupations



Civil Cases



Criminal Cases

individuals with less than a college education, and blue collar workers are sorely underrepresented on juries.

Perhaps two quotes from the jurors are appropriate here:

> "I thought that the process was very fair and that both the defense and the prosecution had a reasonable amount of time to present their cases. Judge ..... never cut them off or rushed them. We were willing to take the time to insure a fair trial." "The process was tremendous to experience. I value it greatly but it sorely impeded on my personal responsibilities."

VII.

GRAND SUMMARY

The results from the several surveys presented here sketch out a complex picture of consumer viewpoints. In general, however, it can be said that the "professional consumers" (attorneys) are rather FAVORABLE in their views regarding costs and delay problems, ascribing to the court quite high marks in both areas. As for *pro se* litigators -- making cases from prison, although they are the least favorable in their assessments of any group they too are inclined to be FAVORABLE to the court as compared to Department of Corrections dispute resolution processes. The "lay consumers" -- litigants in plaintiff and defendant roles -- are also inclined to be somewhat FAVORABLE to the court with defendants being more satisfied with court services than plaintiffs. Finally, the "citizen representative" consumers of court services accord very high marks to the court. From these several different surveys it seems apparent that the consumers of U.S. Federal District Court services are generally satisfied with the Court's performance and hold the judges and staff of the court in rather high esteem. From the standpoint of the EasternWashington district's civil justice system CONSUMERS, the problems commonly ascribed to civil litigation in the federal courts are less pressing here than elsewhere in the country. Without doubt there is room for improvement in the civil justice system generally and in the U.S. District Court for Eastern Washington specifically; the customer survey results contain a number of implications for improvement, especially from the perspective of litigants involved in complex and or long lasting cases. The more effective and earlier resolution of prisoner petitions, for example, would do much to permit the redirection of court resources to its remaining civil caseload. Of the customer-oriented surveys it can be said that they provide both a reaffirmation of the existing performance level of the court and some useful feedback on further efforts that might be made to further improve the effectiveness of civil justice proceedings in the U.S. District Court.

In some respects, the U.S. District Court for Eastern Washington enjoys rather favorable circumstances for careful experimentation. Conditions here are not as dire as they appear to be elsewhere in the country, allowing some room for learning how modest changes might improve operations. Indeed, a substantial number of "good ideas" of likely merit have been developed by the CJRA committee for potential adoption by the Court. In this regard, the surveys reported here represent highly valuable **baselines** for determining the degree to which these changes occasion improvements in the provision of services to the Court's civil justice system consumers.

ATTORNEY QUESTIONNAIRE

CIVIL JUSTICE ADVISORY COMMITTEE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Justin L. Quackenbush
Chief Judge

Robert Henderson, Esq.
Chairman

April 1, 1992

Mark E. Wilson, Esq.
Reporter

James R. Larsen
Clerk of Court

Dear _____:

In addition to creating new judgeships, the Civil Justice Reform Act of 1990 required each District to appoint an advisory committee to study the civil justice system. The enclosed questionnaire has been designed by the Eastern District Advisory Committee to begin our appraisal of civil litigation.

We have randomly selected a group of cases that were recently terminated and are seeking information from attorneys and litigants about these particular cases. Your case was one of those among the 150 selected for study. Your case is listed as follows:

_____

Please take fifteen to twenty minutes to fill out the "Questions for Attorneys" and return the form in the enclosed, stamped preaddressed envelope as soon as convenient. Your responses will be held in the strictest confidence. The information from the surveys is being compiled by an independent research unit at Washington State University, and only the aggregate data from all the returned questionnaires will be reported to the advisory committee. The answers will be entered into the computer for analysis without any identifying references and then the questionaires will be destroyed.

We are also interested in seeking the opinions of the litigants involved in this case. The court records lack the name and address of a corporate contact person representing your client or the individual plaintiff or defendent in this case. Would you please write in that information in the box provided in the upper right-hand corner of the first page of the survey form. For your information, we have enclosed a copy of the survey we will be sending your client. Of course, without the client's views our study would be incomplete.

We greatly appreciate your taking the time to participate in this important study. Your input is absolutely necessary to our efforts. We anticipate that your responses and those of others will lead to significant recommendations for improving the civil justice system in our district.

Thank you,

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

B. EXPEDITIOUSNESS OF LITIGATION IN THIS CASE

1. Our records indicate this case took about _____ months from filing date to disposition date.

2. Did this case take longer than it should have? ____ Yes ____ No

   How many months should this case have taken from filing to disposition under circumstances in which the court, all counsel, and all parties acted reasonably and expeditiously, and there were no obstacles such as a backlog of cases in the court?
   _____ months.

   Please comment:

   _____

   _____

3. If the case actually took longer than you believed reasonable, please indicate the degree to which each of the following factors was responsible for the delay: (circle one for each)

	Mostly Responsible	Somewhat Responsible	Not Responsible	Unsure or Not Applicable
A. Excessive case management by the court	1	2	3	4
B. Inadequate case management by the court	1	2	3	4
C. Dilatory actions by counsel	1	2	3	4
D. Dilatory actions by the litigants	1	2	3	4
E. Dilatory actions by insurance carriers	1	2	3	4
F. Court's failure to rule promptly on motions	1	2	3	4
G. Backlog of cases on court's calendar	1	2	3	4
H. Complexity of the case	1	2	3	4
I. Unnecessary discovery	1	2	3	4
J. Failure to complete discovery within time fixed by scheduling order	1	2	3	4
K. Too much time allowed for discovery	1	2	3	4
L. Unnecessary delay entering or failure to enter a scheduling order	1	2	3	4
M. Trial date not set at early stage of proceedings	1	2	3	4
N. Personal or office practice inefficiencies	1	2	3	4
O. Delay in entry of judgment	1	2	3	4
P. Other. (please specify) _____	1	2	3	4

_____

Please comment:_____

4. Did you gain any advantages from delay in this particular case? (please explain)_____

5. Did the other side gain any advantages from delay in this case? (please explain)_____

6. If delay is a problem in this district for disposing of civil cases, what suggestions or comments do you have for reducing those delays?_____

C. COMPLEXITY OF CASE

1. Compared with your other civil cases, how difficult or complicated was this case?

Highly Complicated	Complicated	Average	Not Very Complicated	Not Complicated
1	2	3	4	5

2. If complicated, what contributed to the complication?_____

_____

_____

_____

_____

3. Did the complication add significantly to the delay? ____ Yes ____ No

4. Did the complication add significantly to the costs in this case? ____ Yes ____ No

D. COSTS OF LITIGATION IN THIS CASE

1. Please estimate the amount of money at stake in this case. $_____.

2. What type of fee arrangement did you have in this case? (circle one)

   A. Hourly rate

   B. Hourly rate with a maximum

   C. Combination of hourly rate and other factors

   D. Combination of reduced rate and other factors

   E. Set fee

   F. Contingency

   G. Other (please describe)_____

3. Apart from the causes, were the costs to your client (circle one)

much too high?	slightly too high?	about right?	slightly too low?	much too low?
1	2	3	4	5

4. Were the attorneys' fees (circle one)

much too high?	slightly too high?	about right?	slightly too low?	much too low?
1	2	3	4	5

5. If the costs or attorneys' fees associated with this litigation were too high, what were the causes?_____

_____

_____

_____

_____

_____

6. If costs or attorneys' fees were too high in this case, what solutions would you suggest?

_____

_____

_____

_____

_____

_____

E. DISPOSITION OF THIS CASE

1. How was this case concluded?

A. Court action
(1) Bench trial ____
(2) Jury trial ____
(3) Court decision on motion ____
(4) Settlement ____

B. ADR
(1) Arbitration ____
(2) Mediation ____

C. Negotiation
(1) Lawyer negotiation ____
(2) Litigant negotiation ____

D. Other (please indicate) _____

2. If the case was settled by negotiation, what factors expedited or facilitated settlement?

_____

_____

_____

3. If court action was unsatisfactory to your client, has the decision been appealed?

____ Yes ____ No

Please comment:_____

_____

_____

F. RESPONDENTS BACKGROUND

1. For how many years have you been practicing law?____

2. Please estimate the percentage of your practice (of time spent) devoted to civil litigation _____.

3. What is the nature of your practice?

   ____ Sole Practice

   ____ Government (____ Federal, ____ State, ____ Local)

   ____ Law firm (____ Number of Attorneys in firm)

   ____ In-House Corporate Practice

   ____ Other:_____

4. Do you represent plaintiffs or defendants?

   ____ Usually plaintiffs

   ____ Both about equally

   ____ Usually defendants

5. Approximately how many cases have you handled or been substantially involved in that were pending in any U.S. District Court within the past five years? _____

6. What types of cases do you usually handle in federal court (check as many as applicable)?

   ____ Admiralty
   ____ Administrative Law
   ____ Antitrust/Unfair Competition
   ____ Bankruptcy
   ____ Banks & Banking
   ____ Civil Rights/Prisoner Rights
   ____ Contracts
   ____ Copyrights/Trademarks/Patents
   ____ Environmental
   ____ ERISA
   ____ Fraud/Truth-in-Lending
   ____ Labor
   ____ Torts
   ____ Personal Injury
   ____ Real Property/Condemnation
   ____ RICO
   ____ Securities/Commodities
   ____ Social Security
   ____ Tax
   Other:_____

Please add any comments or suggestions regarding the time and cost of litigation in federal courts. Also add any further comments you may have on specific questions (please refer to the question number).

Thank you for participating in our study. If you have any questions contact Professor Mark Wilson at (509) 328-4220 or Robert B. Henderson, Esq. at (509) 623-2900.

LITIGANT QUESTIONNAIRE

CIVIL JUSTICE ADVISORY COMMITTEE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Justin L. Quackenbush
Chief Judge

Robert Henderson, Esq.
Chairman

Mark E. Wilson, Esq.
Reporter

James R. Larsen
Clerk of Court

Dear _____:

The Civil Justice Reform Act of 1990 requires each Federal District to appoint an advisory committee to study ways in which to improve the civil justice system. Our advisory committee is seeking information from parties who have had cases before the court in the Eastern District of Washington in order to identify problems and to recommend solutions. Your case was among the 350 that have been randomly selected for study. Your case is listed as follows:

_____

As a "consumer" of the Eastern District Court services your views of the civil litigation process are absolutely essential to our study. We hope you will take fifteen to twenty minutes to fill out the "Questions for Litigants" concerning this case and return in the enclosed stamped, preaddressed envelope as soon as convenient.

Your responses will be held in the strictest confidence. The information from the surveys is being compiled by an independent research unit at Washington State University and only the aggregate data from all the returned questionnaires will be reported to the advisory committee. The answers will be entered into the computer for analysis without any identifying references and then the questionnaires will be destroyed.

We greatly appreciate your taking the time to participate in this important study. We anticipate that your efforts and those of other respondents will lead to significant recommendations for improving the civil justice system in our district.

Thank you,

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

QUESTIONS FOR LITIGANTS

1. Were you the plaintiff or defendant in the case noted on the cover letter? (circle one)

   A. Plaintiff B. Defendant

2. In the past 5 years how often have you turned to the courts for resolution of legal issues? _____ number of times.

3. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures. Some civil cases are intensively managed, for example, through detailed scheduling orders or frequent monitoring of the process. Other cases may be largely unmanaged with the pace and course of litigation largely left to counsel.

   A. How would you characterize the level of case management by the court in your case? (Please circle one)

Intensive	High	Moderate	Low	Minimal	None	Not Sure
1	2	3	4	5	6	7

   Please Comment:_____

   _____

   _____

   B. Should the case management by the court in this case have been (please circle one)

much greater?	somewhat greater?	about right?	somewhat less?	much less?
1	2	3	4	5

   Please Comment:_____

   _____

   _____

4. Please indicate the total costs you incurred on this case for each of the categories listed below. If you are unable to categorize your costs, please indicate the **total** cost only.

   A. Attorneys' Fees _____

   B. Attorneys' Expenses (photocopying, postage, travel expenses, etc.) _____

   C. Consultants _____

   D. Expert Witnesses _____

   E. Deposition Costs _____

   F. Discovery Costs _____

   G. Other (please describe) _____

   _____ _____

   H. Total Cost of Litigation _____

5. Please estimate the amount of money which was at issue in this case. $_____

6. If the fee structure impacted the costs, what arrangement did you have with your attorney? (circle one)

   A. Hourly rate

   B. Hourly rate with a maximum

   C. Combination of hourly rate and other factors

   D. Set fee

   E. Contingency

   F. Other (please describe)_____

   Comments:_____

   _____

   _____

7. Considering the parties involved and the complexity of the case, were the costs incurred by you on this matter (circle one)

   A. much higher than you expected?

   B. slightly higher than you expected?

   C. about what you had expected?

   D. slightly lower than expected?

   E. much lower than expected?

8. If you believe the cost of litigation was too high, what actions should your attorney or the court have taken to reduce the cost of this matter?

   _____

   _____

   _____

   _____

9. Was the time that it took to resolve this matter (circle one)

much too long?	slightly too long?	about right?	slightly too short?	much too short?
1	2	3	4	5

10. If you believe that it took too long to resolve your case, what actions should your attorney or the court have taken to resolve your case more quickly?

    _____

    _____

    _____

11. If delay was involved in your case, did you gain any advantage from that delay?

    ____ Yes ____ No

12. Did the other party gain any advantage? ____ Yes ____ No

13. Did you incur any extra costs as a result of the delay? ____ Yes ____ No

    Please comment:_____

    _____

    _____

14. If arbitration or mediation was used in your case, please describe the results.

    _____

    _____

    _____

15. Apart from the final outcome of the case, how satisfied were you with the overall litigation process? (circle one)

	Very Satisfied	Satisfied	Neutral	Dis-satisfied	Very Dis-satisfied
How satisfied were you with the amount of time your case took to resolve?	1	2	3	4	5
How satisfied were you with attorneys' fees?	1	2	3	4	5
How satisfied were you with expenses other than attorneys' fees?	1	2	3	4	5
How satisfied were you with the processing of your case by the Clerk's office?	1	2	3	4	5
How satisfied were you with the court's handling of your case?	1	2	3	4	5

Please comment: (Which phases of the litigation were most or least satisfying etc.)

_____

_____

_____

16. How would you characterize your level of experience with civil suits?

___ This case was my first experience at civil litigation

___ This case was my second experience at civil litigation

___ This case was one of three or more previous experiences

17. Were you involved in this case as an individual or as a business or corporate entity?

___ Individual

___ Business

___ Other (Please explain)_____

_____

18. If involved as a business entity, how many employees were working for the company when the litigation was brought?

___ Under 5 ___ 50 to 100

___ 5 to 25 ___ Over 100

___ 25 to 50 ___ Not applicable

19. If you were involved as an individual, at the time of the litigation:

a. What was your age? _____

b. What is your gender? ____ Male ___ Female

c. What was your occupation? _____

d. What is your level of education?

___ Not a High School Graduate

___ High School Graduate

___ Some College

___ College Graduate

___ Advanced Degree

20. Please add any comments or suggestions regarding the time and cost of litigation in federal courts or any further comments on specific questions (make reference to specific question numbers).

Thank you for your time and comments. If you have any questions, please call Professors Charles H. Sheldon or Nicholas P. Lovrich at Washington State University (509) 335-3329.

PRISONER PETITIONER QUESTIONNAIRE

CIVIL JUSTICE ADVISORY COMMITTEE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Justin L. Quackenbush
Chief Judge

Robert Henderson, Esq.
Chairman

April 1, 1992

Mark E. Wilson, Esq.
Reporter

James R. Larsen
Clerk of Court

Dear Petitioner:

The Civil Justice Reform Act of 1990 requires each Federal District to appoint an advisory committee to study ways in which to improve the civil justice system. Our advisory committee is seeking information from parties who have filed prisoner petitions in the Eastern District of Washington in order to identify problems and to recommend solutions. Your case was among the 100 that have been randomly selected for study. Your case is listed as follows:

Please take the fifteen to twenty minutes it should require to fill out the "Questions for Petitioners" concerning this case and return in the enclosed stamped, preaddressed envelope as soon as possible.

Your responses will be held in the strictest confidence. The information from the surveys is being compiled by an independent research unit at Washington State University and only the aggregate data from all the returned questionnaires will be reported to the advisory committee. The answers will be entered into the computer for analysis without any identifying references and then the questionnaires will be destroyed.

We greatly appreciate your taking the time to participate in this important study. We anticipate that your efforts and those of other respondents will lead to significant recommendations for improving the civil justice system in our district.

Thank you,

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

QUESTIONS FOR PRISONER PETITIONERS

Before we begin, let us remind you that participation in this study is entirely voluntary. The answers you give will be held strictly confidential. They will be used only in the production of statistical research reports, and you will not be indentified in any way. (To answer circle the appropriate letter or number.)

1. First, was the case noted on the cover letter a civil rights action or a habeas corpus action? (circle one)

   A. Civil rights (section 1983) action B. Habeas corpus action

2. Would you briefly describe what you believe were the one or two most important issues in this case?

   _____

   _____

   _____

   _____

3. Was a final decision made by the court in this case or was it terminated for some other reason?

   A. By the judge B. By the jury C. Terminated for some other reason

   In whose favor was the decision?

   A. Your side
   B. The opposing side
   C. Both

4. Was there a trial?

   A. Yes B. No

5. Did the court render a decision on the most important issues of the case without a trial?

   A. Yes B. No

6. Did you ever request arbitration, mediation, grievance process, or resolution by a third party?

   A. Yes B. No

7. IF YOU USED AN INMATE GRIEVANCE PROCESS, how did it proceed?

A. The grievance was filed and appealed to level 4 (Divisional Department Head).
B. The grievance was filed and appealed to level 3 (Superintendent).
C. The grievance was filed and appealed to level 2 (Grievance Coordinator).
D. The grievance was filed but not appealed.
E. A grievance process was not used.

8. If there was arbitration, mediation, grievance process or resolution by a third party other than a court, please describe the results:

_____

_____

_____

_____

9. IF YOUR CASE WAS A CIVIL RIGHTS ACTION, would you have been willing to accept resolution of your dispute by an *independent hearing board made up of persons from outside the prison* set up to decide such cases?

A. Yes B. No

10. If a decision by such an *independent hearing board* was <u>not</u> in your favor, would you still file your case in federal court?

A. Yes B. No

We are particularly concerned with the problems and solutions of *case management* that may be under the control of the court. *Case management* is the oversight and supervision of litigation by a judge or magistrate, or by routine court procedures. For example, some lawsuits are intensively managed through detailed scheduling orders or frequent monitoring of the process. Other cases may be largely unmanaged with the pace and course of litigation left to the parties.

11. How would you characterize the level of *case management* by the court in **your** case?

Intensive	High	Moderate	Low	Minimal	None	Not Sure
1	2	3	4	5	6	7

12. With each of the *case management* activities listed below, please circle **one** number indicating what was in **your** lawsuit:

	Was Taken	Was Taken but Should Not Have Been	Was Not Taken	Was Not Taken but Should Have Been	Unsure or Not Applicable
A. Hold pretrial activities to a firm schedule.	1	2	3	4	5
B. Set time limits on allowable discovery.	1	2	3	4	5
C. Enforce time limits on allowable discovery.	1	2	3	4	5
D. Narrow issues through conferences or other methods.	1	2	3	4	5
E. Rule promptly on pretrial motions.	1	2	3	4	5
F. Refer the case to alternative dispute resolution, such as mediation or arbitration.	1	2	3	4	5
G. Set an early and firm trial date.	1	2	3	4	5
H. Conduct or facilitate settlement discussions.	1	2	3	4	5
I. Exert firm control over the trial.	1	2	3	4	5
J. Other case management activities (please specify): _____	1	2	3	4	5

Please Comment:_____

_____

_____

13. Was the time that it took to resolve this matter

Much too long	Slightly too long	About right	Slightly too short	Much too short
1	2	3	4	5

Please Comment:_____

_____

_____

14. What actions should your attorney (if you were represented in this petition) or the court have taken to resolve your case more quickly?

Attorney:_____

_____

Court:_____

_____

15. If there was DELAY in your lawsuit, did you gain any advantage from the delay?

A. Yes B. No

16. Did the government gain any advantage from the delay?

A. Yes B. No

17. If action on your case took longer than you believed reasonable, please indicate the degree to which each of the following factors was responsible for the delay: (circle one for each)

	Mostly Responsible	Somewhat Responsible	Not Responsible	Unsure or Not Applicable
A. Excessive case management by the court.	1	2	3	4
B. Inadequate case management by the court.	1	2	3	4
C. Dilatory actions by the government.	1	2	3	4
D. Court's failure to rule promptly on motions.	1	2	3	4
E. Backlog of cases on court's calendar.	1	2	3	4
F. Complexity of the case.	1	2	3	4
G. Discovery problems	1	2	3	4
H. Failure to complete discovery within time fixed by scheduling order	1	2	3	4
I. Too much time allowed for discovery	1	2	3	4
J. Unnecessary delay entering or failure to enter a scheduling order	1	2	3	4
K. Trial date not set at early stage of proceedings	1	2	3	4
L. Delay in entry of judgment	1	2	3	4
M. Other. (please specify) _____	1	2	3	4

_____

20. If this was NOT your first petition you have filed with the court, how many previous peititions have you filed? _____ Number

21. For how many years have you been sentenced? _____ Years

Name and Address of Corporate Client Contact or Individual Plaintiff or Defendant:

_____

_____

_____

QUESTIONS FOR ATTORNEYS

A. MANAGEMENT OF THIS LITIGATION

1. "Case management" refers to oversight and supervision of litigation by a judge or magistrate or by routine court procedures. Some law suits are intensively managed through such actions as detailed scheduling orders, frequent monitoring of discovery and motion practice, substantial court effort to settle the case or to narrow issues, or by requiring rapid progress to trial. Some cases may be largely unmanaged, with the pace and course of litigation left to counsel and with court intervention only when requested.

   How would you characterize the level of case management by the court in the case noted on the cover letter? (Please circle **one**.)

Intensive	High	Moderate	Low	Minimal	None	Not Sure
1	2	3	4	5	6	7

2. Listed below are several case management actions that were available to the court in the litigation of this case. (For each listed action, please circle **one** number indicating what was done in *this* case.)

	Was Taken	Was Taken but Should Not Have Been	Was Not Taken	Was Not Taken but Should Have Been	Unsure or Not Applicable
A. Hold pretrial activities to a firm schedule	1	2	3	4	5
B. Set time limits on allowable discovery	1	2	3	4	5
C. Enforce time limits on allowable discovery	1	2	3	4	5
D. Narrow issues through conferences or other methods	1	2	3	4	5
E. Rule promptly on pretrial motions	1	2	3	4	5
F. Refer the case to alternative dispute resolution, such as mediation or arbitration	1	2	3	4	5
G. Set an early and firm trial date	1	2	3	4	5
H. Conduct or facilitate settlement discussions	1	2	3	4	5
I. Exert firm control over trial	1	2	3	4	5
J. Other (please specify):					
_____	1	2	3	4	5

22. Please add any comments or suggestions regarding inmate litigation in the federal courts, or any comments explaining your answers to specific questions (Please make references to the question numbers).

Thank you for your time and comments.

CIVIL JUROR QUESTIONNAIRE

CIVIL JUSTICE ADVISORY COMMITTEE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

August, 1992

Mark E. Wilson, Esq.
Reporter

James R. Larsen
Clerk of Court

Dear _____:

The Civil Justice Reform Act of 1990 required each U.S. District Court to appoint an advisory committee to study the civil justice system. The enclosed questionnaire has been designed by the Eastern District Advisory Committee as part of our appraisal of civil litigation.

We have selected 100 jurors who have recently served on juries in the Eastern District of Washington. You are among those jurors selected. We hope you will participate in our study by completing the enclosed questionnaire dealing with your jury experiences.

We are not attempting to breach the confidentiality of jury deliberations such as discussions or votes of the jury. Our concern is with your general impressions of your jury experience. Answer only those questions that were relevant to your case and those that you feel comfortable in answering.

Please take fifteen to twenty minutes to fill out the "Questions for Jurors" and return the form in the enclosed, postage paid envelope as soon as convenient. Your responses will be held in the strictest confidence. The information from the surveys is being compiled by an independent research unit at Washington State University, and only the aggregate data from all the returned questionnaires will be reported to the advisory committee. The answers will be entered into a computer file for analysis without any identifying references, and then the original questionnaires and mailing list will be destroyed.

We greatly appreciate your taking the time to participate in this important study. Your input is very important to our efforts. We anticipate that your responses and those of others will lead to significant recommendations for improving the civil justice system in our district.

Thank you,

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

CIVIL CASE

The name of your case was:_____

The issue in the case was:_____

_____

_____

The Judge was:_____

The Attorney for the Plaintiff was:_____

The Attorney for the Defendant was:_____

QUESTIONS FOR JURORS

A. JURY SELECTION PROCESS

1. Did you feel that the jury selection process (the *Voir Dire*) took too long? ____ Yes ____ No
   If your answer is "yes," to what do you attribute the delay?_____
   _____
   _____

2. How active were the following in the questioning of potential jurors?

	Very Active	Moderately Active	Not Active
Plaintiff's Attorney	1	2	3
Defendant's Attorney	1	2	3
Judge	1	2	3

3. Did you sense that either of the attorneys was looking for a **particular kind** of juror?
   ____ Yes ____ No
   If your answer is "Yes," please comment _____
   _____
   _____

4. Did the questions to potential jurors try to explore how they might view a **monetary award** at stake?
   ____ Yes ____ No
   If your answer is "Yes," please comment _____
   _____
   _____

5. In the *Voir Dire* process, were there any questions about your attitudes and experiences that were relevant to the case and may have influenced your decision, but were NOT asked?
   Please comment _____
   _____
   _____

6. During this jury term and before serving as juror in this case, were you ever called as a juror in another case, questioned, and then excused?

____ Yes ____ No

Please comment:_____

_____

_____

B. QUESTION REGARDING THE TRIAL

1. Did you think this trial was

___ extremely interesting? ___ sometimes interesting? ___ boring?

2. What kind of control did the judge exert over the trial?

____ Too firm ____ Firm but appropriate ____ Not firm but appropriate ____ Not firm enough

Please comment _____

_____

_____

3. Did one or another of the lawyers do things in his or her handling of the trial that in your view caused unnecessary delay?

____ Yes ____ No

4. If your answer is "Yes," was the delay largely on the part of the plaintiff or the defendant?

____ Plaintiff ____ Defendant ____ About Even

What were some of those delaying measures?
(Check the following if involved):

A. ___ Too many witnesses were called
B. ___ Too many expert witnesses called to testify
C. ___ Excessive questioning or cross-examination of witnesses
D. ___ Inappropriate requests for recesses
E. ___ Unnecessary motions for continuances
F. ___ Attorney(s) appeared not to be prepared
G. ___ Attorney(s) seemed overcautious and too careful
H. ___ Too many objections
I. ___ Other (Please Explain)_____

Please comment_____

_____

_____

5. Would you call this a complex case? ___ Yes ___ No

Please comment _____

_____

_____

6. After both sides had completely presented their sides of the case, but before you began the jury deliberations, did you feel that you had a good idea of what really had happened?

___ Yes

___ Fairly good, but I still had questions I wish had been answered

___ No

7. If you were allowed to take notes during the trial, did you find those notes useful?

___ Yes ___ No ___ Notes not allowed

8. If you were NOT allowed to take notes during the trial, would you have liked to do so?

___ Yes ___ No

Please comment _____

_____

_____

9. If you were permitted through the court to submit questions to witnesses, did you find this useful?

___ Yes ___ No

10. If you were NOT permitted to submit questions to witnesses, would you have liked to do so?

___ Yes ___ No

Please comment _____

_____

_____

11. Did you understand the judge's explanations in the instructions to the jury?

___ Yes, all of it

___ Yes, most of it

___ Yes, but only partly

___ No, not very much of it

12. Just before jury deliberations began, had you already reached a decision, even though that might not have been your final decision?

___ Yes, definitely for the DEFENDANT

___ Yes, definitely for the PLAINTIFF

___ Was not certain, but was leaning toward the DEFENDANT

___ Was not certain, but was leaning toward the PLAINTIFF

13. Which statement best describes your reactions to the opening statements of the parties' lawyers?

____ They were very important in persuading me how the case should be resolved.

____ They were not all that important in persuading me how the case should be resolved.

14. Which statement best describes your reactions to the closing arguments of the parties' lawyers?

____ They were very important in persuading me how the case should be resolved.

____ They were not all that important in persuading me how the case should be resolved.

____ They helped me to understand the issues and evidence.

15. Did you think that the defendant carried insurance?

____ Yes ____ No ____ I never thought about it

16. If you answered "yes," why do you think so?

____ It came out in the testimony

____ It was mentioned in the jury-room before the trial began

____ I know from personal experience that such people or businesses usually carry insurance

17. If you believed the defendant had insurance which covered at least part of the award made in the jury's verdict, did that fact make a difference in your decision?

____ Yes, importantly so

____ Yes, but only in a minor way

____ I never thought about insurance in this case

18. What kind of feelings did you have for the defendant or defendant company?

____ High regard ____ Low regard ____ No feelings

19. What kind of feelings did you have for the plaintiff or plaintiff company?

____ High regard ____ Low regard ____ No feelings

C. JURY DELIBERATIONS

1. Which of the following statements describes the jury deliberations?

____ There was a full and open exchange of opinions by just about everyone

____ Only a few people spoke, and the others mostly just listened

2. How important do you think it is that jury deliberations entail a full exchange of opinions?

____ Very Important ____ Important ____ Uncertain ____ Unimportant ____ Very Unimportant

3. About how long did the jury deliberate before agreeing on a verdict? _____

4. Which one of the following statements best describes how the jury deliberations affected you?

___ The deliberations didn't affect me at all because I had already made up my mind

___ The deliberations made me think again about the point of view I already had, but I stuck with my original opinion

___ I changed my point of view during deliberations

___ I had not made up my mind at the commencement of deliberations and the deliberations allowed me to do so.

5. Did you feel free to express how you really felt? ____ Yes ____ No

6. Did you feel that the jury deliberations would have been improved had there been twelve jurors instead of six? ___ Yes ___ Not

7. Did the seriousness or extent of the plaintiff's injuries or loss have an effect on your decision in the case?

____ Yes ____ No ___ I'm not certain

8. Did you talk about any Disability or Workman's Compensation to which the plaintiff might have been entitled?

____ Yes ____ No ____ Not Applicable

Please comment _____

_____

_____

9. If you answered "yes," do you think it made a difference in your decision?

___ Yes, very much so ___ Yes, but only in a minor way ___ No

10. Please check the category that best describes your decision process IF AN AMOUNT OF MONEY WAS AWARDED.

___ The amount was a result of jury discussion

___ We largely accepted what the plaintiff's lawyer suggested

___ We were most influenced by the total figure suggested to us by the plaintiff's lawyer, but we SUBTRACTED from it

___ We were most influenced by the total figure suggested to us by the plaintiff's lawyer, but we ADDED to it

___ Other (please explain) _____

_____

___ Not Applicable

11. Could you have used more guidance in the amount to be awarded? ____ Yes ____ No

12. Did you include some money because of the pain and suffering of the plaintiff?

____ Yes ____ No

13. What sort of a role did the jury foreman play during the deliberations? (If necessary check more than one)

___ Led the discussions

___ Attempted to remain neutral in the discussions

___ Attempted to persuade other jurors to his or her view

___ Not any more active than other jurors

___ Remained passive during deliberations

Please comment _____

_____

_____

D. REGARDING THE JURY EXPERIENCE

1. When you were first notified to report for jury service, were you:

___ looking forward to it ___ wanting to get out of it ___ feeling ambivalent

2. Now that you have served as a juror, do you think the jury system is:

___ a GOOD system ___ a POOR system ___ Undecided

3. How satisfied were you with your jury experience?

___ Very Satisfied ___ Satisfied ___ Unsatisfied

4. Do you have any suggestions on how to make the jury experience more satisfying?

_____

_____

_____

_____

5. Did you feel the entire trial process took too long?

____ Yes ____ No

6. If you answered "yes," what would you suggest to speed up the process? _____

_____

_____

_____

7. Did you feel too much money was involved in the award? ___ Yes ___ No

Please comment _____

_____

_____

8. Did you suffer an undue burden as a result of your jury service? ____ Yes ____ No

Please comment ____

____

____

Had you ever served on a jury in any court prior to this occasion? ____ Yes ____ No

Please add any comments or suggestions regarding your jury experience. Also add any further comments you may have on specific questions (please refer to the question by number).

Thank you for participating in our study. If you have any questions, please call the Division of Governmental Studies and Services, Washington State University (509) 335-3329.

CRIMINAL JUROR QUESTIONNAIRE

CIVIL JUSTICE ADVISORY COMMITTEE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

August, 1992

Mark E. Wilson, Esq.
Reporter

James R. Larsen
Clerk of Court

Dear _____:

The Civil Justice Reform Act of 1990 required each U.S. District Court to appoint an advisory committee to study the civil justice system. The enclosed questionnaire has been designed by the Eastern District Advisory Committee as part of our appraisal of civil litigation.

We have selected 100 jurors who have recently served on juries in the Eastern District of Washington. You are among those jurors selected. We hope you will participate in our study by completing the enclosed questionnaire dealing with your jury experiences.

We are not attempting to breach the confidentiality of jury deliberations such as discussions or votes of the jury. Our concern is with your general impressions of your jury experience. Answer only those questions that were relevant to your case and those that you feel comfortable in answering. The questionnaire has been approved by the Eastern District Court.

Please take fifteen to twenty minutes to fill out the "Questions for Jurors" and return the form in the enclosed, postage paid envelope as soon as convenient. Your responses will be held in the strictest confidence. The information from the surveys is being compiled by an independent research unit at Washington State University, and only the aggregate data from all the returned questionnaires will be reported to the advisory committee. The answers will be entered into a computer file for analysis without any identifying references, and then the original questionnaires and mailing list will be destroyed.

We greatly appreciate your taking the time to participate in this important study. Your input is very important to our efforts. We anticipate that your responses and those of others will lead to significant recommendations for improving the civil justice system in our district.

Thank you,

Justin L. Quackenbush
Chief Judge

Robert B. Henderson, Esq.
Chairman

CRIMINAL CASE

The name of your case was:_____

The issue in the case was:_____

_____

_____

The Judge was:_____

The Attorney for the Government was:_____

The Attorney for the Defendant was:_____

QUESTIONS FOR JURORS

A. JURY SELECTION PROCESS

1. Did you feel that the jury selection process (the *Voir Dire*) took too long? ____ Yes ____ No

   If your answer is "yes," to what do you attribute the delay?_____

   _____

   _____

   _____

2. How active were the following in the questioning of potential jurors?

	Very Active	Moderately Active	Not Active
Government's Attorney (Prosecutor)	1	2	3
Defendant's Attorney	1	2	3
Judge	1	2	3

3. Did you sense that either of the attorneys was looking for a **particular kind** of juror?

   ____ Yes ____ No

   If your answer is "Yes," please comment _____

   _____

   _____

   _____

4. In the *Voir Dire* process, were there any questions about your attitudes and experiences that were relevant to the case and may have influenced your decision, but were NOT asked?

   Please comment _____

   _____

   _____

   _____

5. During this jury service term, and before serving as juror in this case, were you ever called as a juror in another case, questioned, and then excused?

____ Yes ____ No

Please comment:_____

_____

_____

_____

B. QUESTION REGARDING THE TRIAL

1. Did you think this trial was

____ extremely interesting? ____ sometimes interesting? ____ boring?

2. What kind of control did the judge exert over the trial?

____ Too firm ____ Firm but appropriate ____ Not firm but appropriate ____ Not firm enough

Please comment _____

_____

_____

_____

3. Did one or another of the lawyers do things in his or her handling of the trial that in your view caused unnecessary delay?

____ Yes ____ No

4. If your answer is "Yes," was the delay largely on the part of the government or the defense?

____ Government ____ Defense ____ About Even

What were some of those delaying measures?
(Check the following if involved):

A. ____ Too many witnesses were called
B. ____ Too many expert witnesses called to testify
C. ____ Excessive questioning or cross-examination of witnesses
D. ____ Inappropriate requests for recesses
E. ____ Unnecessary motions for continuances
F. ____ Attorney(s) appeared not to be prepared
G. ____ Attorney(s) seemed overcautious and too careful
H. ____ Too many objections
I. ____ Other (Please Explain)_____

Please comment_____

_____

_____

_____

5. Would you call this a complex case? ___ Yes ___ No

   Please comment _____

   _____

   _____

   _____

6. After both sides had completely presented their sides of the case, but before you began the jury deliberations, did you feel that you had a good idea of what really had happened?

   ___ Yes

   ___ Fairly good, but I still had questions I wish had been answered

   ___ No

7. If you were allowed to take notes during the trial, did you find those notes useful?

   ___ Yes ___ No

8. If you were NOT allowed to take notes during the trial, would you have liked to do so?

   ___ Yes ___ No

   Please comment _____

   _____

   _____

9. If you were permitted through the court to submit questions to witnesses, did you find this useful?

   ___ Yes ___ No

10. If you were NOT permitted to submit questions to witnesses, would you have liked to do so?

    ___ Yes ___ No

    Please comment _____

    _____

    _____

11. Did you understand the judge's explanations in the instructions to the jury?

    ___ Yes, all of it

    ___ Yes, most of it

    ___ Yes, but only partly

    ___ No, not very much of it

12. Did you feel it necessary to read or discuss the instructions extensively in the jury room?

___ Yes ___ No

13. Just before jury deliberations began, had you already reached a decision, even though that might not have been your final decision?

___ Yes, definitely for the DEFENDANT

___ Yes, definitely for the GOVERNMENT

___ Was not certain, but was leaning toward the DEFENDANT

___ Was not certain, but was leaning toward the GOVERNMENT

14. Which statement best describes your reactions to the opening statements of the U.S. Attorney and the defense attorney?

___ They were very important in persuading me how the case should be resolved.

___ They were not all that important in persuading me how the case should be resolved.

15. Which statement best describes your reactions to the closing arguments of the U.S. attorney and the defense attorney?

___ They were very important in persuading me how the case should be resolved.

___ They were not all that important in persuading me how the case should be resolved.

___ They helped me to understand the issues and evidence.

16. Did you think the defendant was at a disadvantage?

___ Yes ___ No ___ I never thought about it

17. If you answered "yes," why do you think the defendant was at a disadvantage?

___ Because of race or ethnic background of the defendant

___ Because of the gender of the defendant

___ Because of economic or social background of the defendant

___ Because of the seriousness of the crime

___ Because of demeanor or appearance of the defendant

___ Because of inadequate legal representation of the defendant

___ Other (Please Explain)_____

18. What kind of feelings did you have for the defendant?

___ High regard ___ Low regard ___ No feelings

C. JURY DELIBERATIONS

1. Which of the following statements describes the jury deliberations?

   ___ There was a full and open exchange of opinions by just about everyone

   ___ Only a few people spoke, and the others mostly just listened

2. About how long did the jury deliberate before agreeing on a verdict?_____

3. Which one of the following statements best describes how the jury deliberations affected you?

   ___ The deliberations didn't affect me at all because I had already made up my mind

   ___ The deliberations made me think again about the point of view I already had, but I stuck with my original opinion

   ___ I changed my point of view during deliberations

4. Did you feel free to express how you really felt? ____ Yes ____ No

5. Did you feel the jury deliberations would have been improved had there been six jurors instead of twelve? ___ Yes ____ No

   Please comment _____

   _____

   _____

6. Did the seriousness of the defendant's crime have an effect on your decision in the case?

   ____ Yes ____ No ___ I'm not certain

7. Was there anything about the victim(s) that you feel had a bearing on the case?

   ____ Yes ____ No

   If your answer is "Yes," please comment _____

   _____

   _____

8. What sort of a role did the jury foreman play during the deliberations? (If necessary check more than one)

   ___ Led the discussions

   ___ Attempted to remain neutral in the discussions

   ___ Attempted to persuade other jurors to his or her view

   ___ Not any more active than other jurors

   ___ Remained passive during deliberations

   Please comment _____

   _____

   _____

D. REGARDING THE JURY EXPERIENCE

1. When you were first notified to report for jury service, were you:

   ____ looking forward to it ____ wanting to get out of it ____ feeling ambivalent

2. Now that you have served as a juror, do you think the jury system is:

   ____ a GOOD system ____ a POOR system ____ Undecided

3. How satisfied were you with your jury experience?

   ____ Very Satisfied ____ Satisfied ____ Unsatisfied

4. Do you have any suggestions on how to make the jury experience more satisfying?

   _____
   _____
   _____
   _____

5. Did you feel the entire trial process took too long?

   _____ Yes _____ No

6. If you answered "yes," what would you suggest to speed up the process? _____
   _____
   _____
   _____

7. Did you suffer an undue burden as a result of your jury service? ____ Yes ____ No

   Please comment _____
   _____
   _____
   _____

8. Had you ever served in a jury in any court prior to this occasion?

   ____ Yes ____ No

Please add any comments or suggestions regarding your jury experience. Also add any further comments you may have on specific questions (please refer to the question by number).

Thank you for participating in our study. If you have any questions, please call the Division of Governmental Studies and Services, Washington State University (509) 335-3329.

APPENDIX C

Guidance to Advisory Groups and SY92 Statistics Supplement
September 1992
Administrative Office of the U.S. Courts

Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990

SY92 Statistics Supplement

September 1992

Prepared for the Eastern District of Washington

NOTES:

(Except for the update to 1992 data and this parenthetical, this document is identical to the one entitled "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990 SY91 Statistics Supplement, October 1991.")

The pages that follow provide an update to section IIb of the February 28, 1991 "Guidance to Advisory Groups" memorandum, incorporating data for Statistical Year 1992 (the twelve months ended June 30, 1992). The pages have been formatted exactly like the corresponding pages of the original memorandum, and may replace the corresponding pages in the original. There are no changes to the text of the document, except for a few references to the dates covered by the data. Certain discrepancies may be apparent between the original document and this update, as follows:

1. Table 1 (page 12) may show slightly different counts of case filings for recent years (e.g., SY88-90) than were shown in Table 1 of the original document. The variations arise from two sources. First, some cases actually filed in a particular statistical year are not reported to the Administrative Office until after it has officially closed the data files for that year (it is a practical necessity that the A.O. at some point close the files so that it may prepare its annual statistical reports). This can result in increased counts of cases filed in prior years. Second, both filing dates and case-type identifiers are occasionally reported incorrectly when a case is filed, but corrected when the case is terminated. The corrections can result in both increases and decreases in case filing counts.

2. Chart 6 (page 15) in the original document was incorrectly based on a subset of the "Type II" cases (as defined on page 10). It has been replaced in this update with a chart entitled "Chart 6 Corrected," which is based on all Type II cases. In most districts, the difference between the original, incorrect Chart 6 and the new version will be insignificant. In only a few districts is the difference significant.

3. An error was made in constructing Chart 8 in the original document. The text indicating the percentage of cases in the "Other" category lasting 3 years or more was shown as "8.0%," without regard to the actual percentage. The bars shown in the chart, however, were accurate. The error has been corrected in this update.

b. Caseload mix and filing trends. The variety of cases making up the caseload in most district courts will be surprising to many who study them for the first time. That variety may be important to advisory groups in assessing the docket and in considering what groups of cases, if any, should be treated differently in management plans. Different types of cases tend to move through the courts in different ways. For example, some are almost always disposed of by default judgment (student loan); some are in the nature of an appeal (bankruptcy); some are a unique subset of another category (asbestos cases in the personal injury category). From readily available data we cannot discern how a specific case moved through the system nor how a future case may move. Some types of cases, however, may move through the system in distinctive ways often enough to warrant your special attention. Do they affect court performance distinctively? Do they consume court resources distinctively?

We have sorted case types into two categories to illustrate the point of distinctive paths. Type I case types are distinctive because within each case type the vast majority of the cases are handled the same way; for example, most Social Security cases are disposed of by summary judgment. Type II case types, in contrast, are disposed of by a greater variety of methods and follow more varied paths to disposition; for example, one contract action may settle, another go to trial, another end in summary judgment, and so on. (See the table in Appendix B for a complete definition of the case types.)

Type I includes the following case types, which over the past ten years account for about 40% of civil filings in all districts:

- student loan collection cases
- cases seeking recovery of overpayment of veterans' benefits
- appeals of Social Security Administration benefit denials
- condition-of-confinement cases brought by state prisoners
- habeas corpus petitions
- appeals from bankruptcy court decisions
- land condemnation cases
- asbestos product liability cases

The advisory group may wish to consider whether, in this district, these categories or any others identified by the group are distinctive enough to warrant special attention in assessing the condition of the docket or in recommending future actions. Careful documentation of analyses and decisions of this kind will contribute significantly to the final report the Judicial Conference must make to Congress.

Type II includes the remainder of the case types, which collectively account for about 60% of national civil filings over the past ten years. Case types with the largest number of national filings were:

- contract actions other than student loan, veterans' benefits, and collection of judgment cases
- personal injury cases other than asbestos
- non-prisoner civil rights cases
- patent and copyright cases
- ERISA cases
- labor law cases
- tax cases

- securities cases
- other actions under federal statutes; e.g., FOIA, RICO, and banking laws

Chart 1 shows the percentage distribution among types of civil cases filed in your district for the past three years.

Chart 1: Distribution of Case Filings, SY90-92
Eastern District of Washington

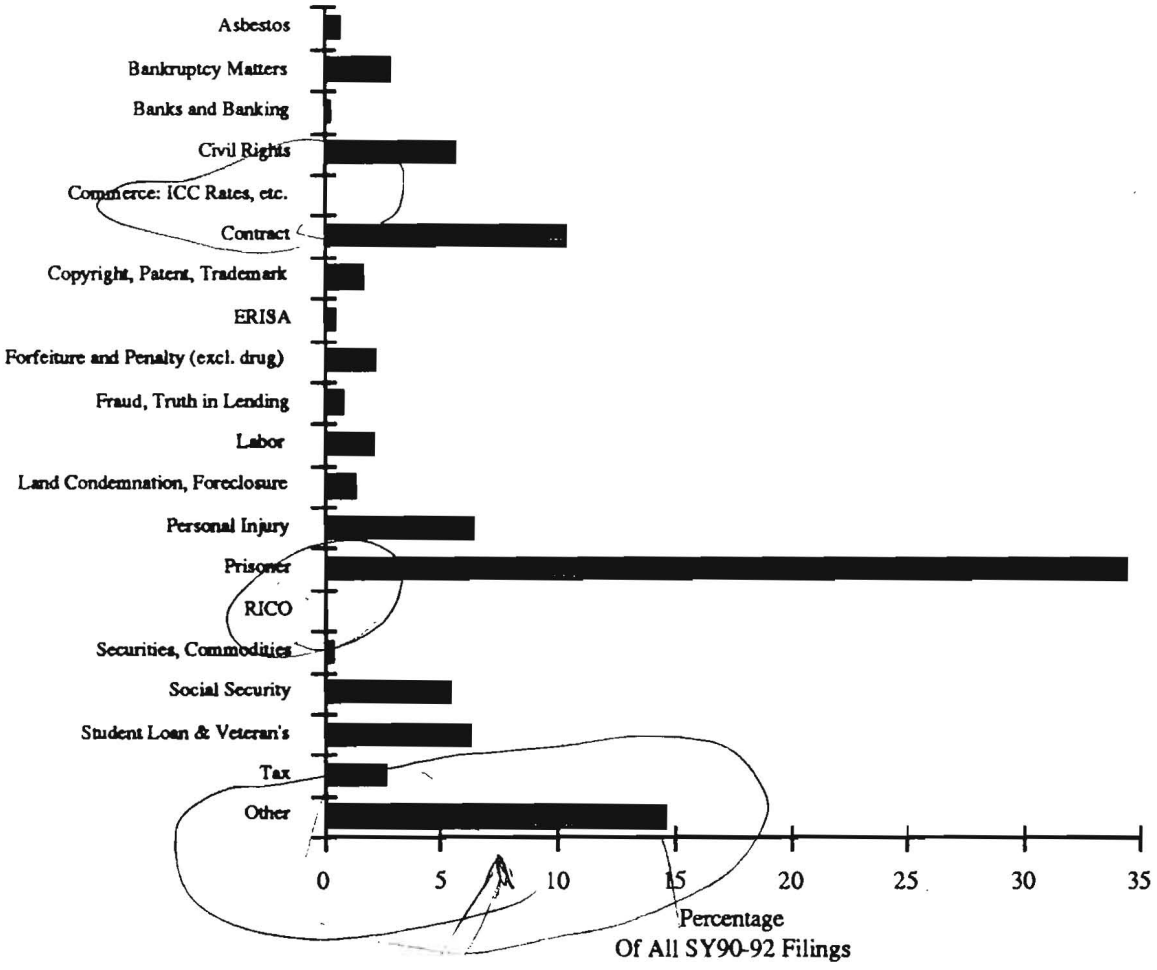


Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

Chart 2: Filings By Broad Category, SY83-92
Eastern District of Washington

Table 1: Filings by Case Types, SY83-92

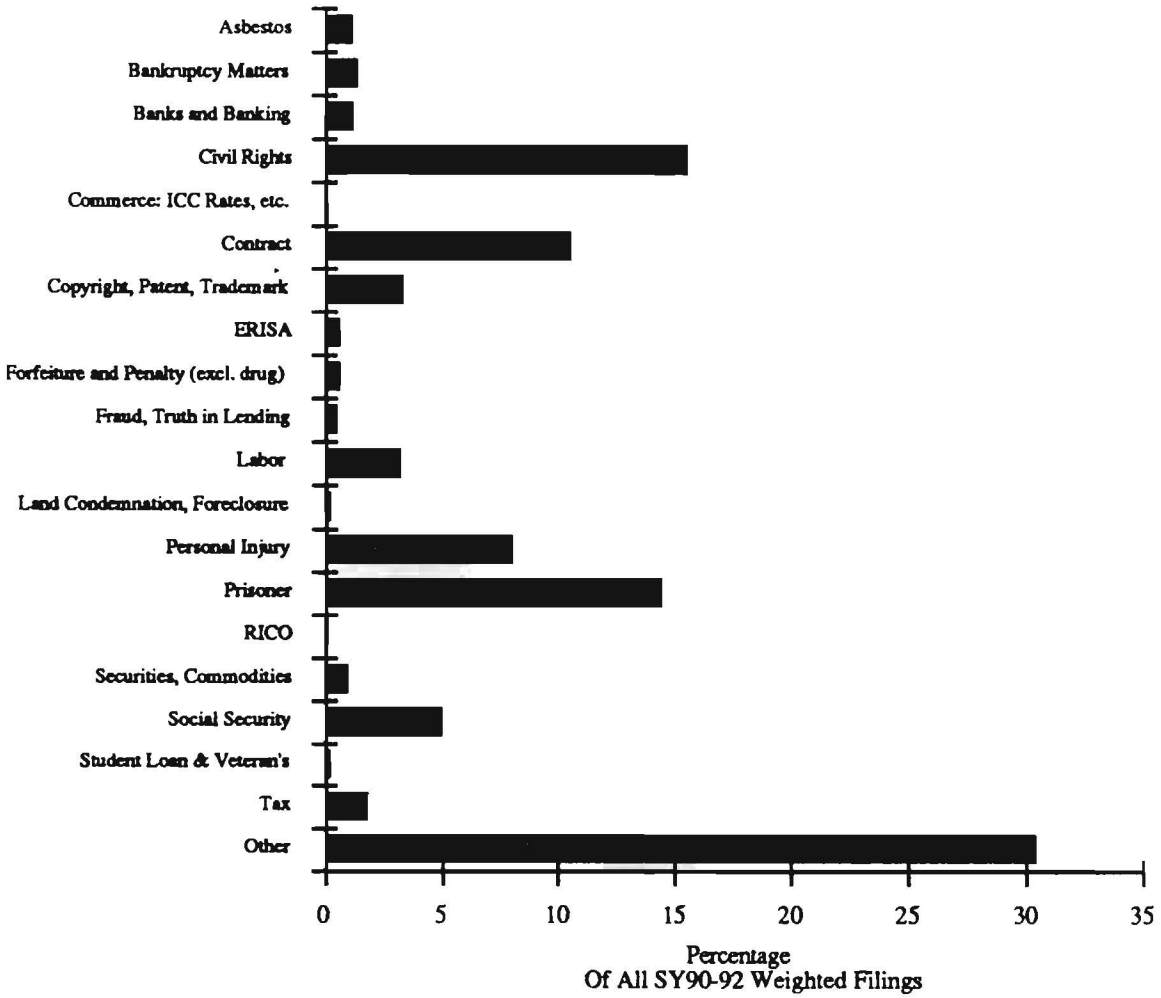
Eastern District of Washington

	YEAR									
	83	84	85	86	87	88	89	90	91	92
Asbestos	6	15	12	12	36	8	15	5	9	2
Bankruptcy Matters	11	23	12	9	11	12	34	10	12	38
Banks and Banking	1	2	1	0	1	2	3	4	2	2
Civil Rights	38	49	41	60	50	41	59	46	39	31
Commerce: ICC Rates, etc.	1	1	0	0	1	1	0	1	0	2
Contract	99	125	112	123	110	81	61	65	77	69
Copyright, Patent, Trademark	6	10	9	8	7	11	13	8	14	14
ERISA	2	5	5	5	3	4	6	8	2	2
Forfeiture and Penalty (excl. drug)	5	4	9	17	21	23	32	33	12	1
Fraud, Truth in Lending	3	0	4	3	1	1	8	8	3	6
Labor	24	29	31	21	24	25	27	19	15	9
Land Condemnation, Foreclosure	34	17	30	19	16	8	51	11	12	6
Personal Injury	52	61	72	61	90	48	39	44	50	37
Prisoner	295	220	167	199	294	230	252	248	229	226
RICO	0	0	0	2	3	2	3	1	1	0
Securities, Commodities	6	10	13	11	11	5	9	6	1	2
Social Security	77	60	100	110	127	87	60	45	46	21
Student Loan and Veteran's	260	183	309	226	245	92	113	64	24	42
Tax	38	66	39	50	37	27	13	19	24	11
All Other	58	63	61	64	57	56	55	67	122	110
All Civil Cases	1016	943	1027	1000	1145	764	853	712	694	631

c. Burden. While total number of cases filed is an important figure, it does not provide much information about the work the cases will impose on the court. For this reason, the Judicial Conference uses a system of case weights based on measurements of judge time devoted to different types of cases. Chart 3 employs the current case weights to show the approximate distribution of demands on judge time among the case types accounting for the past three years' filings in this district. The chart does not reflect the demand placed on magistrate judges.

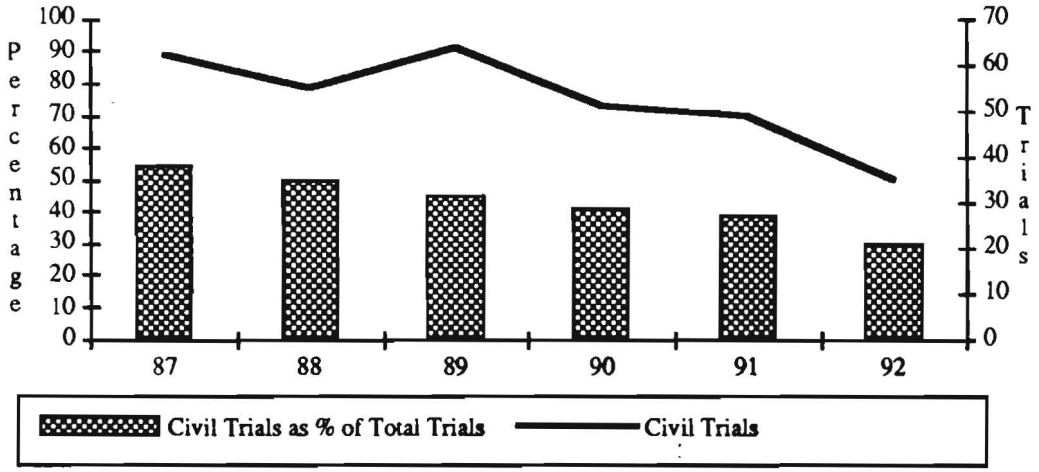
Chart 3: Distribution of Weighted Civil Case Filings, SY90-92

Eastern District of Washington



Another indicator of burden is the incidence of civil trials. Chart 4 shows the number of civil trials completed and the percentage of all trials accounted for by civil cases during the last six years.

Chart 4: Number of Civil Trials and Civil Trials as a Percentage of Total Trials, SY87-92
Eastern District of Washington



d. Time to disposition. This section is intended to assist in assessments of "delay" in civil litigation in this district. We first look at conventional data on the pace of litigation and then suggest some alternative ways of examining data to estimate the time that will be required to dispose of newly filed cases. The *MgmtRep* table shows the median time from filing to disposition for civil cases and for felonies. Time from joinder of issue to trial is also reported for civil cases that reached trial. These data are commonly used to assess the dispatch with which cases have moved through a court in the past. When enough years are shown and the data for those years are looked at collectively, reasonable assessments of a court's pace might be made.

Data for a single year or two or three may not, however, provide a reliable predictor of the time that will be required for new cases to move from filing to termination. An obvious example of the problem arises in a year when a court terminates an unusually small portion of its oldest cases. Both average and median time to disposition in that year will show a decrease. The tempting conclusion is that the court is getting faster when the opposite is actually the case. Conversely, when a court succeeds in a major effort to clean up a backlog of difficult-to-move cases, the age of cases terminated in that year may suggest that the court is losing ground rather than gaining.

Since age of cases terminated in the most recent years is not a reliable predictor of next year's prospects, we offer other approaches believed to be more helpful. *Life expectancy* is a familiar way of answering the question: "How long is a newborn likely to live?" Life expectancy can be applied to anything that has an identifiable beginning and end. It is readily applied to cases filed in courts.

A second measure, *Indexed Average Lifespan* (IAL), permits comparison of the characteristic lifespan of this court's cases to that of all district courts over the past decade. The IAL is indexed at a value of 12 (in the same sense that the Consumer Price Index is indexed at 100) because the national average for time to disposition is about 12 months. A value of 12 thus represents an average speed of case disposition, shown on the charts below as IAL Reference. Values below 12

indicate that the court disposes of its cases faster than the average, and values above 12 indicate that the court disposes of its cases more slowly than the average. (The calculation of these measures is explained in Appendix B.)

Note that these measures serve different purposes. Life expectancy is used to assess change in the trend of actual case lifespan; it is a timeliness measure, corrected for changes in the filing rate but not for changes in case mix. IAL is used for comparison among districts; it is corrected for changes in the case mix but not for changes in the filing rate. Charts 5 and 6 display calculations we have made for this district using these measures.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY83-92

Eastern District of Washington

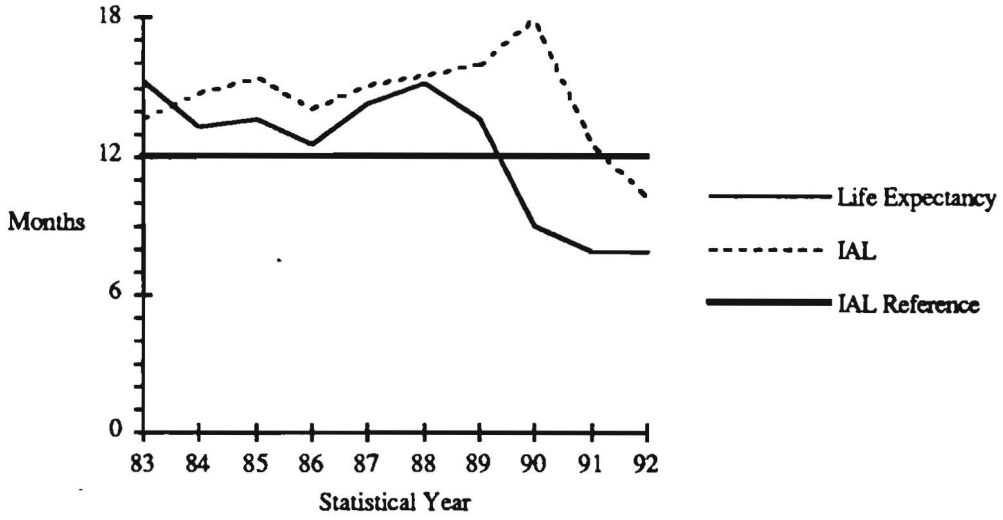
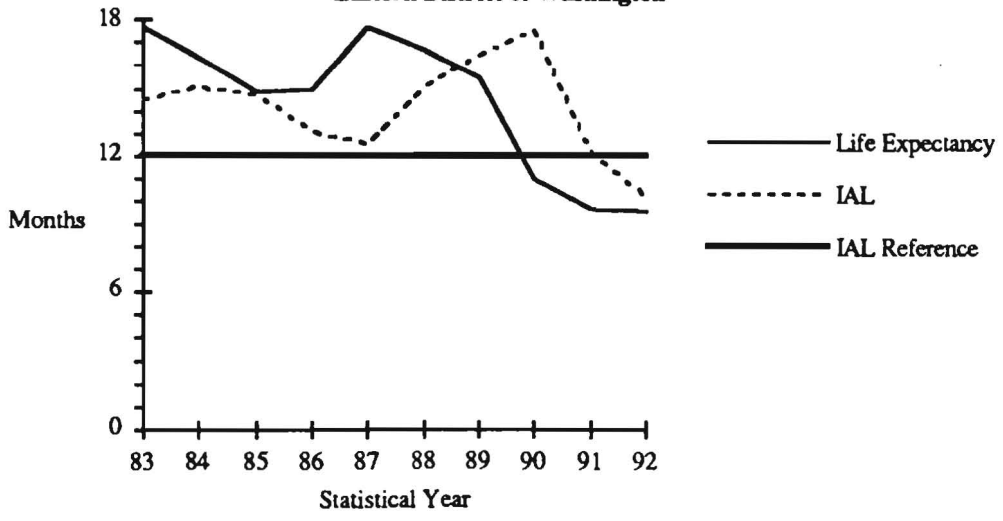


Chart 6: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY83-92

Eastern District of Washington



e. Three-year-old cases. The *MgmtRep* table shows the number and percentage of pending cases that were over three years old at the indicated reporting dates. We have prepared Charts 7 and 8 to provide some additional information on these cases.

Chart 7 shows the distribution of case terminations among a selection of termination stages and shows within each stage the percentage of cases that were three years old or more at termination.

Chart 7: Cases Terminated in SY89-91, By Termination Category and Age

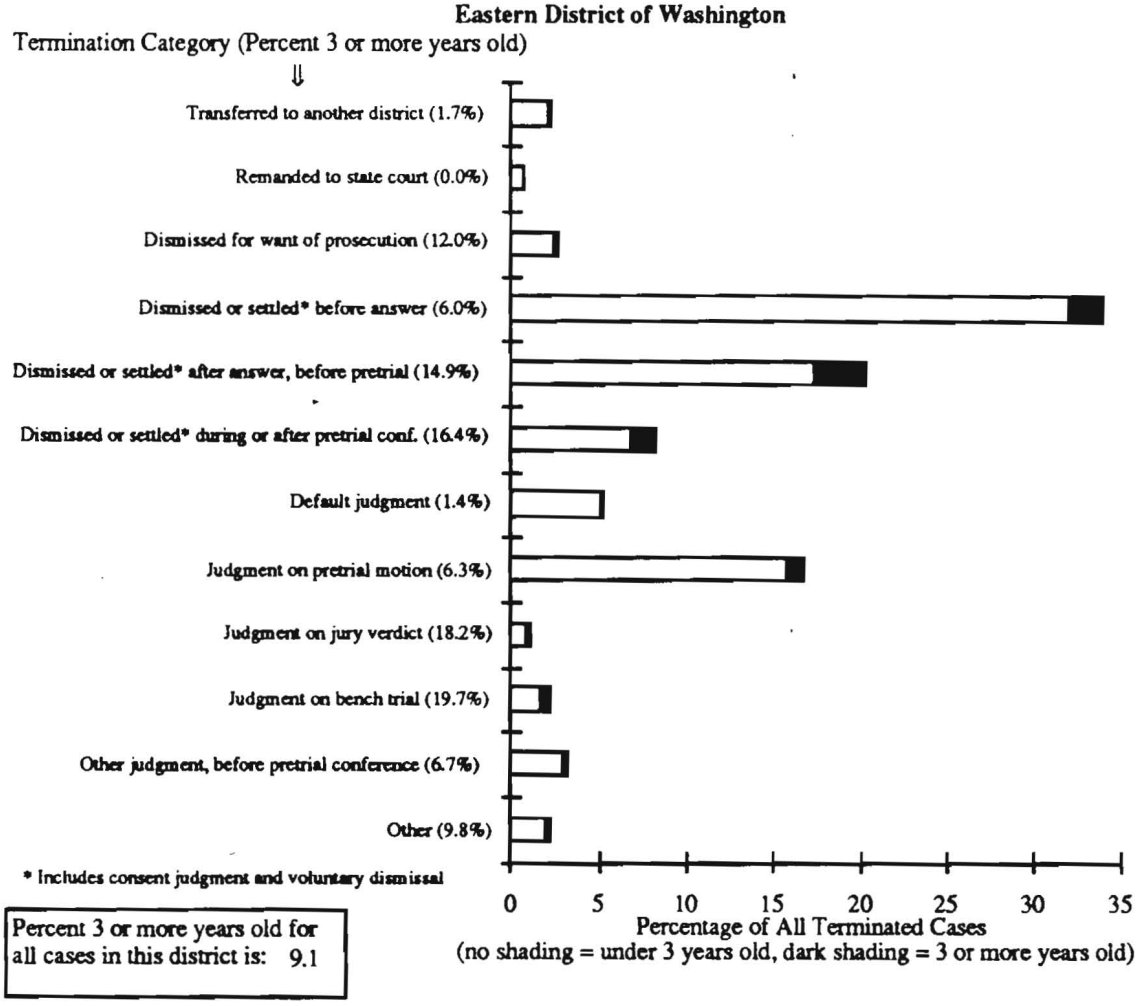
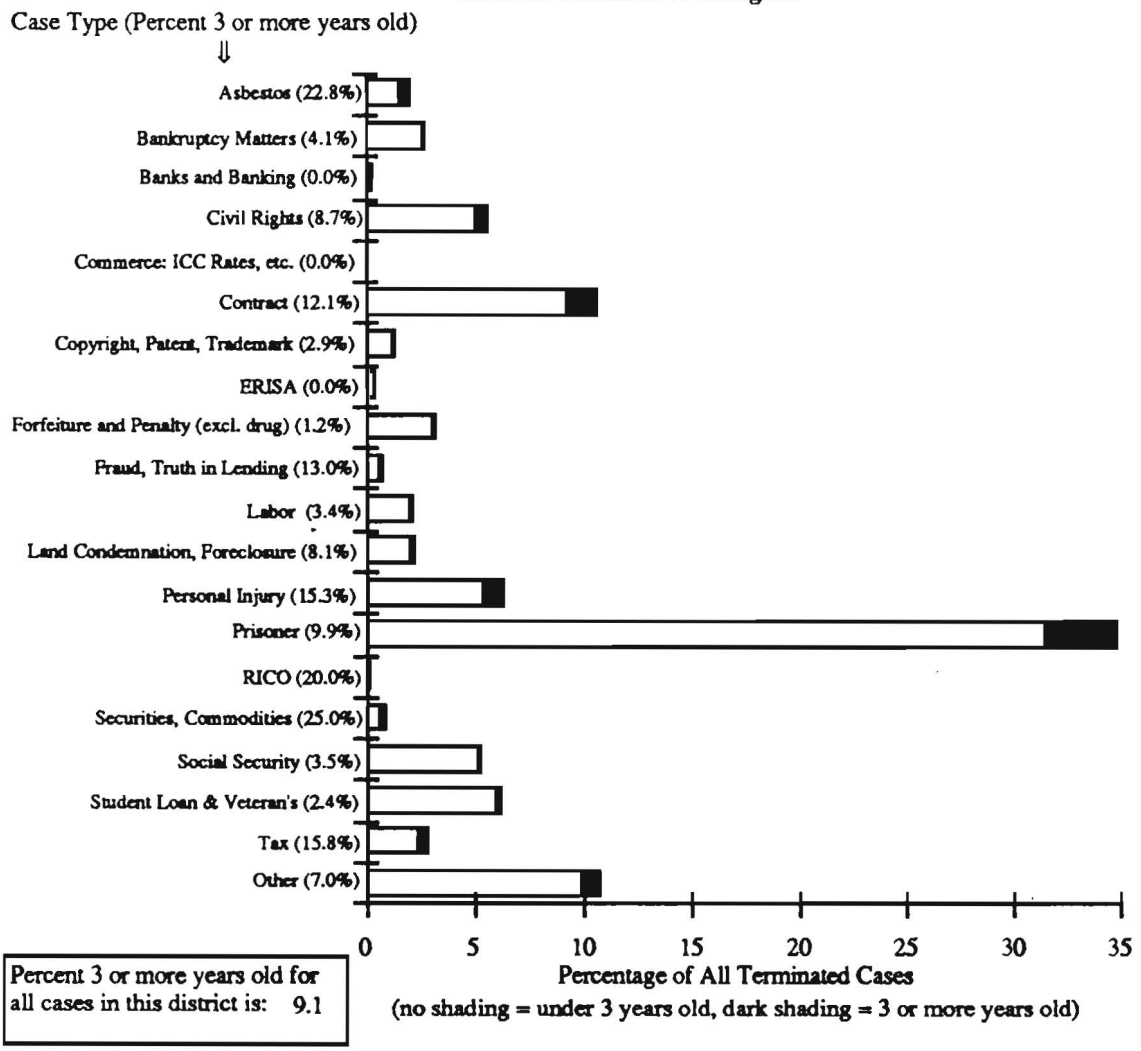


Chart 8 shows the distribution of terminations among the major case types and shows within each type the percentage of cases that were three years old or more at termination.

Chart 8: Cases Terminated in SY90-92, By Case Type and Age

Eastern District of Washington



f. Vacant judgeships. The judgeship data given in *MgmtRep* permit a calculation of available judge power for each reported year. If the table shows any vacant judgeship months for this district, a simple calculation can be used to assess the impact: Multiply the number of judgeships by 12, subtract the number of vacant judgeship months, divide the result by 12, and then divide the result into the number of judgeships. The result is an adjustment factor that may be multiplied by any of the per-judgeship figures in the *MgmtRep* table to show what the figure would be if computed on a per-available-active-judge basis. For instance, if the district has three judgeships and six vacant judgeship months, the adjustment factor would be 1.2 (36 – 6 = 30; 30 / 12 = 2.5; 3 / 2.5 = 1.2). If terminations per judgeship are 400, then terminations per available active judge would be 480 (400 × 1.2). This will overstate the workload of the active judges if

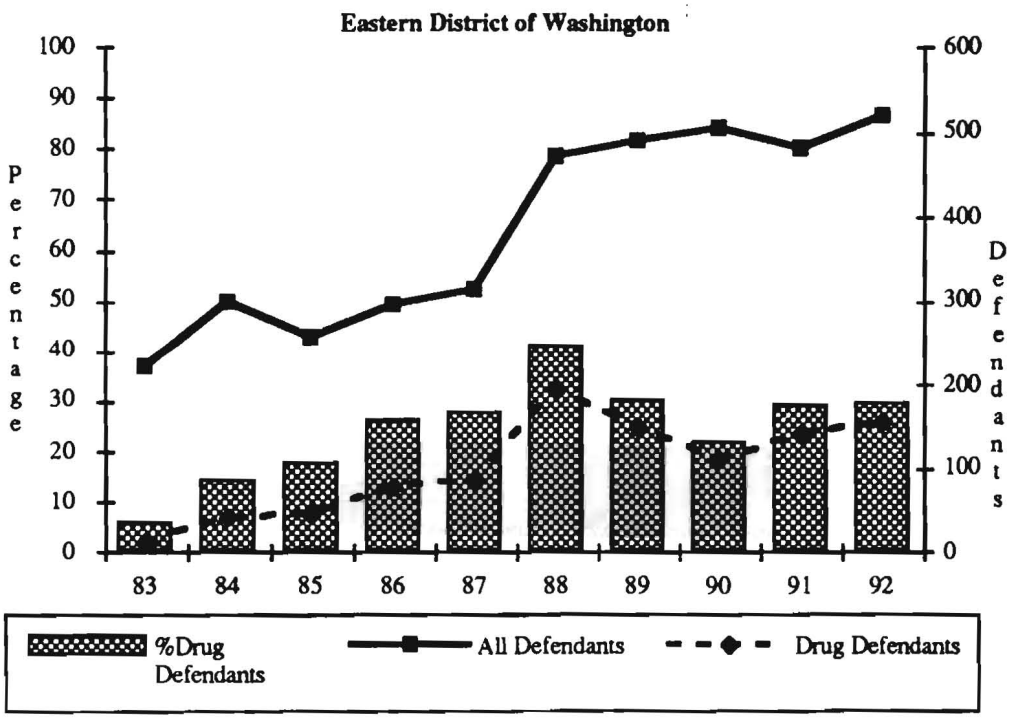
there are senior judges contributing to the work of the district. Because of the varying contributions of senior judges, however, there is no standard by which to take account of their effect on the workload of the active judges.

2. The Criminal Docket

a. The impact of criminal prosecutions. In calling on the advisory group to consider the state of the criminal docket, Congress recognized that the criminal caseload limits the resources available for the court's civil caseload. It is important to recognize that the Speedy Trial Act mandates that criminal proceedings occur within specified time limits, which may interfere with the prompt disposition of civil matters.

The trend of criminal defendant filings for this district is shown in Chart 9. We have counted criminal defendants rather than cases because early results from the current FJC district court time study indicate that burden of a criminal case is proportional to the number of defendants. Because drug prosecutions have in some districts dramatically increased demands on court resources, we have also shown the number and percentage of defendants in drug cases. A detailed breakdown of criminal filings by offense is shown on the last line of the table reproduced on page 8. A more detailed, five-year breakdown of the district's criminal caseload is available from David Cook of the Administrative Office's Statistics Division (FTS/633-6094).

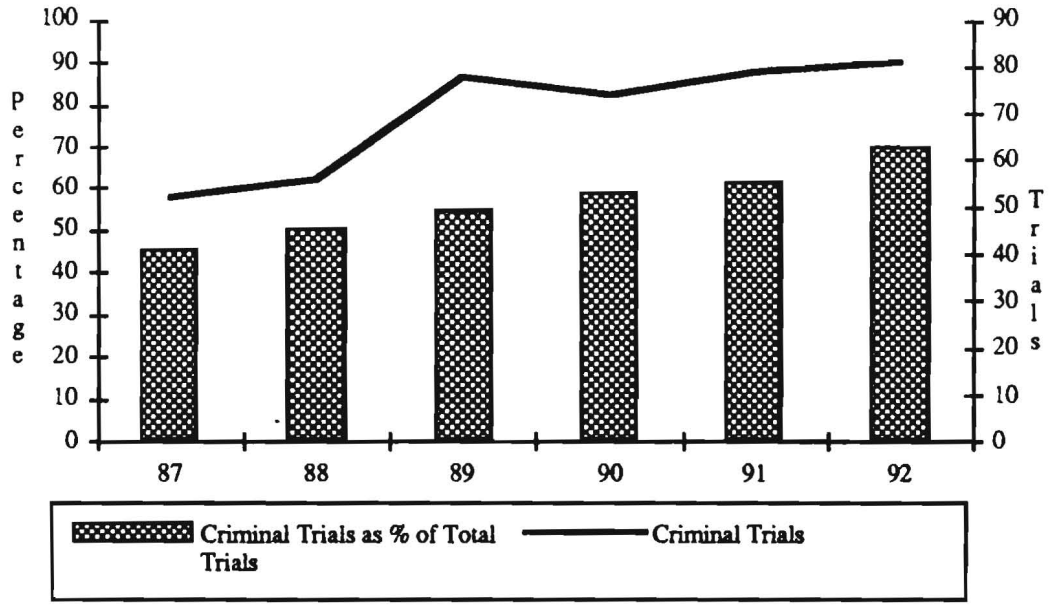
Chart 9: Criminal Defendant Filings With Number and Percentage Accounted for by Drug Defendants, SY83-92



b. The demand on resources by criminal trials. Chart 10 shows the number of criminal trials and the percentage of all trials accounted for by criminal cases during the last six years.

Chart 10: Number of Criminal Trials and Criminal Trials as a Percentage of Total Trials, SY86-91

Eastern District of Washington



For more information on caseload issues

This section was prepared by John Shapard of the Federal Judicial Center with assistance from David Cook and his staff in the Statistics Division of the Administrative Office of the U.S. Courts. Questions and requests for additional information should be directed to Mr. Shapard at (FTS/202) 633-6326 or Mr. Cook at (FTS/202) 633-6094.

APPENDIX D

Model Questionnaire for Judicial Interviews and Reports of Judicial Interviews

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

QUESTIONS FOR JUDICIAL OFFICERS
(Draft June 13, 1992)

1. Are there problems of excessive cost and delay in the processing of civil cases in the court? Why? What specific solutions would you recommend?

2. What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this court, right now, to deal with excessive cost and delay?

3. Is the allocation and coordination of work among active judges, senior judges, and magistrate judges effective? Is there sufficient backup for a district judge who has an unusually burdensome case?

4. What role should a district judge and/or magistrate judge play in the settlement process? When? Would it make sense to have one or more senior judges or magistrate judges assume the role of a settlement judge?

5. How effective has the alternative dispute resolution process been in the court? Are there ways in which ADR should be improved or expanded?

6. When should a district judge appoint a special master? What roles can a special master most effectively and efficiently assume?

7. Does the use by litigants of expert witnesses inappropriately contribute to cost and delay?

8. Is civil discovery a cause of excessive cost? Excessive delay? What actions can a district judge take to reduce excessive cost and delay?

9. What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?

10. Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?

11. Should the manner of handling prisoner petitions which currently constitute a significant proportion of the court's civil caseload, be changed?

12. Are there special problems created by other pro se cases that lead to delay in their processing or in the disposition of other civil cases?

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON
CIVIL JUSTICE REFORM ACT ADVISORY GROUP
(Draft June 13, 1992)

ISSUES TO BE DISCUSSED IN INTERVIEWS WITH JUDICIAL OFFICERS

1. **Are there problems of excessive cost and delay in the processing of civil cases in the court? Why? What specific solutions would you recommend?**

Is delay a problem in all types of cases? In certain types of cases? Which ones? Why?

To what extent is delay the fault of the parties or the lawyers? The court? Are there certain steps in the process where delay is most serious? Which ones? Why? What can be done?

What costs are excessive? Who is responsible for excessive costs? Can the court act to lower the costs to the parties? How?

Are the attorneys adequately prepared? At all stages in the process?

2. What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this court, right now, to deal with excessive cost and delay?

Differential Case Management

Should the court adopt a case management approach that differentiates between cases based upon their complexity?

What kind of differential case management approaches would you recommend?

Separate discovery tracks?

Separate motion practice tracks? Other?

What is the most appropriate bases for the characterization of a civil case as a complex one requiring a more specific case management approach?

Type of action (e.g., class action, derivative action)?

Substance of legal questions (e.g., RICO, takeover, patent)?

Nature and number of parties?

Potential discovery necessary? Other?

Pretrial Conferences

What is your practice concerning scheduling conferences?

Do you hold scheduling conferences?

Describe the format of these conferences.

Are certain types of cases exempt from these conferences?

Do you find scheduling conferences to be effective?

How often do attorneys comply with the dates set at the initial scheduling conference?

Do you use a scheduling order? (Obtain a sample copy).

Do you hold other pretrial conferences?

Other than scheduling conferences, how many pretrial conferences do you typically hold in a given case?

When in a case are these conferences held?

Describe the format of these conferences.

Are certain types of cases exempt from these conferences?

Do you find these pretrial conferences to be effective?

Do you use law clerks or magistrate judges to conduct scheduling or other pretrial conferences?

Do you encourage counsel to request a pretrial conference if they believe one would help expedite pretrial proceedings?

Final Pretrial Conferences and Orders

Describe your procedures concerning final pretrial conferences.

Do you use a form final pretrial order? (Obtain a sample copy).

Do you require the parties to attend the final pretrial conference?

Do you use the final pretrial conference to explore settlement possibilities with the parties?

Do you use magistrate judges:

to hold final pretrial conferences?

to help prepare the final pretrial order?

to explore settlement possibilities with the parties?

Motion Practice

Describe, generally, your internal policies for handling motions.

Do your policies differ in civil and criminal cases?

Are opposing parties routinely required to file written opposition to all motions?

What is your practice regarding oral argument (including whether you require a specific request for oral argument and your criteria for granting oral argument)?

What is your practice with respect to oral rulings on motions?

How often do you rule from the bench?

Describe the procedures that you employ and the types of cases in which you rule from the bench.

Do you monitor the filing of motions, responses and briefs?

Do you require attorneys to file proposed orders:

routinely;

in specific cases;

never.

In ruling on motions, do certain types of motions receive a priority?

What are your policies for the publication of opinions?

What is your opinion about a separate motion docket and motion day?

Do you conduct motions or other hearings by telephone conference call?

In what percent of your cases, if any, does a delay in filing motions needlessly prolong a case?

In what percent of your cases, if any, does a delay in filing motions needlessly increase litigation expense?

In what percent of your cases, if any, does a delay in ruling on motions needlessly prolong a case?

In what percent of your cases, if any, does a delay in ruling on motions needlessly increase litigation expense?

Are there procedures, such as a requirement of a statement of disputed issues of fact, that could assist you in ruling on motions?

Could pre-motion conferences be effectively used to reduce litigation costs and delays in this district?

Would restriction of the parties to letter briefs in discovery disputes reduce litigation costs and delay in this district?

Trials

Describe the manner in which you set trial dates (e.g., date certain set by court, trailing calendar, consultation with counsel about date).

When a civil case is ready for trial, how long does it take you to reach that case for trial?

Under what circumstances do you bifurcate trials or otherwise structure the sequence of trial evidence?

3. Is the allocation and coordination of work among active judges, senior judges, and magistrate judges effective? Is there sufficient backup for a district judge who has an unusually burdensome case?

Are there sufficient magistrate judges? Are they used appropriately?

For what functions do you use magistrate judges? Are there additional ways in which they can be used?

Should senior judges be used more frequently to relieve active judges whose trial schedule results in a conflict? Is more centralized planning desirable? Possible?

4. What role should a district judge and/or magistrate judge play in the settlement process? When? Would it make sense to have one or more senior judges or magistrate judges assume the role of a settlement judge?

How does the court promote settlement? When is the best time for the court to facilitate settlement?

What are the advantages and disadvantages of having one or more judges or magistrate judges focusing on settlement?

Do ADR techniques facilitate settlement conferences? What is your practice?

Should parties be required to attend settlement conferences? What is your practice?

Should the judge or magistrate judge meet with counsel or parties separately or together? In all cases? In jury cases? In nonjury cases?

5. How effective has the alternative dispute resolution process been in the court? Are there ways in which ADR should be improved or expanded?

What percentage of cases do you refer to mediation? To early neutral evaluation?

What types of cases are most appropriate for ADR? Least appropriate?

Has ADR reduced cost and delay? Increased cost and delay?

What additional forms of ADR should be considered?

Should the neutrals be paid? Who should pay them?

6. When should a district judge appoint a special master? What roles can a special master most effectively and efficiently assume?

Should special masters be used to handle complicated discovery issues?

Should special masters be used to assist the court in processing class claims?

How important is consent of the parties?

How should the cost of the special master be allocated?

Should special masters be used as part of the settlement process? In what types of cases?

7. Does the use by litigants of expert witnesses inappropriately contribute to cost and delay?

Do you believe experts generally charge excessive fees?

If yes, do you have any suggestions how the fees may be reduced or limited?

Do you believe the court should limit the length of expert depositions?

Do you believe the court should generally deny parties the opportunity to depose experts, and require the parties to rely upon full and complete written designations of opinions and the basis of opinions?

Do you believe the court should limit the number of experts to be used for the trial of a case?

What criteria should the court use to determine the proper number of experts to be used at trial?

Would the use of court appointed experts reduce the costs of experts in federal court? How?

Do you believe the court should more carefully challenge the qualifications of expert witness testifying at trial? Please explain.

8. Is civil discovery a cause of excessive cost? Excessive delay? What actions can a district judge take to reduce excessive cost and delay?

What discovery cutoffs should be set?

Should each judge use a standard discovery scheduling order?

How frequently does the court have to resolve discovery disputes?

When should Rule 26(g) conferences be held?

Are the costs imposed on parties adequate to deter discovery abuse?

Should the court monitor discovery by requiring periodic reports?

What are the advantages of having discovery requests and responses filed with the Clerk's Office? The disadvantages?

What parts of discovery generate excessive costs? Excessive delay?

What measures can the court take to reduce costs and delay? Will prompt rulings on discovery disputes help?

Should the judge be active in managing the discovery process? What steps best prevent excessive cost, delay, and abuse in the discovery process? What level of management of the discovery process is optimal?

Should there be limits (by rule or court order) on the number of interrogatories? The number of depositions? The time permitted for depositions? In all cases? In certain types of cases?

Should the discovery process be shortened? In all cases? In certain types of cases?

Is the discovery process a cause of delay in civil litigation? A cause of undue cost of litigation? In certain kinds of cases?

What types of cases generate a disproportionate number of discovery disputes? How do you handle them? How can such disputes be resolved expeditiously?

Should there be changes to procedures concerning discovery motions sanctions? Such as requiring the moving parties to certify that a good faith attempt has been made to resolve the discovery dispute before filing the motion? Replacing the motion with a two page letter to the judge or magistrate judge?

Are sanctions an effective tool in the area of discovery disputes? Should they be used more frequently?

Should this court adopt as a local rule a rule requiring the voluntary disclosure by parties of certain basic information? Describe what kinds of information you think ought to be the object of such a rule, and how the rule might work.

9. **What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?**

Should certain cases not be brought by the U.S. Attorney?

Can prosecutors better assist the court in moving cases forward? How?

Should defense counsel be required to do more to assist the court? How?

Should pretrial motions in criminal cases be expedited? Which motions?

Can magistrate judges assist in this process?

Can pretrial hearings be expedited? How?

Should motions be decided without oral argument? When?

Are there any recommendations the Advisory Group should make to the executive or legislative branches?

10. **Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?**

How should trial dates be set?

Should trial dates be kept firm?

Who should serve as backup for a judge who has a conflict when a trial is scheduled?

Can bifurcation expedite trials?

What other procedures have you tried?

11. **Should the manner of handling prisoner petitions, which currently constitute a significant proportion of the court's civil caseload, be changed?**

What are the most common prisoner grievances?

What form of review does the State currently have for prisoner grievances?

What procedures might the State implement to review prisoner complaints that may reduce the number of 1983 actions?

What practices are used in other districts to handle prisoner petitions?

What is the court's current practice in handling prisoner petition cases?

What are the most time-consuming aspects of determining prisoner petitions?

To what extent can law clerks, masters, or appointed counsel participate in the process?

How do you identify whether and when counsel should be appointed in prisoner petition cases?

What are the legal constraints in the determination of prisoner petitions?

Should hearings be held at the prison?

What is your opinion of these possible recommendations of the Advisory Council?

Require submission by the petitioner and the State of a verified documentary record of all material pertinent to the petition.

Encourage judges to take back some prisoner petition cases.

Encourage the Attorney General's office to take a more active role in defining and developing the issues presented in the petitions.

Set up a panel of attorneys to frame issues and develop the applicable record in 1983 cases.

Utilize "materiality" hearings to review the facts in prisoner petitions.

Encourage the State to implement a more efficient correctional system hearing process.

Provide a petition form which offers more guidance to the prisoners.

Hire a "special master" to assist the Magistrate in some capacity.

What other recommendations do you have as to how the court should deal with the volume of prisoner petitions?

12. Are there special problems created by other pro se cases that lead to delay in their processing or in the disposition of other civil cases?

How do you currently decide when to appoint counsel in pro se cases?

Does the appointment of counsel to represent pro se litigants help reduce cost and delay in handling pro se cases?

Should there be more lawyers available to be appointed to represent parties in pro se cases? Should there be other changes to the system of appointing counsel?

What are the advantages and disadvantages of having a magistrate judge or pro se clerk perform a preliminary substantive review of all pro se cases for possible sua sponte dismissal?

What are the advantages and disadvantages of adopting standard discovery procedures in pro se cases, such as the use of standard interrogatories, to be completed by both sides or requiring that defendants accompany their response to the complaint with the production of all relevant documents?

Can law clerks provide greater assistance? Should there be court law clerks or specialists in the Clerk's Office to assist in the management or disposition of pro se cases?

Are there certain categories of pro se cases that could be referred to magistrate judges? Mediators? Others?

LAW OFFICES OF
MEYER, FLUEGGE & TENNEY, P.S.
230 South Second Street
Mailing Address: P.O. Box 22680
Yakima, Washington 98907

TELEPHONE
509/575-8500

WALTER G. MEYER
DENNIS L. FLUEGGE
ROBERT C. TENNEY
MARK D. WATSON
JEROME R. AIKEN

JOHN A. MAXWELL, JR.

REPORT RE: CJRA Judicial Interview with Judge Alan A. McDonald
DATE: September 17, 1992
FROM: Walter G. Meyer, Jr.

I met with Judge McDonald on September 4, 1992 and the following is a report of that meeting.

DELAY & COSTS:

For this District, Judge McDonald did not feel there were problems of excessive cost and delay in processing civil cases. In the Eastern District cases can come to trial within one year if the parties are ready and want to. He felt that although a trial could actually be held in a shorter time, at least a year is needed to allow time for sufficient discovery to be accomplished for the case to be ready for trial. Costs tend to be related to delays, therefore, in this District, without delays there does not tend to be excessive costs.

In the Eastern District Judge McDonald felt that the judicial manpower base was "delightfully dedicated" to doing what needed doing. If assistance is needed, all that is necessary is to ask.

SETTLEMENT:

Concerning the settlement process, Judge McDonald handles his own settlement conferences for those cases which will culminate in a jury trial and presides over them. He does allow the parties a choice as to who they prefer to preside over the settlement conference and it does not necessarily have to be him. He requires that all cases be reviewed for settlement purposes before the Magistrate. He anticipates modifying the process soon, possibly as early as the first of the year, so that settlement conferences are held earlier in the process. He presently sees it as a problem that settlement conferences are not held earlier in the proceedings. This does not seem to be a problem with more experienced lawyers, but younger lawyers do not tend to have the experience to be able to adequately assess their settlement position.

Presently he requires a settlement letter from the parties which outlines both their strengths and their weaknesses. These letters are held in confidence. He then meets with the parties, normally the plaintiffs first, with a meeting with the defendants following, and then both parties. The meeting with both parties continues to preserve that information provided to the Judge by the parties individually as part of their assessment of their position, weaknesses and strengths. He finds that the success of the process is often related to how experienced the attorneys are. He finds that often times the attorneys, primarily the lesser experienced ones, are not willing to indicate that their cases have any weaknesses.

DISCOVERY & SPECIAL MASTERS:

Judge McDonald has not had extensive experience in his Court with the alternative dispute resolution process (ADR). He admitted to a bias against the process that was a hold over from his private practice days, but he is willing to be open to the process. He is aware that often times it is a problem for attorneys to communicate the weaknesses in their case to their clients and often times a strong mediator can help with that aspect.

Judge McDonald has on occasion used Special Masters, but tends to do so more as discovery masters in very complex litigation. He is very careful who he selects and presently has about one half dozen parties who he feels have the experience and toughness the position requires. He believes the imposition of Rule 11 sanctions against parties who are deliberately thwarting the discovery process is an effective tool in limiting deliberate abuses. He feels that the discovery process is important and is not quick to jump on an attorney for discovery violations, but he will do so if warranted.

He feels that the use of a Special Master can be especially effective when the discovery which is necessary is so broad and burdensome as to be impossible for one Judge to monitor in addition to his regular case load. He gave as an example the "downwinder" cases which potentially have 2,300 plaintiffs, but are not a class action. He anticipates appointing several Special Masters if this claim gets past liability and to damages stage. The use of Special Masters is an expensive process for the parties, in that they have to pay the cost of the Special Master, and Judge McDonald tries to limit their appointment to those cases where they can best be utilized.

EXPERTS:

Judge McDonald commented that he did not know what was meant by the term "inappropriate" in relation to the use of expert witnesses. Pursuant to Local Rules no more than two experts are

allowed on any subject, and he feels that sometimes the testimony of the expert is useful to the trier of fact. He does not feel it is a big problem in this area and feels the cost of such experts works as a self-modifying factor.

The attorney who has hired the expert is responsible for his charges. Judge McDonald advises the attorneys that they should be aware that when an expert is hired the opposing side will wish to take his deposition and the hiring party will be responsible for the costs of that discovery deposition. Should the attorney who will ultimately be responsible for the cost of the deposition time feel that the opposing counsel is deliberately delaying to make the deposition more costly, Judge McDonald is available by telephone. Judge McDonald would usually advise the party to continue the deposition but after it was transcribed, he would review the deposition and assess all deposition costs which he felt were generated by nonsense. So far this has not been a problem, but should it arise, this is how it would be handled.

CRIMINAL FILINGS:

Concerning criminal caseload, at one time he and Judge Quackenbush each handled 275 criminal filings per year at a time when the average for all the other Judges in the nation was 55. When 2 new Judges were added by the Biden Bill and this District received one of them, the load became very manageable. There was no problem prior to the appointment of the additional judges and there is still no problem.

CIVIL DISCOVERY/COSTS:

He has taken no specific action with the object of expediting trials and reducing costs, but feels that the procedures they have always employed have this result. A status conference call with the parties and Judge McDonald is initiated approximately 90 days after filing. During that call they assign a trial date and work backwards, setting discovery cutoffs and other deadlines, discussing discovery problems and settlement potential. He intends to enhance this process by having the parties conference with the Magistrate approximately two months after this initial conference call. Judge McDonald again mentioned that the primary problem in moving the trial process along depended often times on the experience level of the attorneys. Older, more experience lawyers seem to have no problem assessing their position and reasonable times frames in which to operate. The younger lawyers are not as adept at this.

Concerning excessive discovery, he finds that this happens primarily in very large cases such as anti-trust matters and feels it is driven by economics, i.e., getting a lot of chargeable hours. He finds most of the abuses occur with the larger law firms who often use more than one lawyer for a one lawyer problem. At the first

hint of abuse he appoints a Special Master and that pretty much resolves the problem.

PRISONER PETITIONS:

Judge McDonald feels that the current manner of handling prisoner petitions is burdensome. He feels it would be appropriate to have a state agency set up just to process prisoner complaints. Obviously if a prisoner's constitutional rights are being violated those claims should get to the Court level. He feels that some of the claims are very noble, however, many of the claims are a charade which take a lot of time to process. Presently they process 300-350 such filings a year. They have one clerk assigned just to these matters. He feels these claims would be better handled by the state. The parties always demand a jury, which jury will likely be unsympathetic to the large majority of the claims filed, yet the cases have to handled unless they are dismissed in a Summary Judgment.

MISCELLANEOUS:

Judge McDonald does not feel that there are special problems created by pro se cases.

As to whether or not attorneys are adequately prepared, he feels that the problems caused are much the same as other problems resulting from young inexperienced lawyers. He feels that the profession must come to some kind of an internship for young lawyers, much as the medical profession has an internship.

Judge McDonald does not feel there should be a special motion day. Federal Judges have a file from the beginning to the end. He likes to fashion the motions to the case and wants to be involved. Judge McDonald does not think a Judge can intelligently preside over a case without having presided over the motions and being aware of the complexity and issues in the case.

Judge McDonald employes a form of trailing calendar in that criminal cases take precedence.

As to special problems that Judge McDonald sees, he feels that as soon as relief is provided, i.e., sufficient manpower the problems seem to resolve themselves. There are currently 100 vacant judicial positions. He is hopeful after the election bipartisan politics will be put aside and those positions will be filled and a sufficient number of judges will be appointed to handle the caseload.

He is worried by the continuing efforts by some members of Congress who, on a strictly political basis and knee jerk reaction to political pressure, try to increase mandatory minimums and move

street crimes, domestic violence and other such matters that are best handled at the state level to the federal level. When he was appointed he was the five-hundred fifty-fifth Judge out of a possible 600. He thinks that the system would be weakened rather than strengthened if the number of Federal Judges were doubled.

He feels that matters such as the Operation Trigger Law in which both state and federal courts would handle a matter is silly. These matters should be handled by the state, but because the federal laws are stricter, more and more the trend is to immediately proceed to the federal level. If the trend continues the Judges will end up more like police commissioners and domestic judges than the last, best bastion of justice, which should be their real role.

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

Notes from Judicial Interview of the Honorable Fred L. Van Sickle

October 27, 1992

Conducted by Mary Ann Murphy and John Workland

Mediation/Alternative Dispute Resolution

Judge Van Sickle stated that it was his feeling that mediation works well in family law, state cases, that are ongoing in nature (i.e. parental visitation, etc.).

If mediation is required, and parties are not committed and willing to go through the process, it adds an additional cost. Therefore, Judge Van Sickle does not feel that mandatory mediation is the answer.

Judge Van Sickle feels that the EDWA system works effectively because each case is initially assigned to a particular judge, the case is dealt with early on and the district has the staff to properly handle the cases. He feels that alternative settlement should be discussed early on and then brought up again, if necessary, but should not be made a mandatory process.

Judge Van Sickle discussed an approach, which he indicated may not be the right approach or always fair, but is used in Washington state courts. A case must go to arbitration if the amount in controversy is less than a certain amount. This process has reduced, by 25 percent statewide, civil cases that need to be tried.

Settlement Conferences

Judge Van Sickle stated that the litigant should be present at settlement conferences and he does not believe the settlement conferences should be handled by the trial judge. He feels that settlement conferences can be handled by a magistrate judge or another judge. The "open" settlement conferences, ("open" meaning handled by someone other than the trial judge), are a good educational process for the clients.

Use of Magistrate Judges

Judge Van Sickle reviewed the fact that in civil cases, the parties must consent to a magistrate hearing the case. In prisoner cases, he has found that the prisoners are willing to consent because 1) resolution of the matter is sometimes faster and 2) the magistrates are building reputations of being fair which effectively allows for better use of the magistrate judge resource.

Judge Van Sickle likes the way the district assigns cases to one judge and that judge handles the case through completion of the matter. He discussed the process in some districts where the magistrate judges handle all civil matters and the judge has little involvement. He does not feel this is the proper way to handle the civil cases.

Keeping Civil Cases on Track

Judge Van Sickle talked about the "master calendar" discussions the judges have weekly where they review their calendars and request help with criminal cases if necessary to keep their civil cases on track. He stated that criminal cases can more easily be heard by another judge than civil cases.

He stated that it is very important to keep trial dates firm, except for emergencies. He also stated that he monitors his criminal cases and promotes early response on pleas. Firm trial dates help solve delay problems. Case management is essential beginning with pretrial/scheduling conferences, then follow-up is important to keep cases on track.

Case Management

Judge Van Sickle feels that good case management does reduce costs. The district's local rules provide for some limitations which are helpful, and counsel can address the court if they want to exceed those limitations.

Judge Van Sickle stated that he has successfully used a Judge McNichols practice where counsel is encouraged to telephone him if they have a discovery problem. This reduces additional motions and hearings on discovery matters. It also encourages counsel to resolve some discovery matters amongst themselves because they do not want to telephone the judge with too many discovery issues. This kind of active management, he stated, the availability of the judge to be able to handle some matters via the telephone, reduces some cost and delay. Also, a discovery master is helpful in some cases.

Management of Prisoner Cases

Judge Van Sickle stated that some change in the system of reviewing prisoner cases would be helpful. Possibly an independent, third party ombudsman, outside the Department of Corrections, might work well.

Another possibility would be to have a magistrate or special master hold hearings at the detention facility. This may be a way of taking care of some concerns without the necessity of going all the way through a case and the accompanying filings that go with that.

Discovery

Judge Van Sickle stated that discovery is a problem and that it is expensive. He believes the change in the federal rules, the "lay down your cards" rule, is in the right direction and that it will help.

He also stated that the U.S. Supreme Court has before it some issues related to "experts" that will be interesting to follow.

Federalization of Crimes

Judge Van Sickle stated that there should be some meaningful policies established by the U.S. Attorney for cases being in the federal court versus the state court so that the charging is rationally done. Judge Van Sickle stated he believes in enforcing the law, however, sees some federal cases that are charged federally because of the harsher sentencing. There is great disparity between federal and state sentencing laws particularly because of federal mandatory minimum sentences.

Interview with Judge William Fremming Nielsen
10/30/92
For the CJRA Committee: John Workland
Mary Ann Murphy
Recorder: Barbara Reed

Judge Nielsen expressed concern that indeed costs are high for civil cases in federal courts and he is interested in the committee's recommendations on the problems of cost and delay.

CASE MANAGEMENT

Trial dates

The system developed in this district to set firm trial dates early in the process by a status conference either in person or by telephone is the most effective case management tool. Judge Nielsen strives to get consensus from the attorneys on the trial date.

Discovery and disclosure

Limits on discovery are difficult to impose. However, this is one advantage in federal court in that civil cases are assigned to a judge at the time of filing, a practice which allows the trial judge to set realistic discovery cut-off dates.

Judge Nielsen discourages game-playing among the attorneys and asks them to reveal their witnesses to each other and exchange documents as the case develops.

Expert witnesses are also costly, but this is managed well by the local rule. The court does oversee the appropriateness of the use of expert witnesses and has the authority to impose limits.

CRIMINAL FILINGS/EFFECT ON CIVIL DOCKET

This is the crux of the problem: the heavy criminal caseload per judge that, then, affects the civil docket. The size of the criminal caseload was the reason for establishment of Judge Van Sickle's position; with that position, the federal judges in this district have been able to keep flexible and innovative in scheduling.

Judge Nielsen schedules criminal trials at times at 8 a.m. or noon, so he can have more than one trial going. Staff members, lawyers, and U.S. Attorney are all cooperative in keeping the judges' calendars fluid.

USE OF MAGISTRATE JUDGES

Mediation, or "shuttle diplomacy," is effective in breaking down positions of pride and narrowing the issues. The experience of having all parties present and holding settlement conferences in the Federal Building helps to forge agreement.

DELAY AND COSTS

Cases tend not to settle until they are ready. Status conferences and pre-trial conferences help to drive a faster settlement.

PRISONER PETITIONS

Judge Nielsen handles prisoner cases as they come up and manages to keep current. He is sometimes able to settle the issue with a conference call between the State Attorney General, the prisoner, and the judge. He finds he must listen carefully and probe to discover what the prisoner wants. He would be in favor of a system where the judge goes directly to the prison to handle these petitions.

MEGA CASES

Very large-scale cases break the rules and should not be used to establish the rules for most cases in federal court. Though unusual, the court must be prepared to accommodate very large and complex disputes.

Civil Justice Reform Act
Advisory Group Meeting

Spokane, Washington
August 22, 1992

The meeting of the CJRA Advisory Group was called to order at 8:30 a.m. by Robert B. Henderson, Chairman. Present were:

Chief Judge Justin L. Quackenbush
Eugene Annis
William Blair
David Dorsey
William First
James Gillespie
Robert Henderson
William Hyslop
James R. Larsen, Clerk of Court
Douglas Pringle
Terrie Scott
Leslie Weatherhead
John Workland

CJRA Advisory Group members not present were: Robert Carr, James P. Connelly, Walter G. Meyer and Mary Ann Murphy.

Advisory staff present:
John Anderson, Washington State University
Brian Bethke, Gonzaga Law School Lawyer Intern
Professor Nicholas Lovrich, Washington State University
Linda Maule, Washington State University
Professor Charles Sheldon, Washington State University
Professor Mark Wilson, Reporter

The guests in attendance were introduced by Chairman Henderson:

Magistrate Judge Cynthia Imbrogno
Dennis Dellwo, State Representative
Pat DeMarco, Assistant Attorney General,
State of Washington
Larry Uribe, Grievance Program Manager,
Department of Corrections

Magistrate Judge Utilization

Magistrate Judge Cynthia Imbrogno addressed the group initially covering her background which includes work as a staff attorney for the federal court, Eastern District of Washington, with an emphasis on pro se and complex cases. Subsequently, Magistrate Judge Imbrogno worked in private practice which included work in the following areas: civil litigation, civil rights, anti-trust, contract and RICO cases.

Magistrate Judge Imbrogno identified and described the duties of the magistrate judge position in the Eastern District of Washington.

She reflected on the name change from a "magistrate" to a "magistrate judge" which, she stated, was done in an effort to educate the public and the bar as to the general powers and duties of a magistrate judge so that the magistrate judges could be better utilized in assisting the Article III Judges with their heavy caseloads.

Criminal Matters. Magistrate judges in the district handle criminal matters that include petty offenses, initial appearances, arraignments, review of search warrants, hearings regarding competency and suppression, pretrial felony matters and appoint CJA panel attorneys to handle criminal cases for indigent clients.

With the consent of the defendant and the USA, magistrate judges can preside over criminal felony jury selection. Magistrate Judge Imbrogno stated that this was an area where the magistrate judges could really help the judges.

In civil cases, the magistrate judges in the district can handle non-dispositive motions and also do reports and recommendations. If parties consent, the magistrate judges can resolve all issues in a civil case.

Each magistrate judge in the district handles one out of seven prisoner cases.

Lastly, and perhaps most importantly, Magistrate Judge Imbrogno stated that the magistrate judges of the district could be very helpful in conducting settlement conferences. Early intervention is key. Magistrate Judge Imbrogno discussed her method of handling the settlement conferences which is a "mediation-type" method. It has been her experience that the attorneys and parties who have gone through the settlement conferences have been satisfied and felt that the system worked for them.

Chairman Henderson asked Magistrate Judge Imbrogno how she thought the magistrate judges of the district could help with prisoner pro se cases. Magistrate Judge Imbrogno felt that the magistrate judges could take more of these cases.

Reports on Surveys

Professor Sheldon reported on the surveys that had been conducted. The attorney survey had, after two mailings and follow-up telephone calls, a 70% return rate. The petitioners (prisoner pro se litigants) were difficult to locate in some instances because the prisoners are very mobile. 61 petitioners completed the survey. The litigants were the hardest group to find. Only 32 litigants completed the survey out of 92 that were sent out. (108 were actually mailed out with 16 refusing to respond to arrive at 92.) The group from Washington State University conducting the survey are working on surveying some Spanish speaking litigants. The first waive of the juror surveys, 117, were sent out. 89 responded in a two week period, a 45.4% return rate at that point.

Of the 89 returned, 62 returned out of 117 sent (criminal jury trial); 27 returned out of 79 sent (civil jury trial).

The jurors responding so far felt that the court management was firm, but appropriate. Out of 89 responding, only 2 did not like the jury process. The second waive of juror surveys will be mailed out next week.

Professor Sheldon circulated a summary of the attorney responses to a few of the survey questions. A discussion followed.

Chief Judge Quackenbush addressed questions regarding one of the attorney responses reflected on the summary regarding case management. Chief Judge Quackenbush stated that a schedule should be set to avoid procrastination. The schedule should be "timely but fair". Most often the schedule is set in accordance with the schedules requested by the attorneys. Chief Judge Quackenbush was

asked if the court should be involved in setting a schedule for a "small" case. Chief Judge Quackenbush explained that the federal court is different than state court and the federal rules require that a schedule is set.

Washington State University will check into what types of cases were involved in the summary response: I.(2) "Excessive case management by court" more responsible for delay in short terms cases (under 12 months).

Professor Sheldon stated that, from the open-ended responses received on the attorney survey, it appears there is not a great demand for change -- at least in the Eastern District of Washington.

Professor Lovrich talked to the group about the survey responses from the prisoner pro se petitioners. Professor Lovrich stated that his reading of the petitioner responses reflected three overwhelming findings.

1. Impression is strong that the prisoners are not satisfied with the grievance program. They don't trust - and have a fear of retaliation. In other words, to be a complainer marks you.

2. Apparent lack of faith in procedure. General feeling of inadequate legal resources, paralegal advice or access to legal advice or opinion.

3. Impression that there was an overwhelming desire to have a third party that could help resolve the complaints, someone independent, something apart from the state and "the joint". This was a fairly uniform sense, not different from long-timers and short-timers.

Information Gathering

Les Weatherhead indicated that he felt it was important that the group work hard to get the litigant response rate up. It was suggested that a letter from the Chief Judge to attorneys to obtain addresses and to retrieve files from the federal archives to attempt to locate addresses from the case files might be helpful.

The "need" for the litigant and juror responses to each of those surveys was reiterated by Professors Sheldon and Wilson. A discussion followed regarding the responses from the litigants and jurors and the resource those responses would provide regarding the public's perception of civil litigation in federal court. Professor Lovrich stated that it is essential that the litigant responses are received -- they are the "consumers".

Chief Judge Quackenbush suggested that an in-depth study of one case might prove beneficial for the group possibly a case such as the WPPSS case that took so much of the court's time. He stated that Carl Halverson, Chairman of the WPPSS Managing Committee, might be an interesting person to interview.

William Blair suggested that studying a few cases, in addition to the WPPSS-type case, would also be a good method to obtain valuable information.

Chairman Henderson noted that the group would be hearing from the ADR, Judicial Interview and Discovery/Disclosure committees. David Dorsey stated that he would obtain a copy of a publication that would be a good source for information on certain cases.

Judicial interviews were discussed. The interviews have not been conducted yet. Walter Meyer, chair of the committee conducting the interviews, was not present at the meeting.

Writing the Plan

Chairman Henderson stated that the group must start writing. Les Weatherhead did not feel the group should begin writing until the results were in. A discussion followed.

Mark Wilson talked about writing the plan. The report to the district with assessments and recommendations will be the basis for the plan.

By way of organizing the report: writing will be delegated to three committees and remaining portions by the chair and staff.

1) ADR
2) Discovery
3) Prisoner petitions and pro se litigants

Each subcommittee will prepare a report.

Guests from the State of Washington

Larry Uribe reported on the grievance program. An assessment of the grievance program is included in TAB 6 of the meeting notebook.

Mr. Uribe addressed the statements by the prisoners regarding retaliation for filing complaints. He stated that out of 836 complaints, there were 9 alleged reprisals reported.

Pat DeMarco spoke to the group. She suggested that perhaps a filing fee would discourage some of the frivolous actions being filed.

Larry Uribe was asked if he had suggestions that would improve the grievance program. He outlined the following concerns: 1) no line authority over coordinator; 2) turnover rate on grievance coordinators; 3) correction unit supervisor will be rotated out.

Dennis Dellwo, State Representative, spoke to the group briefly regarding the prisoner cases and asked that the group forward suggestions to him regarding processing civil actions filed by the prisoners.

Pat DeMarco was asked if there was any way to resolve disputes other than trial. She indicated that 90% are resolved by dispositive motions or trials. Ms. DeMarco discussed the challenges of settling prisoner cases. The State is hesitant to set a precedent of settling cases and awarding monetary damages. She also stated that the law is not conducive to settling until after dispositive motions are considered.

Handling Prisoner Cases

The merits of a prisoner case ombudsman, not state related, but an independent, impartial ombudsman were discussed.

Wm. Hyslop suggested that the group address:

1) an efficient method to "weed out" the frivolous cases, and
2) address how to best handle the legitimate cases to resolution.

Filing fee
Ombudsman
Mandatory Exhaustion of grievance program
Remand

William Blair noted that a quick resolution, possibly the ombudsman, would be a good way to resolve the prisoner complaints -- step in early and give credibility.

The group discussed special masters, ADR, appointment through local rule, possibly. Pat DeMarco stated that the Western District utilizes their mediation rule 39.1 for certain prisoner matters.

Mark Wilson suggested that the group may want to look at other districts and how they handle the prisoner cases. Chief Judge Quackenbush concurred. The group discussed checking to see if there were some uniform practices such as having magistrate judges handle prisoner cases, etc.

Larry Uribe asked how the grievance process fit into the ombudsman process. It was suggested that the ombudsman would be completely independent and would make recommendations.

Report on Other Districts

Brian Bethke circulated a summary report on plans and reports submitted to date by other districts.

Mandatory Disclosure

Mark Wilson talked about mandatory disclosure and the fact that it will probably be adopted as a federal rule late this year. It is before the U.S. Judicial Conference. Chief Judge Quackenbush has a copy of the proposals before the Judicial Conference should anyone wish to review.

Items for September '92 Meeting

■ Identify cases for case studies so the group will have something to read by September. Possibly WPPSS case, cases assigned to Magistrate Judge Imbrogno, cases from each age category.

■ Contact the staff attorney in the Northern District of New York regarding mediation of prisoner cases.

■ Invite Alan Alhadeff, ADR expert, to attend September meeting. He has written two plans for federal courts in Iowa and Eastern District of New York.

■ Bill Hyslop volunteered to serve on the prisoner committee.

■ Walter Meyer will report on judicial interviews and recommendations.

■ Les Weatherhead will have a committee report on discovery and disclosure and recommendations.

■ Brian Bethke will report on plans and recommendations from other districts.

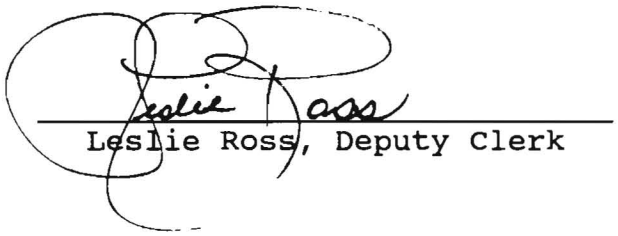
■ Reporter Mark Wilson will report on the form, substance and actual writing of the Plan.

■ James Gillespie will have an interim report on ADR.

The next meeting of the Advisory Group will be held in Spokane, Washington at the Spokane Club, West 1002 Riverside, September 19, 1992 at 8:00 a.m.

With no further business, the meeting adjourned.

Respectfully submitted,



Leslie Ross, Deputy Clerk

TALKING PAPER

Prepared By

THE HONORABLE JAMES B. HOVIS
UNITED STATES MAGISTRATE JUDGE

RESPONDING TO QUESTIONS PROPOUNDED TO
JUDICIAL OFFICERS OF THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

By The

CIVIL JUSTICE REFORM ACT ADVISORY GROUP

September 16, 1992

1. Are there problems of excessive cost and delay in the processing of civil cases in the court? Why? What specific solutions would you recommend?

I know that there must be problems of excessive cost and delay in the processing of civil cases or there would not be such a concern. Even the President and the Vice President think it is such a problem that they have used prime time to attack lawyers about the problem and inferentially the courts. Frankly, I do not see the enormity. And I say this even though, like most of the products of the Great Depression, I could classify, without proper reflection, today's cost of almost every service as excessive. [You will note that this classification is without "reflection."] The decrease in the value of the dollar and the existing deficit indicate we haven't seen anything yet. Before one can classify the cost and delay as **excessive** one must look at other alternatives. Frankly my experience, though limited, does not present me with alternatives that have survived an empirical test. It was always my impression in the practice that I was able to conclude a matter in a very short time if it were a matter that could be so concluded. Perhaps I settled too easily. I know that not many matters will be settled if either counsel or the parties are paranoid believing they are either paying or leaving an extra quarter on the table.

Generally, when you have a call for a substantial system change, it usually emanates from those who do not have the ability to use the existing system. If you can't make a buck in a capitalist economy, isn't your ready solution to change the system to socialist or communist? We must be careful that the fulcrum of change of the court system is not those who have not been able to compete in the present system. At least as regards the lawyer members of this committee that I know, I see no evidence of that bias.

As far as delay caused by the court, it has been a long time since I have had anyone ask for an increased pace in one of the cases assigned to me. Usually it is just the opposite with counsel asking for additional discovery etc. time.

Where delay actually exists, I would not assign fault, ultimately or solely, to the bench or the bar. As regards the bench, there are just some judicial officers that have a very hard time making decisions. This has never been my problem. My problem, both on the bench and off, has been making the right decisions. From this statement I would not for a moment suggest that those who take more time are wrong. After all, the parties are entitled to a decision that the judicial officer believes has had the requisite inquiry. Certainly parties wish adequate consideration and usually this timeless consideration is appreciated by at least the prevailing party. However, if

judicial indecision is a serious problem how is this to be changed by a reform in procedure? It has been my experience that judicial officers usually change for the better after their appointment. Therefore, again merely postulating for this discussion that judicial delay in making decisions is a problem, shouldn't we get right back to basics and suggest that the appointment stage of the system is really where study emphasis should lie?

As regards the bar, a main portion of inquiry must be based on economics. Your committee, the courts, bar associations and even Congress cannot repeal the laws of economics. The cost of obtaining a legal eduction is very, very high. Well beyond the ability for most parents to fully fund, requiring almost all new lawyers to bring a substantial debt to service in their practice. The cost of supporting services in the legal and medical professions is very, very high. [You will note that I did not say the cost was excessive in either of the two costs. You pay what the market requires.] Just as costs are increasing the number of hours that professionals are willing to devote to work is decreasing. It has been traditional for lawyers to work long hours. That tradition is becoming less customary. That is the price the profession pays when its new members are not only more intelligent but also come from a higher economic and comfort strata in society. These new members who must generate more income in fewer hours if they are going to have accustomed comfort are faced with a real problem. Usually they are working on assigned matters and for at least a decade of their practice have no real opportunity to determine the course of their efforts. It is running contrary to human nature if you expect their principal direction to be early termination rather than complete consideration of the matters assigned to them. A return to value billing customary during my early practice rather than the current hourly or unit billing could be helpful. However, I do not see any substantial chance for such a change.

Practically all clients and almost all **busy** attorneys want to settle matters. When the course of events finds busy and able attorneys on both sides of the case, it is surprising how easily and fairly a case settles. In this happy circumstance, probably the biggest problem is for counsel to find time to discuss settlement and evaluate offers. Look at the statistics in this district as to the percentage of settlements. If you take pro se matters out, you will find the percentage of cases settled is very high. A sign of a good bar in this district. In almost all of these cases, settlement is reached between parties and counsel without the help of any judicial officer. The magistrate judges in this district are handling quite a few settlement conferences and settlements are reached in a high percentage of the matters. The only problems from a judicial officer's perspective is that it takes as much time to get prepared for settlement as it does to try the case. The big savings in judicial time is that you do

not have to prepare an opinion that will stand the test of an appeal. Referring settlement conference duties to the bar does not appeal to me as a long-term solution. You are merely taxing attorneys for services that society in general can well afford.

When counsel use expert witnesses the cost of litigation really increases. These experts are governed by the same economic factors that lawyers are. I try to indicate to counsel that they should be chary about how much money they expend in this area. I explain to them that I have the arrogance to believe that I can figure a few things out for myself. So far I have never had to enforce the rule about numbers of expert witnesses. Whether this is due to my comments or to the level of complexity in the matters before me, I am not able to determine. However, I would place my guess on the latter reason.

I do not find attorneys' submissions to be adequate in a too high a percentage of cases. It is very disturbing when you reach a determination based on independent research. Such determinations certainly give you pause when you rule based on authority that neither counsel has raised or discussed. Initially, I believed that this lack of preparation was caused by the economic value of the cases assigned to me, but other judicial officers advise that they have similar experience. For the last year, I have found that the quality of submissions is much better. However, a large number of the cases assigned to me are pro se cases and usually the court receives little assistance towards determination of these actions.

About the only thing that I feel is helpful in reducing costs is for me to stay right on top of my calendar and move the cases to termination as soon as possible. I have that luxury with the increase in judicial officers handling civil matters in this district and it pays. The other luxury I have, not having to give priority to criminal jury trials, is that I can give counsel a firm trial date and hold them to it unless they both agree. It does not assist the closing of cases if either counsel has the expectation that there will be a delay of trial beyond the date set at status conference. That a firm trial date assists settlement in a geometric ratio is a premise universally adopted by bench and bar.

2. What are the most effective measures you have employed for preventing excessive cost and delay that are not case-specific? What measures would you like to see instituted in this court, right now, to deal with excessive cost and delay?

See paragraph above.

While I have not had a case under the manual of complex cases as a judicial officer, I had several in practice. I do not

expect that I will be handling consent cases under the manual. While I have had consents from three, four and five attorneys, the normal number is two. While I make myself available for continuing case management to assist counsel in the speedy resolution of their case and to move it along, none of my consent cases have required specified formal case management under the manual to accomplish this result. Usually the normal scheduling conference and order works just fine.

Of course I use a scheduling conference. [See Local Rule 16(a)] This routine certainly is the most productive time that counsel and the court will ever spend in the entire case. The conference is called as early as it could be productive and usually is concluded by phone. Counsel appreciate this. It saves them time. I insist on a certificate from counsel, and press for a joint certificate. This routine is very effective and counsel usually comply with the dates set. After all it is **their** schedule. However, there are emergencies that arise that call for a mutual variance. After all, one never knows when the fish may be biting. Copy of the scheduling form and scheduling call is attached.

Other conferences are held any time counsel feel it would be helpful. My chambers is readily accessible, particularly by phone. My excellent staff has well defined authority and do not exceed that authority without checking with me. If they did I would probably back them up and further define my delegation without counsel even knowing it. Usually they can advise of our standard disposition even if they cannot commit me. It is one of our mutual rules that no one leaves the chambers between 8 and 4:30, excluding the noon hour, without someone here knowing if return is imminent or where the absent person can be reached. Where counsel are agreed we can commit readily. We require all counsel be contacted or be on the line before commitment.

We **never** go to trial without a pretrial order and conference. [See Local Rule 16(b)] They are held after conclusion of enough time for discovery and determination of dispositive motions as scheduled in the scheduling order. LR 16(b) proceedings are effective and usually are concluded by agreed order which can receive my approval during a telephonic conference. Usually by the time for Local Rule 16(b) proceedings I am sufficiently familiar with the file so that I can be helpful in the composition of the order if counsel need this assistance. Usually if counsel need this assistance I schedule another conference--this time in chambers or in court. I not only explore settlement before and at these conferences, but I also try to conclude evidence questions or schedule them for pretrial disposition. I like do as much before trial date as possible to keep jurors in the box, not in the jury room. I consider a trial a race of disclosure with as few hurdles or hazards as possible to retard the pace of disclosure. It goes without saying that I

regard settlement the day of trial or during trial to be a waste of juror and court time, not even counting the taxpayers' money.

My attorney clerk, Fred Karau, schedules all my social security reviews but again the social security bar is used to working with each other and we have few scheduling problems. I also conduct both scheduling and pretrial conferences where a case is assigned to me for management under 28 U.S.C. § 636(b) as well as in consent cases [§ 636(c)] discussed above. However, I cannot give parties or counsel a firm trial date but must only give them a tentative period to be ready to go to trial on notice from the Article III judge who will be trying the case. There are not too many of these cases in this district as most of the cases assigned under section 636(b) usually become consent cases under section 636(c) because of the problem regarding a firm trial date. If a case appears to be interesting, complex or one where there will never be a consent, the Article III judges do not press to assign these cases for any purpose to another judge and we get few § 636(b) assignments in such cases. The judge assigned to the case likes to follow through for the purpose of being fully advised as to all aspects of the case as it evolves as this helps them with their final disposition.

My motion practice is specified under the local rules for magistrate judges (See LMR 7) and is not governed by any internal policies in this chambers. Day for submission of motions [motion day] is specified by the published rules, but to assist counsel we do hear motions on other than Monday afternoons where arrangements have been made. If you note for Monday afternoons allowing response time under the published rules, counsel does not have to contact the courtroom deputy prior to noting. I require a specific request from either counsel before the motion is scheduled for oral argument. If either counsel believes that they can assist the court by oral argument, I usually accept that evaluation. If requested, I entertain consideration of telephonic argument. My chambers and the courtroom deputy monitor filed motions to see that they are timely noted for determination. We **never** request a proposed order on motions. If an oral argument is scheduled almost always I will indicate my determination from the bench. If I am ruling against some one I like to be able to look them in the eye when I do so. Thereafter, I prepare a written opinion on all motions to more fully explain my reasons to the parties and to assist any reviewing authority in understanding why I so ruled. Usually I forget to request publication and I only request publication where the opinion is new or assists in interpretation of established law.

In a large percentage of my cases failure to file responsive pleadings needlessly prolongs a case. This usually happens in pro se matters and usually involves certificates of material fact or other responses to motions for summary judgement. The circuit has been so protective of pro se parties that we are really

reluctant to rule on motions involving a pro se party until we have advised said party at least once of delinquency and provided a blueprint of how to cure it.

I believe that it is a nano-percentage of cases assigned to me that are appreciably delayed by a delay in ruling on motions after date set for argument. As previously described we are most often ready to rule on the date the motion is submitted. We do delay after that time to prepare a written opinion and order. However, we have a standing ten-day rule. That rule is that even if the opinion is not as well done as we would like it at the end of the ten-day period, we close research, write and file regardless of improvement that **might** result from further examination. To give more time, given our load, would only result in taking from Peter's opinion to polish Paul's opinion. When I came aboard twenty-two dispositive motions, now assigned to me, had been under advisement for ninety days or longer. When I got current I knew that I must not ever let that happen to me. I can't do a decent job if that situation prevailed for a long period. Decent case management calls for cutting the opinions to fit the cloth. After all, we have twenty-eight wonderful appellate judges that can correct any mistakes we may make.

I have not had any experience with pre-motion conferences or letter briefs in discovery disputes. I favor calls to chambers on discovery problems. If there is more than one call I ask them to move over to a room near our chambers so that I can walk down and assist them if they continue to have problems.

Firm trial dates are basically set by counsel with the court's approval at the first status conference subject to amendment for changed conditions. I can give anyone a trial date within 60 days of the completion of discovery and ruling on dispositive motions. Thirty days if there is a need.

3. Is the allocation and coordination of work among active judges, senior judges, and magistrate judges effective? Is there sufficient backup for a district judge who has an unusually burdensome case?

Given the present number of civil and criminal filings and the present system for assignment of cases to a magistrate judge, two full-time magistrate judges is adequate. This is clearly in line with the national standard of at least one full-time magistrate judge for each two active Article III judges. No complaints, since I like to work, but having only one magistrate judge for this district is too thin. The insufficiency of magistrate judges is in the part-time category. Given the size of this district and the large number of felony filings, a part-time magistrate judge in the Tri-Cities and a part-time magistrate judge in Wenatchee to assist the two full-time

magistrate judges would make sense.

Both magistrate judges in this district have indicated their desire to assist active judges in all categories and particular to assist in all types of cases assigned in seriatim with consents actively solicited by the staff of a magistrate judge.

It is not appropriate for a magistrate judge to comment on the coordination among active judges and senior judges.

4. What role should a district judge and/or magistrate judge play in the settlement process? When? Would it make sense to have one or more senior judges or magistrate judges assume the role of a settlement judge?

Judge McDonald and I are coordinating so that all of his cases are assigned to me for a settlement conference. The specimen order attached shows what the parties are required to do prior to and at the settlement conference. Where I have a conflict, Judge Imbrogno will handle the conference--as I will regarding any conflicts on Spokane cases.

I have had good results in the settlements assigned to me with few exceptions. Judge Imbrogno handled one settlement in a case scheduled for trial before me. It was a substantial matter and she handled the conference to the satisfaction of both counsel. Judge Imbrogno attended seminars on settlement techniques during her practice and I am sure that further training of judicial officers in this field would be productive.

I meet with the parties and so far they have not been cases which were scheduled for trial before me. While judges in this district hold settlement conferences in matters set for jury trial before them and meet separately with counsel, I would feel uncomfortable to follow this practice. I would never meet separately with counsel for any reason in a case set for bench trial before me.

5. How effective has the alternative dispute resolution process been in the court? Are there ways in which ADR should be improved or <u>expanded</u>?

As explained above, I have some real reservations as to how effective any dispute resolution would be if the neutral is a volunteer.

6. When should a district judge appoint a special master? What roles can a special master most effectively and efficiently assume?

My experience with assignments to me as a special master is that the assignment delayed the resolution of the case. I have no experience with special masters for discovery but such an appointment with the parties assuming the cost of the master sounds like a practice that has great potential. It really would have potential if the master would have the power to divide the fee on a fault basis. There are many professionally neutrals who I understand do a great job and certainly they are a resource that can be used in settlement. It is the volunteer neutral that I oppose.

7. Does the use by litigants of expert witnesses inappropriately contribute to cost and delay?

See my initial comments in paragraph one. I do not have enough empirical knowledge regarding experts that would allow me to further comment on the subdivisions to this paragraph.

8. Is civil discovery a cause of excessive cost? Excessive delay? What actions can a district judge take to reduce excessive cost and delay?

In my opinion, discovery cutoffs should be set at the status conference, subject to revision for cause, and that is when I do it. As previously related the parties usually agree, at times with the court's assistance, to the discovery cutoff date.

It is very seldom that I have to resolve discovery disputes. By far the most common call for court assistance is in prisoner cases.

Attorneys for the Corrections Department and the department in their discovery response times indicate that they seem to believe that they have a duty to make things as difficult as possible for plaintiffs in prisoner litigation.

I don't understand the question about conferences under Rule 26(g).

The court should be available by phone and otherwise to resolve discovery disputes promptly but in my estimation that would not include monitoring discovery with periodic reports and active management of the discovery process. Procedure for bringing the court into these disputes is adequate in my estimation.

I am all for the limit on the number of interrogatories without prior permission from the court. I have yet to deny permission but no one has tried to blow smoke up my nose on the

need for excessive interrogatories. Presently I see no need to limit number of depositions in the cases assigned to me. Motions for an protection order seems to handle excess depositions quite handily.

No, I don't want the clerk's files full of discovery. It is bad enough to familiarize yourself with the present abridged files. It would be nice to be able to go to discovery in totality on discovery motions to get an impression of whether there is a real problem. However, requiring a certain effort in setting out excerpts from discovery in a motion to compel does have some impact on limiting a request for intervention.

Sure counsel should and are required to confer before filing a motion. I am sure that lack of discovery disputes in cases assigned to me is attributable to the quality of the attorneys consenting. Either I am extremely lucky or I just don't attract the jerks. Probably a combination of both factors.

I am not too great on sanctions. If I hit an attorney with a club I am sure he will not consent to a case before me again. It helps the district if the magistrate judges handle as many civil actions as possible. If the attorney is one that I don't want to see again, usually the feeling is mutual and I don't have to even waive the big stick to assure that he is not in my courtroom. Otherwise, the levy of sanctions and awarding of costs is a very valuable tool for the bench. I plead guilty to not properly using these tools.

At the initial status conference we work on getting an exchange of exhibits that counsel will wish to introduce at trial. See: scheduling order attached.

9. What impact does the criminal caseload have on the processing of civil cases? Are there administrative improvements that would assist judges in handling their civil cases without delaying the disposition of criminal cases? Are there procedures that would expedite criminal trials and permit more time for consideration of civil cases?

The criminal case load has a disastrous effect on the civil case load and is completely out of proportion in this district. Magistrate judges' workload is being affected by the increase in federal felony prosecutions, especially for narcotics and felon in possession of firearms offenses. Increases in felony prosecutions tie up the district judges because "speedy trial" requirements make criminal cases move to the head of the docket queue. Because magistrate judges cannot conduct trials and sentence offenders in felony cases, an increase in felony prosecutions should make litigants more inclined to consent to civil trials before magistrate judges as district judges' time

becomes increasingly absorbed by felony cases.

When I talk about the criminal caseload being completely out of proportion in this district you should look at the ratio of civil to criminal felony filings in other districts within this circuit. Do you want me to believe that the communities in which I have lived are so crime-ridden that this ratio is a natural consequence to that fact. Come on now, do I look like I have straw sticking out of my ears. I have lived in Yakima, Spokane and Seattle. It is going to be difficult getting me to believe that the ratio of felonies filed in this district is a direct result of what a dangerous place this district is. As an intake judicial officer I see where these cases are coming from. There is a high number that originate from state enforcement or joint task forces. A large number are in the federal forum because the penalties are more substantial. I take issue with this trend. The Constitution in its Republican Form of Government Clause [article IV §4] guaranteed to the states that they would have a right to fashion and enforce their own criminal laws in a republican form. It was never intended that we would have a national police emphasis regarding crime. States and state citizens within federal court districts should have the principal responsibility to determine the emphasis to be placed on crime in a state and district, not some federal official. If you want a prime example of an emphasis that our founding fathers would really take issue with just look at the "Triggerlock" emphasis emanating from the central office of the Department of Justice. See attachment.

Magistrate judges can substantially assist in the process of civil cases. Congress created the office of U.S. Magistrate in 1968 to provide additional case-processing resources for the federal district courts. In December 1990, the title for the office was changed to "U.S. Magistrate Judge" as part of the Judicial Improvements Act. Full-time magistrate judges are appointed by district court judges for renewable eight-year terms and part-timers are appointed for renewable four-year terms. Because they do not possess the attributes of Article III judges (i.e. presidential appointment, senate confirmation, and protected tenure), magistrate judges are considered "adjuncts" of the federal courts who perform tasks delegated by the district judges.

Initially, the magistrates' authority was primarily confined to the limited tasks performed by the old U.S. commissioners, lay judicial officers who handled warrants, arraignments, and petty offenses from 1793 until they were replaced by the newly-created magistrates after 1968. Congress subsequently amended the Magistrates Act in 1976 and 1979 to authorize magistrates to assist district judges with a broad spectrum of tasks, including the supervision of complete civil trials with the consent of litigants. After the 1979 Act, magistrates could perform

virtually any task undertaken by district judges except for trying and sentencing felony defendants.

By June 1990, the 323 full-time magistrates and 153 part-time magistrates were such an integral component of the federal district courts that they were responsible for completing 450,565 tasks, including 4,220 civil and criminal evidentiary hearings, 45,201 civil pretrial conferences, and 1,008 complete civil trials. Article III judges acknowledged that magistrates "contribute significantly to the administration of justice in the United States and are an integral part of the Federal judicial system" by including the magistrates' interests in arguments presented to Congress concerning the need for higher salaries for judicial officers.

Because these subordinate judicial officers were intended to be utilized flexibly according to the needs of each district court, the precise judicial roles performed by magistrate judges vary from district to district.

The Judicial Improvements Act encourages civil consent trials by now permitting district judges and magistrate judges to inform litigants directly about their option of consenting to a trial before a magistrate judge: "[E]ither the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. The involvement of judicial officers in informing litigants about the consent option represents a significant change from previous statutory language that made clerks of court exclusively responsible for communications about the consent option and precluded any involvement by judges or magistrates.

10. Are there specific actions that you have taken to manage the trial of civil cases that expedite trials and reduce costs?

I believe that my discussions above has exhausted my ideas regarding specific actions.

I always bifurcate fee applications.

11. Should the manner of handling prisoner petitions, which currently constitute a significant portion of the court's civil caseload, be changed?

I do not believe **internal** changes within the district will result in improvement of the pace in closing or determining prisoner petitions.

I do believe that **external** changes could result in great improvement in the pace in closing or determining prisoner petitions. I suggest that these external changes could result in large savings of money by both governments, i.e. federal and state. The primary change suggested is that indigent plaintiffs be furnished with the availability of not only legal materials but also attorneys. Having these petitions reviewed before filing and having a trained person to try these cases could save the attorney's general assigned to the corrections department and this court considerable time. After all, these attorneys provided for prisoners would be subject to Rule 11 of the Federal Rules of Civil Procedure. It could result in some increase in judgments but if recovery is warranted isn't that what we and society are after? I am constantly bothered by the multitude of hours expended, not only by the court, to separate those cases of merit from those lacking merit. Then when a petition makes its way to trial to see the jury, sometimes with a prejudiced eye, spend the average of about an hour to deny relief. I try to get attorneys to take a case **pro bono** where it looks like one that can get to trial. The attorneys for the Corrections Department then and only then will make a Rule 68 offer which usually will mean that section 1988 attorney's fees cannot be awarded. You must understand that attorneys for the Corrections Department demand juries. There should be some way that it could be brought to the taxpayers' attention that they are being hailed into jury service by their so called public servants who are counting on their prejudice.

The most time-consuming aspects in determining petitioner petitions are the ill-prepared submissions and the difficulty in finding guidance from appellate courts. Even the Supreme Court cannot render a decision with a uniform court holding in the most basic of matters. Some of the holdings specifying that some actions are constitutionally protected and that others are not would be humorous if we were not dealing with basic issues of process, life and liberty.

No, evidence hearings should not be held at the prison. I have tried that and facilities are not adequate. Consideration of settlement conferences at the prison could be entertained.

I am not sure that I understand the possible recommendations of the Advisory Council.

Having a pro se clerk provide a preliminary review is helpful in the initial stages. Elbow clerks provide the best service if there were enough of them. Magistrate judges only have one law clerk and the clerk spends a majority of the clerk's time on pro se cases.

12. Are there special problems created by other pro se cases that lead to delay in their processing or in the disposition of other civil cases?

Yes, all pro se cases have the problems of someone trying to prevail in a professional field without any education in that field. When you take this problem together with the decisions of the Circuit Court of Appeals that requires you to walk pro se plaintiffs through every case, you will experience delay. I would not classify this delay as unnecessary, however. After all, we are here for service to the public.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

*	)	
	)	
Plaintiff,	)	No. CS-*
	)	
v.	)	
	)	ORDER SETTING STATUS
*	)	CONFERENCE
	)	
Defendant.	)	
	)	

This case has been referred to the undersigned for trial and other proceedings pursuant to 28 U.S.C. § 636(c) and a status conference between counsel and the court is in order.

IT IS ORDERED, that a telephonic scheduling conference between the court and counsel be held at Yakima, Washington on * Counsel for the plaintiff shall initiate the call. For such a telephonic conference on that date the undersigned shall be called at (509) 454-5772.

Counsel are directed to confer in advance of the above scheduled status conference. Further, after counsel have conferred, and not less than ten days in advance of the status conference, counsel shall file a joint certificate or separate certificates reflecting the results of their conference and the parties'

positions with respect to each of the following matters:

1. Service of process on parties not yet served;

2. Jurisdiction and venue;

3. Anticipated motions;

4. Anticipated and remaining discovery, including limitations on discovery;

5. Further proceedings, including setting dates for discovery cutoff, pretrial and trial;

6. Appropriateness of special procedures such as consolidation of actions for discovery or pretrial, reference to a master, to arbitration, or to the Judicial Panel on Multidistrict Litigation or application of the Manual for Complex Litigation;

7. Modification of the standard pretrial procedures due to the relative simplicity or complexity of the action or proceedings;

8. Anticipated trial time required--if reasonable evaluation is practical;

9. Feasibility of bifurcation or otherwise structuring sequence of trial;

10. Prospects for settlement; and

11. Any other matters that may be conducive to the just, efficient and economical determination of the action or proceeding, including the definition or limitation of issues.

DATED this _____ day of *

JAMES B. HOVIS
United States Magistrate Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

*)		
Plaintiff,	)	NO. *
v.	)	SCHEDULING ORDER
*)		
Defendant.	)	

A scheduling conference by telephone was held on *. * appeared for plaintiff and * for defendant. With the agreement of counsel, the court establishes the following schedule:

* Parties will exchange witness lists, with a brief statement of the area of testimony of each witness. On the same date, parties will exchange copies of exhibits. Except for rebuttal and impeachment, witnesses not so listed will not be permitted to testify and exhibits will not be admitted. Exceptions will be permitted only on a showing of good cause. Timely application for the addition of new witnesses and exhibits surfacing during discovery shall be deemed good cause.

* Last day for discovery. No discovery need be filed with the Clerk. The party initiating discovery shall have the

responsibility for maintaining it and producing it as necessary for proceedings.

All dispositive motions shall be filed and served on or before *. Thereafter there shall be no further joinder of parties.

* (Spokane). Pretrial Conference. This may be by conference call if the parties have submitted to the court an agreed pretrial order prepared in compliance with Local Rule 12 three days prior to the day of the conference. If not, counsel will attend the pretrial conference in person.

* Parties will serve and file trial memoranda, suggested voir dire questions, and proposed instructions.

(alternate) Trial briefs and proposed findings of fact and conclusions of law shall be filed and served on or before *.

* (**Firm Setting**) *Jury Trial, Spokane.

Counsel will meet with the court at 9:00 a.m.

IT IS SO ORDERED. The Clerk is hereby directed to enter this order and furnish copies to counsel.

DATED this _____ day of *

JAMES B. HOVIS
United States Magistrate

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

*)		
Plaintiff,	)	NO. C*
v.	)	ORDER FOR SETTLEMENT CONFERENCE
*)		
Defendant.	)	

Pursuant to referral by the Honorable * and with the consent of all of the parties to this action, a settlement conference shall be held on * before this U.S. Magistrate Judge for the Eastern District of Washington.

1. In addition to counsel who will try the case being present, a person with full settlement authority must likewise be present for this conference. This requirement contemplates the presence of your client or, if a corporate entity, an authorized representative of your client. For a defendant, such representative must have final settlement authority to commit the company to pay, in the representative's discretion, a settlement amount recommended by this magistrate judge up to the plaintiff's prayer (excluding punitive prayer damages in excess of $100,000) or up to the plaintiff's last demand, whichever is lower. For a plaintiff, such representative must have final authority, in the

representative's discretion, to authorize dismissal of the case with prejudice, or to accept a settlement amount recommended by this magistrate judge down to the defendant's last offer. The purpose of this requirement is to have representatives present who can settle the case during the course of the conference without consulting a superior.

2. If Board approval is required to authorize settlement, attendance of the entire Board is requested. The attendance of at least one sitting member of the Board (preferably the Chairman) is absolutely required.

3. Counsel appearing without their clients (whether or not you have been given settlement authority) may cause the conference to be canceled and rescheduled. The noncomplying party, attorney, or both, may be assessed the costs and expenses incurred by other parties and the court as a result of such cancellation, as well as any additional sanctions deemed appropriate by the referring judge.

4. Any insurance company that is a party or is contractually required to defend or pay damages, if any, assessed within its policy limits in this case, must have a fully authorized settlement representative present at the conference. Such representative must have final settlement authority to commit the company to pay, in the representative's discretion, an amount recommended by this magistrate judge within the policy limits. The purpose of this requirement is to have an insurance representative present who can settle the outstanding claim or claims during the course of the conference without consulting a superior. An insurance

representative authorized to pay, in his discretion, up to the plaintiff's last demand will also satisfy this requirement. Failure to fully comply with this requirement may result in the imposition of appropriate sanctions by the referring judge, which may include contempt proceedings.

5. Counsel of record will be responsible for timely advising any involved non-party insurance company of the requirements of this order. This magistrate judge may, in his discretion, converse with the lawyers, the parties, the insurance representatives, or any one of them, outside of the hearing of the other.

6. Prior to the settlement conference, the attorneys are directed to discuss settlement with their respective clients and insurance representatives, and opposing parties are directed to discuss settlement so the parameters of settlement have been explored well in advance of the settlement conference.

7. The purpose of the settlement conference is to permit an informal discussion between the attorneys, parties, non-party indemnitors or insurers, and this magistrate judge of every aspect of the lawsuit bearing on its settlement value, thus permitting this magistrate judge to privately express his views concerning the settlement value of the parties' claims.

8. In preparation for the settlement conference, the attorneys for each party should submit an in camera letter to this magistrate judge which sets forth the following:

a. A brief analysis of key issues involved in the litigation.

b. A description of the strongest and weakest points in your case, both legal and factual.

c. A description of the strongest and weakest points in your opponent's case, both legal and factual.

d. Status of any settlement negotiations, including the last settlement proposal made by you and to you.

e. Settlement proposal that you believe would be fair.

f. Settlement proposal that you would be willing to make in order to conclude the matter and stop the expense of litigation.

The in camera letters are to be submitted by * at *. *Judge McDonald's staff previously advised you to send such a letter; however, you should supplement the letter in accordance with the requirements of this order.

All communications made in connection with the settlement conference are confidential and will not be disclosed to anyone. Any documents requested and submitted for the settlement conference will be maintained in chambers and will be destroyed after the conference(s). Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of this case.

9. The settlement conference is set for * at * at Yakima, Washington, in the William O. Douglas Courthouse. THE PARTIES MAY DECLINE TO PARTICIPATE IN THE CONFERENCE, AND DETERMINE THAT YOU WISH THE CONFERENCE HELD BEFORE AN ARTICLE III JUDGE, BUT MUST DO

SO BY WRITTEN NOTIFICATION TO THIS COURT AT LEAST SEVEN DAYS PRIOR TO THE CONFERENCE.

DATED this _____ day of *

JAMES B. HOVIS
United States Magistrate Judge

Officials: Gun law is a potent weapon against criminals

By WES NELSON
Of the Herald-Republic

Lawbreakers, particulary drug dealers, are finding that using a gun while committing their misdeeds can backfire under a year-old federal prosecution effort.

Project Triggerlock, begun in April 1991, targets armed criminals who present the largest threat to the community and law enforcement officers. The project has been particularly effective in Eastern Washington, said U.S. Attorney William D. Hyslop of Spokane.

In short, the federal system can punish armed criminals more severely than can the state system — specifically through stiffer sentences, no parole and pretrial detention in selected cases.

Of the 94 federal judicial districts throughout the country, Eastern Washington ranks 10th in Triggerlock prosecutions, Hyslop said.

So far, Eastern Washington has prosecuted 11 armed career criminals, who will serve 15-year mandatory minimum sentences up to life; 73 cases of people involved in armed violent crime or armed drug trafficking who will serve at least a five-year mandatory sentence; and 45 other cases of felons illegally possessing firearms, which entail a 10-year maximum sentence.

Except for the prosecution of armed career criminals, the Yakima region accounts for about half of the total number of cases in each category, said Robert Linnell, assistant U.S. Attorney in Yakima.

"It's an outstanding program," Linnell said. "It provides some realistic sentences."

Locally, Triggerlock is frequently applied to drug cases handled by the Yakima County prosecutors office, Linnell said. The county prosecutes the drug offense "and we inherit the firearms violation," Linnell said.

For example, a defendant in possession of a weapon while committing a drug offense would face, in most cases, only a two-year additional penalty if prosecuted by the county.

That increases to a minimum five years in prison under federal prosecution and possibly up to life in prison — in addition to the drug conviction sentence, Linnell said.

"We've had numerous cases of that nature," he said.

"We work very closely with the U.S. Attorney's office," county Prosecutor Jeff Sullivan said.

In its first year, Project Triggerlock has mobilized federal, state and local law enforcement efforts to charge some 6,454 defendants with federal firearms violations — in effect, doubling federal firearms prosecutions, according to the U.S. Attorney's office in Spokane.

In addition, more than one of 10 of all federal prosecutions now include firearms charges, and 84 percent of Triggerlock defendants are felons, drug dealers or violent criminals in possession of a firearm.

The average sentence received by an armed career criminal under Triggerlock is 18 years.

No armed career criminals were nabbed in the Yakima area since Triggerlock began, Linnell said.

Spokane, however, was the scene of the arrest of a man with numerous robbery convictions and a conviction for the murder of a prison guard. After a chase along Interstate 90, Washington State Patrol troopers arrested William Walter and seized a loaded 9mm handgun, a large amount of cash and a police scanner with a list of local law enforcement frequencies.

Walter, wanted on a parole violation originating in Minnesota, where he had been released from prison, cut the throat of an inmate at the Spokane County jail following his capture.

He eventually pleaded guilty to the federal firearms charge and was sentenced to 15 years in prison with no possibility of parole, according to the U.S. Attorney's office.

APPENDIX E

Report on the Major Case Panel on
Washington Public Power Supply System v. General Electric

MEMORANDUM

TO: Robert B. Henderson, Chairman
Civil Justice Reform Act Advisory Panel

FROM: David J. Dorsey, Advisory Panel Member

DATE: January 22, 1993

RE: Analysis of WPPSS v. GE/Chelan Panel Discussion

You have requested that I review the information presented to the Advisory Panel at our Chelan meeting in October, 1992. You indicate, and I agree, that the viewpoints shared with us by the panel participants in WPPSS v. GE (Chelan panel) may assist us in formulating our report. Undoubtedly, my views on the message received from the Chelan panel won't necessarily be the same as those of my fellow Advisory Panel members but I would hope that this memo will nonetheless serve to refresh all of our memories so that we may collectively identify the lessons learned at Chelan and properly incorporate them in our ultimate report.

It will be recalled that the Chelan panel was made up of key management personnel, members of the litigation team and corporate counsel of the litigants. Prior to their presentation, the Chelan panel members were advised that the Advisory Panel was charged with assessing the information it was able to develop and to prepare a report to the U.S. District for the Eastern District of Washington setting forth our recommendations for a plan to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management and ensure just, speedy and inexpensive resolution of civil disputes.

The WPPSS v. GE litigation involved a series of claims by the Supply System against General Electric in which damages were originally sought in excess of one hundred million dollars and may have ultimately been expanded to one and a half billion dollars. The case commenced in January, 1985 and was concluded through settlement in March, 1992. In February, 1990 the first trial of the case was commenced and resulted in a mistrial after eighty-three days of trial. This was followed by preparations for a second trial which included settlement conferences with the trial judge, out of the presence of counsel, which ultimately resulted in a settlement.

We were told that during the more than seven years that WPPSS v. GE was pending that GE expended more than forty-eight million dollars in litigation expense and the Supply System expended in excess of twenty-four million in litigation expense.

In determining the lessons to be learned from WPPSS v. GE, it is perhaps best to start with a reexamination of the impressions and suggestions provided by Carl Halvorson, the Supply System Board Chairman; Fritz Heimann, the attorney who acted as liaison between GE management and the GE litigators; Craig Doupe, corporate counsel to the Supply System and liaison between the Supply System management and the litigation team; William A. Gordon, lead defense counsel for GE; and Wolf Hoppe, lead counsel on the Supply System's litigation team.

Mr. Halvorson, the only non-lawyer on the Chelan panel, stressed the importance that he felt mediation played in the ultimate result of the case. He appeared to urge the Advisory Panel to develop new procedures for disposing of complex litigations. He stressed that the Supply System was seeking not only damages but justice and it was clear that he was frustrated by the seven year process. While Mr. Halvorson urged the Advisory Panel to develop new procedures, it is not my recollection that he had any specific suggestions to make.

Mr. Heimann, as the representative GE management, noted that foreign companies do not have to contend with litigations such as WPPSS v. GE. He opined that the case probably could not have been settled sooner. He attributed this to other pending cases against GE and to the political problems facing the Supply System. He indicated that the mediation proceeding in which the mediator had shaken both sides with his view on damages had been of assistance. Mr. Heimann further opined that the efforts of the trial court on the eve of the second trial in restructuring a settlement had been very valuable.

While Mr. Heimann reviewed the experiences of GE in other courts and the methods utilized by those other courts, it was not my impression that he found any of the approaches used elsewhere to be superior to that used in WPPSS v. GE. To the best of my recollection, Mr. Heimann had no specific recommendations to make as to how a case of the magnitude of WPPSS v. GE could have been moved more quickly or less expensively. Nonetheless, his message seemed to be that if a process could be developed whereby the actual litigants, as opposed to their attorneys, could be brought face to face with one another and confronted with the actual risks and potential damages presented by the case that more timely and cost effective settlements could result.

Mr. Doupe recommended that procedures be developed which would result in the early assignment of the trial judge and would avoid changing the trial judges. He suggested that such had resulted in time delays and increased expenses. He indicated that "big cases" assume a life of their own which implied that in some senses they establish their own rules.

On the matter of expediting settlement, he indicated that settlement efforts were most vigorous just before the first trial but that after the trial resulted in a hung jury that settlement efforts broke off for many months. The implication was that if a procedure could be developed whereby pressure to settle, presumably at the insistence of the court, would continue even if the trial were delayed that the goal of reducing expenses and speeding up the litigation could be facilitated.

The two actual litigators, Mr. Gordon and Mr. Hoppe, conveyed similar messages. Both emphasized that the focus of WPPSS v. GE was not just on speed and cost but upon justice. Mr. Gordon urged that we concentrate on the needs of the litigants and cautioned us not to put the process ahead of justice. In this connection, he recommended that our plan not place the burden on the litigants of proving their actual need for more time to perfect discovery. In support of this, he noted that in the subject litigation 243 depositions had been accomplished over 463 days resulting in thirty million pages of documents. The message seemed to be that discovery, when undertaken by responsible counsel, is working properly. Mr. Gordon appeared satisfied with the procedures used in WPPSS v. GE and did not fault the litigation process for the time expended and costs incurred in that case.

Mr. Gordon suggested that the courts treat unusual cases unusually. He appeared to approve of the extent of court participation and, if anything, implied that more active court participation could, in most cases, result in the saving of time and the reduction of costs.

Mr. Hoppe urged that justice not be sacrificed for efficiency. In the complex case he recommended that the courts not establish more rules. Further, he recommended that having the trial judge assigned early was crucial. He noted that in WPPSS v. GE a permanent trial judge was not assigned until ten months after the case was filed.

The Chelan panel, particularly the active litigators in WPPSS v. GE, made the following recommendations for the handling of complex litigations:

1. Identify the complex case as soon as possible.

2. The judge should require frequent meetings between the judge and the lawyers. It was suggested that "in chambers" conferences might be more valuable than formal courtroom confrontations.

3. Early identification of the critical issues.

4. The establishment of a trial date early on was recommended.

Because of the huge amounts involved and the complexities of WPPSS v. GE, it is not easy to take the lessons learned in that case and apply them to the more usual civil case encountered in the federal courts. However, the majority of the Chelan panel seemed to be of the opinion that a procedure which introduces either mediation and/or aggressive court supervised settlement discussions at the earliest feasible stage will reduce the cost and the time consumed in a civil litigation. Likewise, a method of identifying the complex and time consuming litigation at an early stage was deemed important. Further, the consensus of the Chelan panel did not seem to favor the implementation of more court rules as a means of achieving speedier and less expensive civil litigation. Rather, the consensus seemed to be that aggressive case management by the trial judge, presumably within the existing rules, would best serve to facilitate just, speedy and inexpensive resolution of civil disputes.

In addition to aggressive judicial management of the case, it was also clear that the Chelan panel felt that their case benefitted from the unsuccessful mediation effort conducted earlier in the case. Thus it would seem that one lesson to be taken from their presentation is that mediation can set the ultimate stage for settlement and should thus be encouraged in the appropriate case.

I regret that in reviewing my notes of the Chelan panel presentation that I was not able to come up with "pearls of wisdom" which could be included in our report verbatim. Despite this, the experiences related by those involved in WPPSS v. GE were such as to encourage the Advisory Panel to focus on matters such as mediation and aggressive case management. The Chelan panel did not have a great deal to say about improvements to discovery procedures which would assist in achieving our goals. I was left with the impression that they felt that the nature of their case warranted the discovery efforts and that the existing discovery rules worked well for them.

APPENDIX F

Civil Justice Reform Act,
28 U.S.C. §§ 471-482

Public Law 101-650
101st Congress

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Dec. 1, 1990
[H.R. 5316]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

Judicial Improvements Act of 1990.
Courts.
28 USC 1 note.

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

Civil Justice Reform Act of 1990.

SEC. 101. SHORT TITLE.

28 USC 1 note.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

28 USC 471 note.

The Congress makes the following findings:

(1) The problems of cost and delay in civil litigation in any United States district court must be addressed in the context of the full range of demands made on the district court's resources by both civil and criminal matters.

(2) The courts, the litigants, the litigants' attorneys, and the Congress and the executive branch, share responsibility for cost and delay in civil litigation and its impact on access to the courts, adjudication of cases on the merits, and the ability of the civil justice system to provide proper and timely judicial relief for aggrieved parties.

(3) The solutions to problems of cost and delay must include significant contributions by the courts, the litigants, the litigants' attorneys, and by the Congress and the executive branch.

(4) In identifying, developing, and implementing solutions to problems of cost and delay in civil litigation, it is necessary to achieve a method of consultation so that individual judicial officers, litigants, and litigants' attorneys who have developed techniques for litigation management and cost and delay reduction can effectively and promptly communicate those techniques to all participants in the civil justice system.

(5) Evidence suggests that an effective litigation management and cost and delay reduction program should incorporate several interrelated principles, including—

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration, and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials, and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pretrial process; and

49-139 O - 90 (650)

(D) utilization of alternative dispute resolution programs in appropriate cases.

(6) Because the increasing volume and complexity of civil and criminal cases imposes increasingly heavy workload burdens on judicial officers, clerks of court, and other court personnel, it is necessary to create an effective administrative structure to ensure ongoing consultation and communication regarding effective litigation management and cost and delay reduction principles and techniques.

SEC. 103. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS.—Title 28, United States Code, is amended by inserting after chapter 21 the following new chapter:

"CHAPTER 23—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

"Sec.

"471. Requirement for a district court civil justice expense and delay reduction plan.
"472. Development and implementation of a civil justice expense and delay reduction plan.
"473. Content of civil justice expense and delay reduction plans.
"474. Review of district court action.
"475. Periodic district court assessment.
"476. Enhancement of judicial information dissemination.
"477. Model civil justice expense and delay reduction plan.
"478. Advisory groups.
"479. Information on litigation management and cost and delay reduction.
"480. Training programs.
"481. Automated case information.
"482. Definitions.

"§ 471. Requirement for a district court civil justice expense and delay reduction plan

"There shall be implemented by each United States district court, in accordance with this title, a civil justice expense and delay reduction plan. The plan may be a plan developed by such district court or a model plan developed by the Judicial Conference of the United States. The purposes of each plan are to facilitate deliberate adjudication of civil cases on the merits, monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

"§ 472. Development and implementation of a civil justice expense and delay reduction plan

"(a) The civil justice expense and delay reduction plan implemented by a district court shall be developed or selected, as the case may be, after consideration of the recommendations of an advisory group appointed in accordance with section 478 of this title.

Reports.

"(b) The advisory group of a United States district court shall submit to the court a report, which shall be made available to the public and which shall include—

"(1) an assessment of the matters referred to in subsection (c)(1);

"(2) the basis for its recommendation that the district court develop a plan or select a model plan;

"(3) recommended measures, rules and programs; and

"(4) an explanation of the manner in which the recommended plan complies with section 473 of this title.

"(c)(1) In developing its recommendations, the advisory group of a district court shall promptly complete a thorough assessment of the state of the court's civil and criminal dockets. In performing the assessment for a district court, the advisory group shall—

"(A) determine the condition of the civil and criminal dockets;

"(B) identify trends in case filings and in the demands being placed on the court's resources;

"(C) identify the principal causes of cost and delay in civil litigation, giving consideration to such potential causes as court procedures and the ways in which litigants and their attorneys approach and conduct litigation; and

"(D) examine the extent to which costs and delays could be reduced by a better assessment of the impact of new legislation on the courts.

"(2) In developing its recommendations, the advisory group of a district court shall take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys.

"(3) The advisory group of a district court shall ensure that its recommended actions include significant contributions to be made by the court, the litigants, and the litigants' attorneys toward reducing cost and delay and thereby facilitating access to the courts.

"(d) The chief judge of the district court shall transmit a copy of the plan implemented in accordance with subsection (a) and the report prepared in accordance with subsection (b) of this section to—

"(1) the Director of the Administrative Office of the United States Courts;

"(2) the judicial council of the circuit in which the district court is located; and

"(3) the chief judge of each of the other United States district courts located in such circuit.

"§ 473. Content of civil justice expense and delay reduction plans

"(a) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following principles and guidelines of litigation management and cost and delay reduction:

"(1) systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case;

"(2) early and ongoing control of the pretrial process through involvement of a judicial officer in—

"(A) assessing and planning the progress of a case;

"(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

"(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

"(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

"(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

"(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(3) for all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

"(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

"(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

"(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

"(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and

"(ii) phase discovery into two or more stages; and

"(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition;

"(4) encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices;

"(5) conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion; and

"(6) authorization to refer appropriate cases to alternative dispute resolution programs that—

"(A) have been designated for use in a district court; or

"(B) the court may make available, including mediation, minitrial, and summary jury trial.

"(b) In formulating the provisions of its civil justice expense and delay reduction plan, each United States district court, in consultation with an advisory group appointed under section 478 of this title, shall consider and may include the following litigation management and cost and delay reduction techniques:

"(1) a requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so;

"(2) a requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters;

"(3) a requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request;

"(4) a neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation;

"(5) a requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference; and

"(6) such other features as the district court considers appropriate after considering the recommendations of the advisory group referred to in section 472(a) of this title.

"(c) Nothing in a civil justice expense and delay reduction plan relating to the settlement authority provisions of this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or any delegation of the Attorney General.

"§ 474. Review of district court action

"(a)(1) The chief judges of each district court in a circuit and the chief judge of the court of appeals for such circuit shall, as a committee—

"(A) review each plan and report submitted pursuant to section 472(d) of this title; and

"(B) make such suggestions for additional actions or modified actions of that district court as the committee considers appropriate for reducing cost and delay in civil litigation in the district court.

"(2) The chief judge of a court of appeals and the chief judge of a district court may designate another judge of such court to perform the chief judge's responsibilities under paragraph (1) of this subsection.

"(b) The Judicial Conference of the United States—

"(1) shall review each plan and report submitted by a district court pursuant to section 472(d) of this title; and

"(2) may request the district court to take additional action if the Judicial Conference determines that such court has not adequately responded to the conditions relevant to the civil and criminal dockets of the court or to the recommendations of the district court's advisory group.

"§ 475. Periodic district court assessment

"After developing or selecting a civil justice expense and delay reduction plan, each United States district court shall assess annually the condition of the court's civil and criminal dockets with a view to determining appropriate additional actions that may be taken by the court to reduce cost and delay in civil litigation and to improve the litigation management practices of the court. In performing such assessment, the court shall consult with an advisory group appointed in accordance with section 478 of this title.

"§ 476. Enhancement of judicial information dissemination

"(a) The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer— Reports.

"(1) the number of motions that have been pending for more than six months and the name of each case in which such motion has been pending;

"(2) the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and

"(3) the number and names of cases that have not been terminated within three years after filing.

"(b) To ensure uniformity of reporting, the standards for categorization or characterization of judicial actions to be prescribed in accordance with section 481 of this title shall apply to the semiannual report prepared under subsection (a).

"§ 477. Model civil justice expense and delay reduction plan

"(a)(1) Based on the plans developed and implemented by the United States district courts designated as Early Implementation District Courts pursuant to section 103(c) of the Civil Justice Reform Act of 1990, the Judicial Conference of the United States may develop one or more model civil justice expense and delay reduction plans. Any such model plan shall be accompanied by a report explaining the manner in which the plan complies with section 473 of this title.

Reports.

"(2) The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations to the Judicial Conference regarding the development of any model civil justice expense and delay reduction plan.

"(b) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives copies of any model plan and accompanying report.

"§ 478. Advisory groups

"(a) Within ninety days after the date of the enactment of this chapter, the advisory group required in each United States district court in accordance with section 472 of this title shall be appointed by the chief judge of each district court, after consultation with the other judges of such court.

"(b) The advisory group of a district court shall be balanced and include attorneys and other persons who are representative of major categories of litigants in such court, as determined by the chief judge of such court.

"(c) Subject to subsection (d), in no event shall any member of the advisory group serve longer than four years.

"(d) Notwithstanding subsection (c), the United States Attorney for a judicial district, or his or her designee, shall be a permanent member of the advisory group for that district court.

"(e) The chief judge of a United States district court may designate a reporter for each advisory group, who may be compensated in accordance with guidelines established by the Judicial Conference of the United States.

"(f) The members of an advisory group of a United States district court and any person designated as a reporter for such group shall be considered as independent contractors of such court when in the performance of official duties of the advisory group and may not, solely by reason of service on or for the advisory group, be prohibited from practicing law before such court.

"§ 479. Information on litigation management and cost and delay reduction

"(a) Within four years after the date of the enactment of this chapter, the Judicial Conference of the United States shall prepare a comprehensive report on all plans received pursuant to section 472(d) of this title. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding such report to the Judicial Conference during the preparation of the report. The Judicial Conference shall transmit copies of the report to the United States district courts and to the Committees on the Judiciary of the Senate and the House of Representatives. Reports.

"(b) The Judicial Conference of the United States shall, on a continuing basis—

"(1) study ways to improve litigation management and dispute resolution services in the district courts; and

"(2) make recommendations to the district courts on ways to improve such services.

"(c)(1) The Judicial Conference of the United States shall prepare, periodically revise, and transmit to the United States district courts a Manual for Litigation Management and Cost and Delay Reduction. The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts may make recommendations regarding the preparation of and any subsequent revisions to the Manual. Government publications.

"(2) The Manual shall be developed after careful evaluation of the plans implemented under section 472 of this title, the demonstration program conducted under section 104 of the Civil Justice Reform Act of 1990, and the pilot program conducted under section 105 of the Civil Justice Reform Act of 1990.

"(3) The Manual shall contain a description and analysis of the litigation management, cost and delay reduction principles and techniques, and alternative dispute resolution programs considered most effective by the Judicial Conference, the Director of the Federal Judicial Center, and the Director of the Administrative Office of the United States Courts.

"§ 480. Training programs

"The Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts shall develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation. The curriculum of such training programs shall be periodically revised to reflect such information and analyses.

"§ 481. Automated case information

"(a) The Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court.

"(b)(1) In carrying out subsection (a), the Director shall prescribe—

"(A) the information to be recorded in district court automated systems; and

"(B) standards for uniform categorization or characterization of judicial actions for the purpose of recording information on judicial actions in the district court automated systems.

"(2) The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.

Records. "(c) Each United States district court shall record information as prescribed pursuant to subsection (b) of this section.

"§ 482. Definitions

"As used in this chapter, the term 'judicial officer' means a United States district court judge or a United States magistrate.".

28 USC 471 note. (b) IMPLEMENTATION.—(1) Except as provided in section 105 of this Act, each United States district court shall, within three years after the date of the enactment of this title, implement a civil justice expense and delay reduction plan under section 471 of title 28, United States Code, as added by subsection (a).

(2) The requirements set forth in sections 471 through 478 of title 28, United States Code, as added by subsection (a), shall remain in effect for seven years after the date of the enactment of this title.

28 USC 471 note. (c) EARLY IMPLEMENTATION DISTRICT COURTS.—

(1) Any United States district court that, no earlier than June 30, 1991, and no later than December 31, 1991, develops and implements a civil justice expense and delay reduction plan under chapter 23 of title 28, United States Code, as added by subsection (a), shall be designated by the Judicial Conference of the United States as an Early Implementation District Court.

(2) The chief judge of a district so designated may apply to the Judicial Conference for additional resources, including technological and personnel support and information systems, necessary to implement its civil justice expense and delay reduction plan. The Judicial Conference may provide such resources out of funds appropriated pursuant to section 106(a).

Reports. (3) Within 18 months after the date of the enactment of this title, the Judicial Conference shall prepare a report on the plans developed and implemented by the Early Implementation District Courts.

(4) The Director of the Administrative Office of the United States Courts shall transmit to the United States district courts and to the Committees on the Judiciary of the Senate and House of Representatives—

(A) copies of the plans developed and implemented by the Early Implementation District Courts;

(B) the reports submitted by such district courts pursuant to section 472(d) of title 28, United States Code, as added by subsection (a); and

(C) the report prepared in accordance with paragraph (3) of this subsection.

(d) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 28, United States Code, is amended by adding at the end thereof the following:

"23. Civil justice expense and delay reduction plans..... 471".

SEC. 104. DEMONSTRATION PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(2) A district court participating in the demonstration program may also be an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENT.—(1) The United States District Court for the Western District of Michigan and the United States District Court for the Northern District of Ohio shall experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures, and timeframes for the completion of discovery and for trial.

(2) The United States District Court for the Northern District of California, the United States District Court for the Northern District of West Virginia, and the United States District Court for the Western District of Missouri shall experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution, that such district courts and the Judicial Conference of the United States shall select.

(c) STUDY OF RESULTS.—The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program.

(d) REPORT.—Not later than December 31, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report of the results of the demonstration program.

SEC. 105. PILOT PROGRAM. 28 USC 471 note.

(a) IN GENERAL.—(1) During the 4-year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a pilot program in accordance with subsection (b).

(2) A district court participating in the pilot program shall be designated as an Early Implementation District Court under section 103(c).

(b) PROGRAM REQUIREMENTS.—(1) Ten district courts (in this section referred to as "Pilot Districts") designated by the Judicial Conference of the United States shall implement expense and delay reduction plans under chapter 23 of title 28, United States Code (as added by section 103(a)), not later than December 31, 1991. In addition to complying with all other applicable provisions of chapter 23 of title 28, United States Code (as added by section 103(a)), the expense and delay reduction plans implemented by the Pilot Districts shall include the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(2) At least 5 of the Pilot Districts designated by the Judicial Conference shall be judicial districts encompassing metropolitan areas.

(3) The expense and delay reduction plans implemented by the Pilot Districts shall remain in effect for a period of 3 years. At the end of that 3-year period, the Pilot Districts shall no longer be required to include, in their expense and delay reduction plans, the

6 principles and guidelines of litigation management and cost and delay reduction described in paragraph (1).

(c) PROGRAM STUDY REPORT.—(1) Not later than December 31, 1995, the Judicial Conference shall submit to the Committees on the Judiciary of the Senate and House of Representatives a report on the results of the pilot program under this section that includes an assessment of the extent to which costs and delays were reduced as a result of the program. The report shall compare those results to the impact on costs and delays in ten comparable judicial districts for which the application of section 473(a) of title 28, United States Code, had been discretionary. That comparison shall be based on a study conducted by an independent organization with expertise in the area of Federal court management.

(2)(A) The Judicial Conference shall include in its report a recommendation as to whether some or all district courts should be required to include, in their expense and delay reduction plans, the 6 principles and guidelines of litigation management and cost and delay reduction identified in section 473(a) of title 28, United States Code.

(B) If the Judicial Conference recommends in its report that some or all district courts be required to include such principles and guidelines in their expense and delay reduction plans, the Judicial Conference shall initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

(C) If in its report the Judicial Conference does not recommend an expansion of the pilot program under subparagraph (A), the Judicial Conference shall identify alternative, more effective cost and delay reduction programs that should be implemented in light of the findings of the Judicial Conference in its report, and the Judicial Conference may initiate proceedings for the prescription of rules implementing its recommendation, pursuant to chapter 131 of title 28, United States Code.

SEC. 106. AUTHORIZATION.

(a) EARLY IMPLEMENTATION DISTRICT COURTS.—There is authorized to be appropriated not more than $15,000,000 for fiscal year 1991 to carry out the resource and planning needs necessary for the implementation of section 103(c).

(b) IMPLEMENTATION OF CHAPTER 23.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to implement chapter 23 of title 28, United States Code.

(c) DEMONSTRATION PROGRAM.—There is authorized to be appropriated not more than $5,000,000 for fiscal year 1991 to carry out the provisions of section 104.

Federal Judgeship Act of 1990.
28 USC 1 note.

TITLE II—FEDERAL JUDGESHIPS

SECTION 201. SHORT TITLE.

This title may be cited as the "Federal Judgeship Act of 1990".

SEC. 202. CIRCUIT JUDGES FOR THE CIRCUIT COURT OF APPEALS.

President.
28 USC 44 note.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 2 additional circuit judges for the third circuit court of appeals;