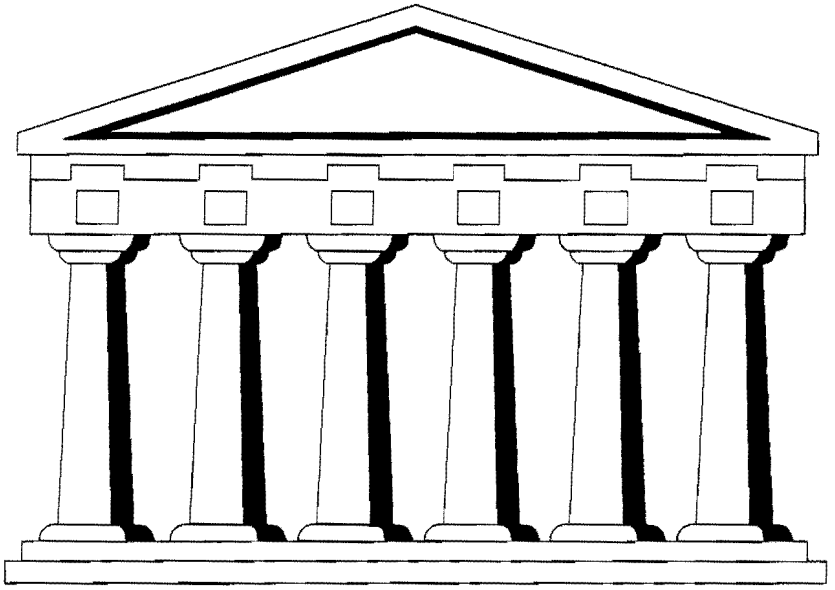
REPORT OF THE ADVISORY GROUP
FOR THE UNITED STATES DISTRICT COURT
UNDER THE CIVIL JUSTICE REFORM ACT OF 1990

WESTERN DISTRICT OF WASHINGTON



Report of the Advisory Group

For the United States District Court

Under the Civil Justice Reform Act of 1990

January, 1993

WESTERN DISTRICT OF WASHINGTON
Advisory Group Report

TABLE OF CONTENTS

WESTERN DISTRICT OF WASHINGTON

Advisory Group Report

SUMMARY TABLE OF FINDINGS AND RECOMMENDATIONS

WESTERN DISTRICT OF WASHINGTON
CIVIL JUSTICE REFORM ACT ADVISORY GROUP

Theodore J. Collins, Esq. (Co-Chair)
Vice President and General Counsel
The Boeing Company
MS 13-08 P.O. Box 3707
Seattle WA 98124

Jerry R. McNaul, Esq. (Co-Chair)
Culp, Guterson & Grader
27th Floor, One Union Square
600 University Street
Seattle, WA 998101-3143

The Honorable Barbara J. Rothstein
Chief U.S. District Judge
U.S. Courthouse, Room 705
1010 Fifth Avenue
Seattle, WA 98104

The Honorable John L. Weinberg
U.S. Magistrate Judge
U.S. Courthouse, Room 407
1010 Fifth Avenue
Seattle, WA 98104

The Honorable William L. Dwyer
U.S. District Judge
U.S. Courthouse, Room 502
1010 Fifth Avenue
Seattle, WA 98104

Susan L. Barnes, Esq.
First Assistant U.S. Attorney
3600 Seafirst Fifth Avenue Plaza
800 Fifth Avenue
Seattle, WA 98104

Kelby D. Fletcher, Esq.
Peterson, Bracelin, Young, Putra,
Fletcher & Zeder
2500 Smith Tower
506 Second Avenue
Seattle, WA 98104

Bruce Rifkin (Reporter)
Clerk of Court
U.S. District Court
U.S. Courthouse, Room 215
1010 Fifth Avenue
Seattle, WA 98104

Marco Magnano, Esq.
Foster, Pepper & Shefelman
1111 Third Avenue
Suite 3400
Seattle, WA 98101

Elizabeth Schott, Esq.
Litigation Advocacy Training Coordinator
Evergreen Legal Services
401 Second Avenue South, Suite 401
Seattle, WA 98104

Patricia K. Schafer, Esq.
Gordon, Thomas, Honeywell, Malanca,
Peterson & Daheim
1100 First Interstate Plaza
P.O. Box 1157
Tacoma, WA 98401

ACKNOWLEDGEMENTS

The advisory group acknowledges with thanks the significant assistance and support of all of the following:

All of the attorneys and court staff who gave generously of their time in participating in interviews and responding to the group's survey
Ms. Janet Bubnis, Chief Deputy Clerk
Ms. Shirley Lindberg, Assistant Supervisor of Docketing
Ms. Elizabeth Tyree, Courtroom Deputy
Mr. James Kirkham Johns, The Boeing Company

I. INTRODUCTION

A. STATUTORY MANDATE

In 1990, Congress passed the Civil Justice Reform Act of 1990, Public Law No. 101-650, 104 Stat. 5090 (28 U.S.C. §§ 471-82).[1] The statute directs each judicial district to formulate a civil justice expense and delay reduction plan. Specifically, the plan is designed "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." (28 U.S.C. § 471) In order to develop the plan, the court may consider the recommendations of an advisory group, § 472.

An advisory group was formed pursuant to the terms of 28 U.S.C. § 478. It includes lawyers and judges, a representative of the United States Attorney's Office, and the Clerk of the United States District Court. The lawyers selected represent a broad cross-section: practitioners from Seattle and Tacoma who practice in private, public, and corporate settings. Also included in the group were former U.S. District Court law clerks, prior prosecutors, and lawyers whose practices covered the range of cases found in federal court, including representation of plaintiffs and defendants.

The advisory group first met on May 6, 1991. Various subcommittees were formed to address issues including the hiring of consultants; conducting a survey; interviewing lawyers, judges, and court personnel; analyzing the criminal and civil dockets; and preparing this report. This report represents the consensus of the group developed after deliberation and debate.

B. OVERVIEW OF THE DISTRICT

The Western District of Washington is bordered on the north by Canada, on the east by the Cascade Mountain Range, on the south by the Oregon border, and on the west by the Pacific Ocean. The area encompasses 3.5 million inhabitants, most of whom are concentrated in the Seattle-Tacoma area. Seattle, with a population of 497,000, is the 14th largest metropolitan area in the United States. The Puget Sound region is experiencing rapid growth, with 300,000 new residents in the last five years.

The criminal work of the district in the main is handled by the United States Attorney's Office and the Federal Public Defender's Office. The United States Attorney's Office is the 25th largest in the country and has approximately 44 Assistant United States

---

[1]Appendix A

Attorneys. The office has a small branch in Tacoma. The Federal Public Defender has nine attorneys and a branch office in Tacoma as well.

The civil work of the district is diverse. Seattle-Tacoma is a major seaport on the Pacific Rim. Blaine, Washington, on the Canadian border, is one of the busiest ports of entry into the United States. The district encompasses a large federal presence in the form of multiple military installations, parks, and national forests. Seattle is also a regional office for many federal agencies including several with independent litigating authority. The district has 22 Indian tribes. The industry of the district varies from aerospace, light industrial, and computer technology to logging, fishing, and farming. The area houses several colleges and universities, the largest of which is the University of Washington. Additionally, The Boeing Company and its related industries are headquartered in Seattle. The community is environmentally sensitive.

There are seven authorized district judgeships and four authorized full-time magistrate judgeships. Currently, there are six sitting district judges and one vacancy in Tacoma, two sitting senior judges, and four sitting full-time magistrate judges. The district judges and full-time magistrate judges sit in Seattle or Tacoma. Part-time magistrate judges sit in Vancouver on the Oregon border, in Bellingham on the Canadian border, and in Port Angeles on the Olympic Peninsula.

The Seattle United States Courthouse was built in 1939. Its original tenants have outgrown its available space. Plans are underway for a new adjacent facility. A new United States Courthouse in Tacoma was recently constructed, with occupancy in November, 1992.

C. THE FACT-GATHERING PROCESS

Several techniques were employed to gather information on the civil docket's cost and delay problems. The group retained the Salisbury Research Group of Seattle, Washington, who with the advisory group designed and effected a survey of lawyers practicing in this district. A total of 2029 attorney surveys were mailed, with a response rate of 23.2%.[2] Group members conducted detailed interviews with a wide range of participants in federal court civil litigation: each active district judge and full-time magistrate judge; court personnel, including the clerk, chief deputy clerk, courtroom deputies, law clerks, and others with special knowledge; and a diverse group of very experienced lawyers. The group members themselves submitted written answers to the questions posed by the statute. Additionally, the group conducted a random survey of 124 cases to test the findings of the interviews and the attorney survey.[3]

---

[2]Appendix C.

[3]Appendix B.

The group declined to hold formal public hearings or to conduct litigant surveys because of unsuccessful experiences in pilot and early implementation districts. However, in June, 1992, the Federal Bar Association for the Western District of Washington held a public meeting to discuss in part the group's work. Input from that public meeting was recorded and incorporated into this report.

The written and oral interviews and surveys examined all topics mandated by the statute. Initially the interviewees addressed (1) problems with cost and/or delay in the district, and (2) the overall condition of the district's civil docket. Interviewees discussed court practices and procedures to determine whether they exacerbate the problems. Litigant and attorney practices were also examined. In analyzing potential areas of reform, the interviewees addressed differential case management, early judicial pretrial intervention, judicial discovery monitoring, voluntary early disclosure, "meet and confer" requirements for discovery motions, ADR, early joint case management planning by counsel, requiring clients to be present with authority at pretrial conferences, requiring client signatures on time extensions, early neutral evaluations, and the requirement to have binding authority at settlement conferences. This report sets forth the group's findings and recommendations on each of these points.

II. CONDITION OF THE CIVIL AND CRIMINAL DOCKET

A. THE CIVIL DOCKET

Relative to its past condition and to the condition of the civil docket in other districts, the present condition of the civil docket is very satisfactory. In the late 1970s, the district had a very heavy caseload. This district dealt with the problem by creating a local ADR system, consisting primarily of an aggressive mediation program utilizing qualified members of the bar as unpaid mediators. This program dramatically reduced the backlog. Expanding the number of authorized judgeships also assisted in reducing the backlog. The combined effect of these factors, and other efforts by the court and the bar, left the district's civil docket in its current condition.

Civil filings decreased slightly between 1983 and 1992. In the mid-80s, there was an expansion of civil filings in the student loan area, since decreased. Non-student loan cases, such as tort cases, prisoner litigation, and contract cases, which constitute a substantial portion of the filings in the district, have risen 26% in the last ten years. In 1991, on a per-judge basis, this district ranked 45th for civil filings out of the 94 judicial districts. There were 318 civil filings per authorized judgeship, while the national profile was 320 filings per judgeship. The district averages nine months for disposition of civil cases, one of the shortest in the nation. Measured by the Federal Judicial Center's "indexed average life span," the district since 1989 has moved cases faster than the national average of 12 months.[4] The attorneys and judges surveyed validated these statistics. They agreed civil litigation works well in the Western District of Washington.[5]

B. THE CRIMINAL DOCKET

The condition of this court's criminal docket is also very satisfactory when compared to its prior condition and the current status in other districts. Criminal filings have risen 158% over the last ten years, but have dropped in the last three years. Peaks in the mid-80s due to Zero Tolerance[6] and other initiatives have declined. While the number of filings by defendant do not reflect the complexity of the cases, the judges all acknowledged that their current criminal caseload is manageable. Criminal felony filings per judgeship were 47,

---

[4]Filing Trend Charts (Appendix B).

[5]Results of the Attorney Survey on the Problems of Delay and Cost in the Western District of Washington, May 25, 1992 (Appendix C).

[6]"Zero Tolerance" is a program of the U.S. Customs Service at the Canadian border. Persons importing any quantity of controlled substances are referred for prosecution.

compared to the national profile of 52. The median time from filing to disposition in criminal felonies is 4.6 months, ranking the district 14th in the nation. The national figure is 5.7 months.[7] The judges expressed concern, however, that the criminal docket could increase substantially, for the reasons discussed in the following section.

[7]Filing Trend Charts (Appendix B).

III. TRENDS IN FILINGS AND DEMANDS ON COURT'S RESOURCES

The future holds numerous question marks; however, some events are clearly beginning to impact the district. The population of the district is increasing. The federal military's presence is expanding. The Bremerton Naval Shipyard plans expansion and the Everett Home Port is under construction. The Madigan Army Medical Center is one of the nation's seven regional army medical centers, treating a million patients a year from five states. Fort Lewis will be receiving the personnel formerly at Fort Ord, California. Passage of the National Indian Gaming Act extends federal regulation to gambling on Indian reservations. The Americans with Disabilities Act, and recent amendments to the Civil Rights Acts, will increase federal civil litigation.

Both the federal law enforcement community and the prosecutors in the United States Attorney's Office have sizably increased in the last three years. While the criminal caseload has increased only slightly, it is likely to continue upward.

Increases in judicial caseloads have resulted from an unfilled vacancy. Although judges share the increase incrementally, that increase consumes the available margin of flexibility, flexibility essential to accommodate retrials and particularly large case assignments. The advisory group and the judges recognize the need to fill the existing vacancy promptly.

IV. EXTENT TO WHICH THE CAUSES OF COST AND DELAY CAN BE REDUCED BY BETTER ASSESSING THE EFFECT OF NEW LEGISLATION ON THE COURTS

While new legislation can substantially increase caseloads, no specific additional measures are needed within the judiciary itself to assess the effects of proposed legislation. There currently exists a Judicial Impact Office within the Administrative Office of the U.S. Courts which provides to members of Congress information concerning the impacts of proposed legislation.[8] From the court's point of view, Congress gives less than adequate consideration to those concerns.

[8]*The Third Branch,* Vol. 23, No. 5, May 1991.

V. FINDINGS AND RECOMMENDATIONS

A. INTRODUCTION AND STATUTORY ASSUMPTIONS

Section 102 of the Civil Justice Reform Act of 1990 makes legislative findings to support the statute. Congress found that the problems of cost and delay must be addressed, that all the participants of the system share responsibility for the problem, that the solutions must include contributions by all those concerned, and that all the parties need to consult and share their experience and knowledge on the variety of techniques of case management available. Congress also found that an administrative structure needs to exist to make this effective.[9]

In seeking to investigate the causes of cost and delay, the advisory group chose to examine in the first instance the question of whether cost and/or delay are problems in this district. The group adopted this posture because preliminary analysis suggested there was doubt whether either or both existed in this district.

B. DELAY: GENERAL FINDINGS

FINDING NO. 1: DELAY IS NOT A SIGNIFICANT PROBLEM IN THE DISTRICT.

As set forth with more specificity in the attached survey results,[10] a significant portion of the bar, all the judges, the court staff, and the advisory group agreed there is no serious problem of delay in the district. This is confirmed by the findings of the case review, which reflect that the district resolves cases in less than the national average of 12 months. Further validation comes from the random sample of cases, which reflected that only 9% of cases reviewed took longer than 18 months from filing to disposition. Almost half of the cases reached disposition in six months, 23% in 7-12 months, and 26% in 13-18 months.[11]

The survey found one area at variance from this general conclusion: nearly half of the attorneys surveyed opined there was unnecessary delay by the court in ruling on motions. This issue is discussed in more detail infra, in Section F.

---

[9]Appendix A.

[10]Appendix C.

[11]Appendix D.

C. COST: GENERAL FINDINGS

FINDING NO. 2: THERE IS A COST PROBLEM IN THE DISTRICT, PARTICULARLY AS TO COSTS ARISING FROM DISCOVERY.

Survey results reflected a concern of the bar that there are excessive costs, particularly in the discovery process. For a full discussion of the views of the attorneys and the judges, the results of the case survey, and the advisory group's findings and recommendations, see Section G, infra.

FINDING NO. 3: COURT PROCEDURES AND PRACTICES IN THE MAIN DO NOT CONTRIBUTE TO UNNECESSARY COST OF CIVIL LITIGATION.

Neither the bar survey nor any other source identified a specific rule or procedure as contributing to excessive cost. While attorneys found particular local rules troublesome, they were not cited as major cost items.[12] The advisory group recommends modifications to those rules in later portions of this report. The group concluded that, in the main, the court simply needs to exercise more firmly its existing authority.

FINDING NO. 4: ATTORNEYS, NOT LITIGANTS, APPEAR TO CONTRIBUTE TO THE EXCESSIVE COSTS, IN THE WAY THEY APPROACH AND CONDUCT LITIGATION.

An overwhelming number of attorneys surveyed agreed to five top causes of excessive cost in the district: four of those relate to discovery. Ultimately, attorneys blamed themselves and their colleagues for the cost problems in this district, rather than the court or clients.[13] With surprising uniformity, the attorney survey placed the blame for excessive costs squarely on the shoulders of the bar. This consensus existed with minor percentage differences regardless of whether the attorney surveyed was a plaintiff attorney, defense attorney, or government attorney.

---

[12]See Recommendations 1, 4, 7, and 8.

[13]Some attorneys did note that large law firms representing large clients were the problem. The overwhelming conclusion was that the significant problem was due to attorneys.

D. DIFFERENTIAL CASE MANAGEMENT

FINDING NO. 5: JUDICIAL DIFFERENTIAL TREATMENT OF CASES ALREADY EXISTS IN THIS DISTRICT, BUT FURTHER IMPROVEMENTS CAN BE MADE.

Each judge has an individual docket and a case management system of his or her own design. In some measure, the differences reflect variances in styles and beliefs about the need for and advisability of active judicial intervention. The judges meet and confer regularly and constantly revise and improve their systems. Uniformly, they are open to proposals and suggestions both from the bar and this advisory group.

The group concluded this individual case management system works well here. The clerk currently divides cases into four categories of complexity based upon weights used by the Administrative Office of the U.S. Courts. The random survey of cases indicated no significant difference in time to disposition in this district among cases in the four categories.[14] The group concluded that categorization by arbitrary tracks would not be an effective substitute for individual case management.

Attorneys favor more judicial involvement in the discovery process. The attorney survey concludes that although the principal problem is attorneys themselves, the solution rests with the court. The attorneys surveyed did not want drastic changes, but simply more active judicial use of tools already available.

Recommendation No. 1: The judges should make more active use of the tools presently available for managing discovery on an individualized, case-by-case basis.

E. JUDICIAL CONTROL OF PRETRIAL PROCESS

FINDING NO. 6: EARLY CONTROL OF THE PRETRIAL PROCESS BY THE COURT ALREADY EXISTS IN THIS DISTRICT, BUT FURTHER IMPROVEMENT IS IN ORDER.

[14]Appendix D.

All of the judges in the district set joint status conferences or order the filing of a joint status report within a short time of the case being at issue . See Local Rule CR 16(a). In either instance, the court requires attorneys to cooperate in setting dates for discovery, trial, motions, etc. One judge noted that a sizable number of cases actually settle just prior to the filing of this order or the appearance date set for the conference. Some of the judges set the dates based, in part, on their own independent assessment of the needs of the case; others prefer instead to let the attorneys determine the pace and the initial scheduling. The attorneys surveyed sought more active case management in this regard. In consideration of their consensus and the more proactive admonition in the preamble to the proposed Federal Rules of Civil Procedure,[15] the advisory group favors more consistent proactive judicial management across the board, including the recommendations described herein.

One vigorously debated cost issue was the requirement that a Rule 16 Pretrial Order must be prepared in most cases. Both lawyers and judges split among themselves on the value of pretrial orders. Local Rule CR 16(n)(2) permits the court, in a specific case, to order the parties to prepare an abbreviated pretrial order, or to waive its preparation altogether. The advisory group concluded that the court should ease pretrial order requirements after considering the requirements of the individual case. For example, in some cases all parts of the pretrial order could be waived, except a statement of jurisdiction, summary lists of the claims and defenses, and lists of witnesses and exhibits. In some cases no pretrial order is necessary.

> *Recommendation No. 2: The judges should consider using more frequently their authority under Local Rule CR 16(n)(2) to permit the preparation of an abbreviated pretrial order, or to waive its preparation altogether.*

FINDING NO. 7: THERE IS NO PROBLEM IN THIS DISTRICT REQUIRING THE CLIENTS TO BE PRESENT AT THE EARLY PRETRIAL CONFERENCES.

None of the attorneys surveyed, nor any of the judges, were aware of any problem in this district requiring clients to be present at early pretrial conferences.

---

[15]Proposed Amendments to The Federal Rules of Civil Procedure and Forms:

> "These rules govern the procedure in the United States district courts in all suits of a civil nature which are cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action."

FINDING NO. 8: THE JUDICIAL MONITORING OF COMPLEX CASES ALREADY OCCURS IN THE DISTRICT, BUT FURTHER IMPROVEMENT CAN BE ACCOMPLISHED.

Judges currently monitor their complex cases on an individual basis. Judges are comfortable with the current system and do not believe the number of complex cases warrants a separate structural system.

Over 90% of the caseload settles prior to trial. A challenge of case management is to identify those that will settle and to assist prompt settlement. The attorney survey recommended expediting rulings on dispositive motions and making early use of the rules to narrow and eliminate issues. To that end, the advisory group recommends carefully selective utilization of phased discovery and phased motion practice. This is recommended, assuming the court will take into consideration the potential duplicative effort that sometimes occurs when these techniques are inappropriately applied.

> *Recommendation No. 3: In complex cases, and in others where a limited issue; e.g., the statute of limitations, may be dispositive, the court should consider the possibility of resolving one or more issues first and phasing the discovery and motions accordingly.*

F. MOTION PRACTICE

As noted earlier, nearly half of the attorneys surveyed opined there was unnecessary delay by the court in ruling on motions. However, interviews with the court staff and the judges indicated that, while this had been a problem in years past, the situation has improved. The random sample survey of cases confirmed this latter view. Most motions are decided within 30 days after the noting date. A new local rule (CR 7(d)) also sets 30 days as a guideline. The sample survey reflected that, while not all judges are equally prompt in deciding motions, 53% of all motions were ruled upon within ten days, another 30% within 10-30 days, and 17% took more than 30 days. It was also suggested that for some motions, particularly cross-motions for summary judgment, the briefing schedule provided in the local rules should be reduced.

> *Recommendation No. 4: The court should assure that all motions are promptly decided. In some instances the time period for briefing called for by the local rules should be shortened by the judge. The court should monitor the effectiveness of the recently-adopted local rule stating that "All motions will be decided as soon as practicable and normally within thirty days following the noting date."*

Motions to shorten time have presented procedural problems to the court and to counsel for some time. The May 1992 amendments to the local rules simplified the paperwork involved.

The advisory group believes that many motions can be avoided if the court and counsel utilize the procedure for telephone access to the court, as authorized by Local Rule CR 9(f). This procedure is particularly useful for discovery disputes, but can be constructive in other contexts.

> *Recommendation No. 5: The court and counsel are encouraged to utilize Local Rule CR 9(f) for telephone resolution of motions where appropriate.*

G. DISCOVERY MANAGEMENT

FINDING NO. 9: FURTHER IMPROVEMENTS OF THE CURRENT TOOLS OF DISCOVERY MANAGEMENT ARE IN ORDER.

As earlier noted, attorneys believe that discovery practices are the principal causes of unnecessary costs of civil litigation in the district. Almost half of the attorneys surveyed believe that counsel seek discovery of insignificant or unnecessary information, use discovery to increase the cost to the opponent, unreasonably resist discovery, and inappropriately schedule discovery.[16]

Excessive discovery costs are incurred in many, perhaps most cases. Abuse of discovery by counsel, on the other hand, is viewed by the judges as occurring in only a minority of cases.

A habit of over-contentiousness among the bar was universally cited as a cause of discovery abuse. Thirty-five percent of the lawyers cited opposing counsel's desire to maximize billings as a cause. The judges expressed the view that counsel in many cases were not fully meeting their obligations to confer, and to agree where possible, on discovery matters.

The advisory group queried the judges and reviewed the randomly selected cases to determine how many discovery disputes were presented to the court. The judges reported relatively few telephone requests to resolve discovery disputes. Additionally, the random sample of cases showed only 18% of all cases surveyed had any discovery motions filed whatsoever.

---

[16]Appendix C.

Collectively, the Western District of Washington has been refining its case management system for some time with overall good results. On May 1, 1992, the court implemented a major revision of the local rules, which built upon the late 1970s reforms.[17] Many of the changes related to problems with discovery. The new rules approved telephonic motions, continued the requirement that counsel with authority attend scheduling conferences, and simplified the "meet and confer" rule. Additionally, individual judges have implemented more relaxed rules for court access for discovery dispute resolution, adopted early case management processes, and have experimented with a host of ideas. In short, much has already been done to streamline discovery and cut related costs.

It should also be noted that the attorneys reported a deterioration of civility between counsel. In many instances, the abuse of discovery and decline in civility are caused by lack of supervision of less-experienced attorneys by lead or other attorneys. Failure to plan discovery and to prepare for trial also contribute to increased cost and delay. The behavior of counsel toward each other can significantly increase the costs of discovery, but would not necessarily come to the attention of the court in a given case. The advisory group, therefore, also recommended addressing the civility problem generally.

Ultimately, the group was unable to quantify the extent of the problem of excessive costs in discovery. Nevertheless, it was clear that there was a perception that such a problem did exist. Even if limited to a minority of cases, the court should address this problem. The group's recommendations are set forth below.

Recommendation No. 6: The court should:

A) Adopt a clear statement that the court seeks to achieve efficient and cost-effective discovery in every civil case, and expects counsel, as officers of the court, to work on a cooperative basis to accomplish this objective; and

B) Request that the Federal Bar Association of the Western District of Washington specially address the problem of incivility and other litigation behavior of counsel that tends to increase costs, and suggest potential solutions.

[17]Consideration of the local rule amendments began prior to the passage of the Civil Justice Reform Act of 1990. They were proposed by the Local Rules Committee of the court, commented upon by the Rules Committee of the Federal Bar Association for the Western District of Washington, and adopted with modifications by the court.

Recommendation No. 7: The court should continue to limit the time period for discovery in all cases. In some cases, the judge should limit discovery to particular measures approved by the court, or to only that discovery necessary to prepare a case for early mediation. The trial judge must be alert to the potential need for discovery control even in cases in which no counsel has complained.

FINDING NO. 10: THIS DISTRICT ALREADY HAS JOINT DISCOVERY PLANNING AT THE INITIAL STAGES OF CIVIL CASES.

Joint discovery planning is currently done on a case-by-case basis, pursuant to Local Rule CR 16(a).

FINDING NO. 11: WHILE VOLUNTARY EXCHANGES OF INFORMATION ARE DESIRABLE, THERE IS NO NEED TO ESTABLISH A PROCEDURE REQUIRING THE EXCHANGE OF CORE INFORMATION INDEPENDENT OF TRADITIONAL DISCOVERY TECHNIQUES.

Of the attorneys surveyed, 44.1% favored a procedure for voluntary exchange of information.[18] The advisory group declined to recommend a mandatory exchange of the type of information contemplated since the discovery problems appear to be small in number. A new Federal Rule of Civil Procedure is under consideration. Under the existing rules, the court has authority to compel exchanges of information in a particular case. The advisory group favors further study of this issue for possible recommendation at a later time.

FINDING NO. 12: THE DISTRICT ALREADY HAS A RULE WHICH CONDITIONS CONSIDERATION OF DISCOVERY MOTIONS ON THE PARTIES' HAVING PREVIOUSLY MADE GOOD FAITH EFFORTS TO AGREE.

The local rules have long required a "meet and confer" certificate prior to the filing of a discovery motion, and it has worked well when a "good faith" conference has been held.

---

[18]Appendix C.

FINDING NO. 13: THE DISCOVERY PROCESS WOULD BE MADE MORE EFFICIENT BY PLACING PARAMETERS ON THE CONDUCT OF COUNSEL AT DEPOSITIONS, AND BY FACILITATING THE RESOLUTION OF DISCOVERY DISPUTES.

Our judges generally take telephone calls to resolve discovery disputes, and the experience has been satisfactory. Some of the judges have adopted, as part of their joint status order, some directives which place parameters on the conduct of counsel and parties at depositions. They also invite counsel to request expedited rulings on discovery disputes by a telephone conference. The deposition conduct provisions served as a model for a proposed state rule, and the entire order was praised by the lawyers interviewed as a model for all the courts to use. A form of order currently used by U.S. District Judge William L. Dwyer is attached as Appendix E. The advisory group recommends a standing order on this subject in every case.

Recommendation No. 8: The practice of advising counsel at the start of each civil case that all discovery matters are to be resolved by agreement if possible, and that they can obtain a prompt ruling on a discovery dispute through a telephone conference call to the judge, is beneficial and should be continued. In addition, the court should prescribe a standard governing the conduct of depositions in each appropriate case. There should be a standing order on this matter in every case.

H. ALTERNATIVE DISPUTE RESOLUTION (ADR)

FINDING NO. 14: THIS DISTRICT ALREADY HAS EFFECTIVE ADR RULES. THE 1992 AMENDMENTS TO THE LOCAL RULES OF THE DISTRICT EXPANDED THE RANGE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) MEASURES.

This district has had various forms of ADR since the late 1970s, including mediation and arbitration. The options have been further expanded in the most recent amendments to the local rules to include summary jury trials, court-appointed settlement judges, and private mediation. The advisory group recommends only one form of expansion, and that is to amend the local rules to make summary court trials available.

Recommendation No. 9: The court should expand the local rules to provide for the option of summary court trials before a district judge or magistrate judge.

The court recently appointed an ADR coordinator. This coordinator can help monitor the progress of ADR in individual cases and evaluate the efficacy of ADR procedures generally.

Recommendation No. 10: The responsibilities of the ADR coordinator should include monitoring cases to assure that ADR procedures have been followed, and evaluating the success of those procedures.

FINDING NO. 15: THE ADDITION OF A NEW PROCEDURE FOR EARLY NEUTRAL EVALUATION WOULD NOT APPEAR TO BE OF ANY SIGNIFICANT BENEFIT, IN LIGHT OF THE BROAD RANGE OF ADR ALREADY AVAILABLE IN THIS DISTRICT.

Because the district already has extensive ADR available, the advisory group does not recommend any new procedures for neutral evaluation. At some point, having too many options increases cost. However, the group will monitor the experience with such programs in other districts.

FINDING NO. 16: THERE IS NO SIGNIFICANT PROBLEM IN THIS DISTRICT WITH HAVING PERSONS WITH BINDING AUTHORITY PRESENT AT SETTLEMENT CONFERENCES.

Neither the attorneys surveyed nor the court report any significant problem with the lack of persons with settlement authority at settlement conferences. Occasionally an insurance company or a government client will not have someone in attendance with total authority, but arrangements have been made which worked well in those few cases.

I. TRIAL

The attorney survey distinguished between case management and trial reform. The attorneys did not appear to support an alternative that either hinders their access to the

judges or changes traditional trial practices. This was not explored in significant depth by the advisory group. Given the significant expenses incurred at trial, this area merits further study. The group should continue to look at the advisability of adopting time budgets for trials.

FINDING NO. 17: A FIRM AND EARLY TRIAL DATE IS THE SINGLE MOST EFFECTIVE TOOL IN ACHIEVING SETTLEMENT.

Virtually every in-depth interview revealed that a firm trial date is the single most effective tool in achieving early settlement. The random case study reflected that the court sua sponte changes trial dates very seldom. Recently, judges have been experimenting with trying cases for each other when unavoidable conflicts occur. The advisory group believes this is a very good idea worthy of institutionalizing. The group also recommends that the court encourage attorneys, to the extent allowed by law, to consent to having cases handled by the magistrate judges in order to increase the pool of available trial judges.

Recommendation No. 11: The court should strengthen its practice of assigning and preserving firm and early trial dates. To this end, the district judges should continue to try cases for each other when necessary, and reasonable steps should be taken to encourage a higher number of consents to trials by magistrate judges.

FINDING NO. 18: THERE IS NO PROBLEM WITH CONTINUANCE REQUESTS IN THIS DISTRICT.

Neither the attorney survey, the court, nor the audit of the docket revealed any problem with continuances. The random case survey found that they do occur, but not excessively and not inappropriately.

J. SHIFTING ATTORNEYS' FEES AND COSTS

FINDING NO. 19: THE ISSUE OF FEE AND COST SHIFTING NEEDS TO BE ADDRESSED.

According to those surveyed and interviewed, it appears that the federal rules of discovery have been abused. In order to take the economic incentive out of consideration as to whether to litigate endlessly or not, the advisory group recommends trying the adoption of a cost-shifting rule (an "English" rule) under Rule 68, F.R.C.P. The Administrative Office of the U.S. Courts has opined that this is beyond the power of the court to enact as a local rule. However, there is a pending proposal which would authorize individual districts to adopt such a rule. We recommend that, when authorized, this court draft and circulate such a rule for comment. A provision of this nature will promote economy by encouraging settlements and will serve justice by shifting fees in appropriate cases. The rule should include reasonable provisions for the time at which an offer of judgment could be made, the time for accepting it, and the court's discretion in assessing such costs.

> *Recommendation No. 12: The court should adopt, if and when permitted by the Judicial Conference of the United States, a local rule that generally permits the court to award attorney fees and litigation costs to a party who has reasonably incurred them after having made a written offer of judgment that was rejected, where the final judgment is more favorable to the offering party than the rejected offer would have been.*

K. CONCLUSION

The advisory group recommends that the court adopt its own plan, not a model plan. The group stands prepared to draft a plan if the court so desires.

Appendix A

PUBLIC LAW 101-650 [H.R. 5316]; December 1, 1990

JUDICIAL IMPROVEMENTS ACT OF 1990

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".

TITLE I—CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS

SEC. 101. SHORT TITLE.

This title may be cited as the "Civil Justice Reform Act of 1990".

SEC. 102. FINDINGS.

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

(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

"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.

"(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—

"(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.

"(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.

"(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.

"(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.

"(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.".

(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.

(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).

(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.

(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.

(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.

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.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

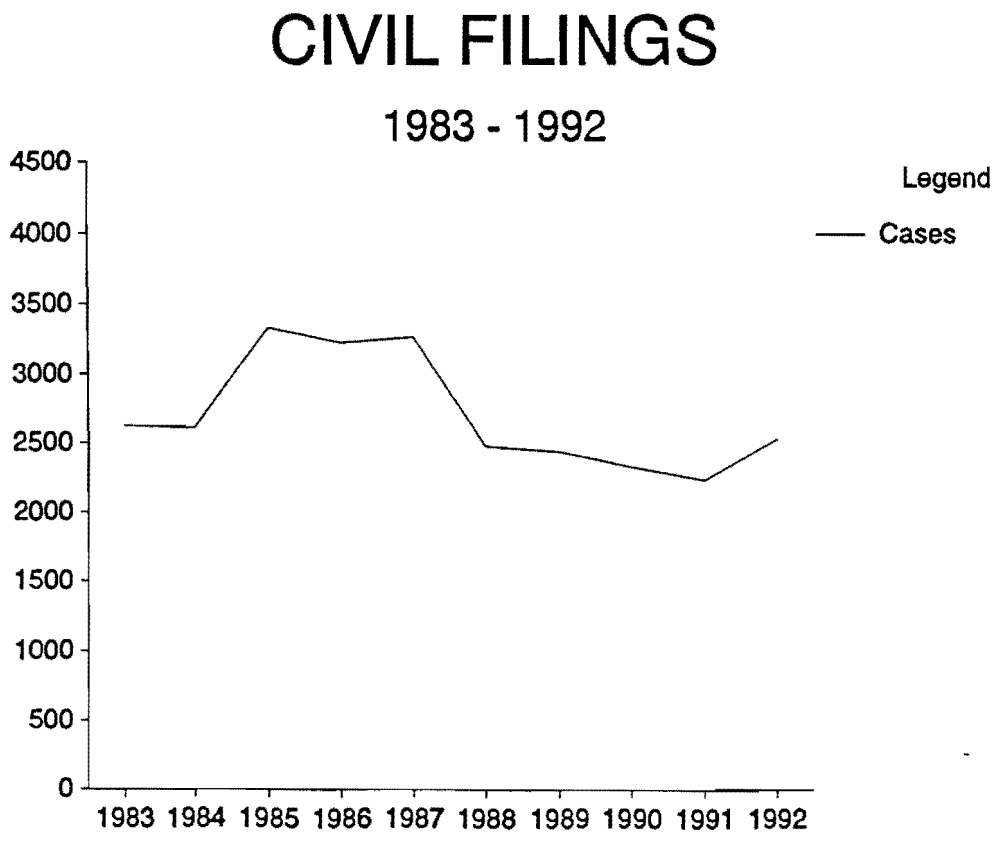
(1) 2 additional circuit judges for the third circuit court of appeals;

FILING TRENDS AND JUDICIAL WORKLOAD PROFILE IN THE WESTERN DISTRICT OF WASHINGTON

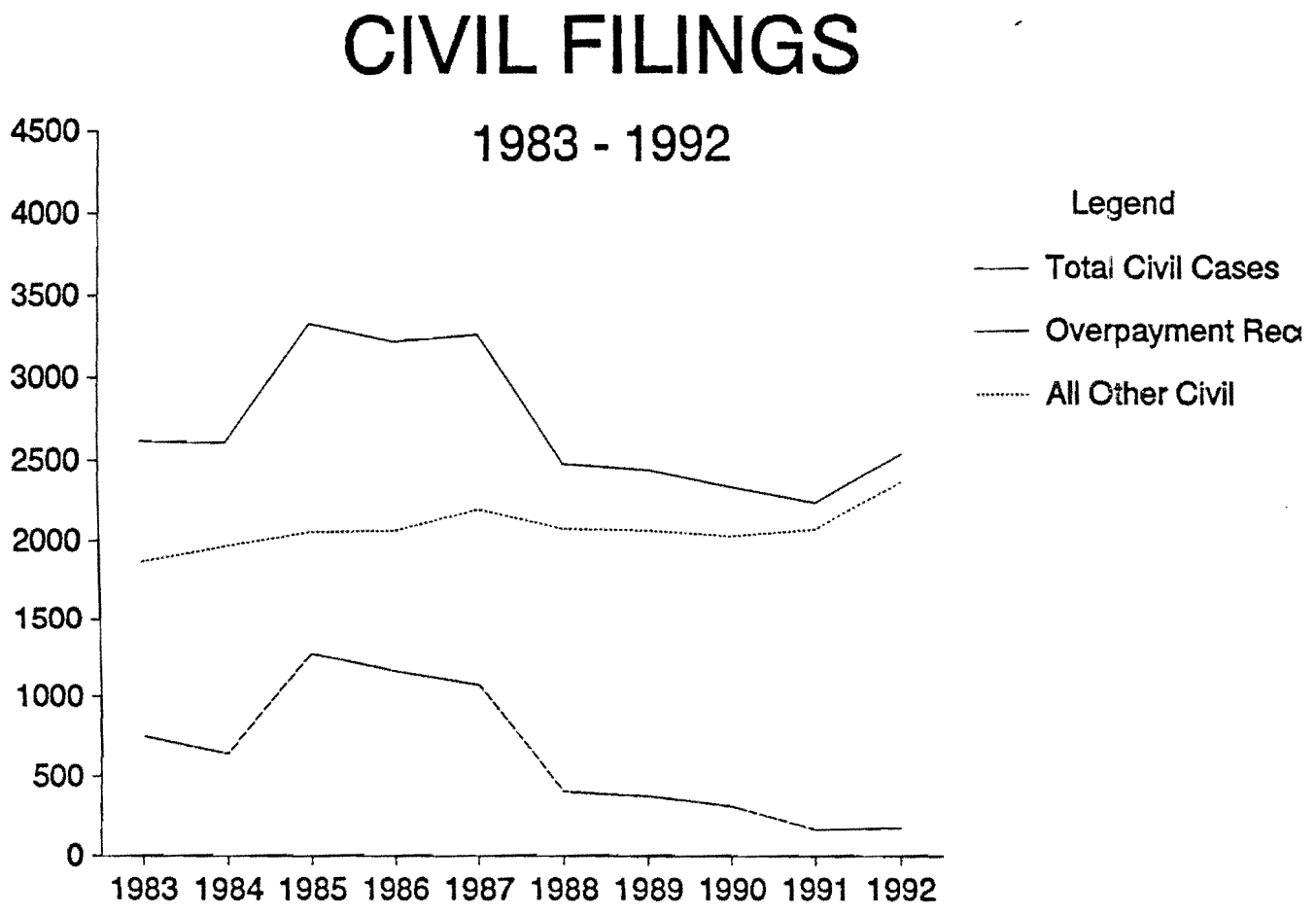
This report is being submitted to the Civil Justice Reform Act Committee for the Western District in Washington. All references to statistics from particular years in this report use a twelve-month period ending June 30. The statistics have been gathered from various publications of the Administrative Office.

CIVIL FILINGS

Civil filings in the Western District of Washington have been on a slight decline over the past ten years. In 1992, there were 2526 civil cases filed in the district, while in 1983, there were 2621 civil cases filed, for a difference of 95 cases.



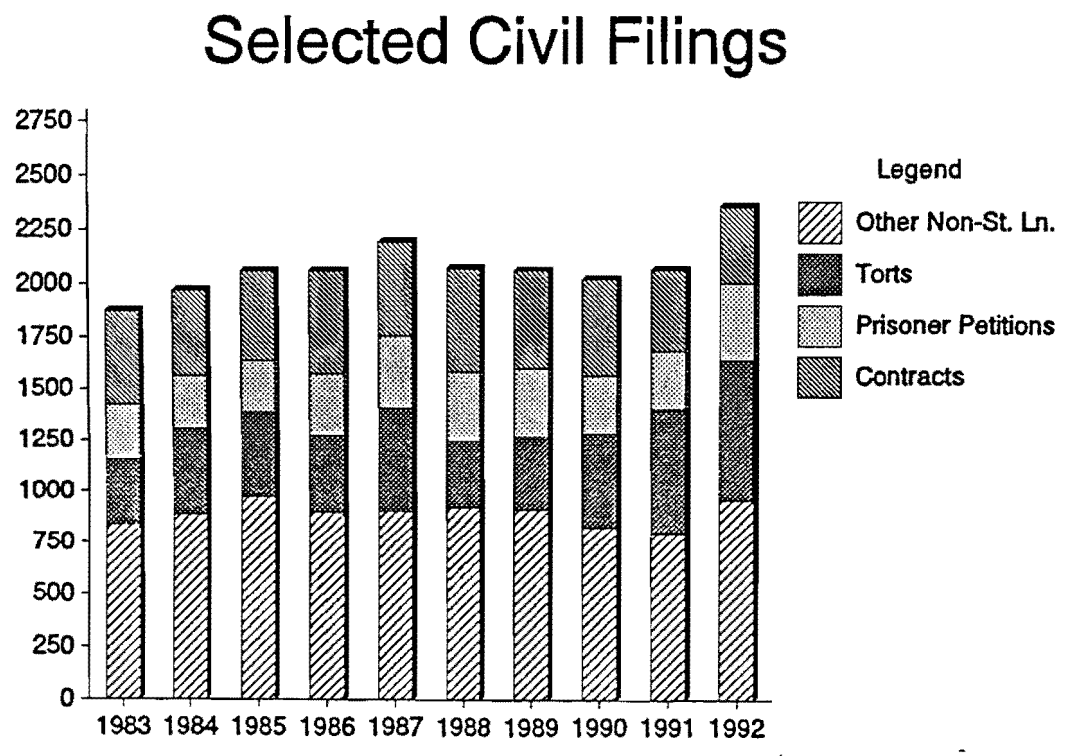
As seen from the preceding graph, during the years 1985 through 1987, civil case filings were substantially higher than civil case filings in 1992. The increase in filings during the mid-1980's is due to the expansion of prosecutions by government agencies for defaulted student loans and overpayment recovery cases. During the time period of 1985 through 1987, these types of cases accounted for 36%, 34% and 30% respectively of the entire civil caseload of the district. Although these cases have a significant numerical impact on the case filings of the district, these cases usually have very little impact in terms of judicial time. The graph depicted below illustrates the numerical impact of these cases on the overall civil filings in the Western District of Washington.



This graph also illustrates the general rise in all other types of civil cases over the 10 year time period. In 1983, there were 1870 non-student loan cases, while in 1992, there were 2350 non-student loan cases filed. This amounts to a 26% increase in non-student loan filings during this ten-year time period.

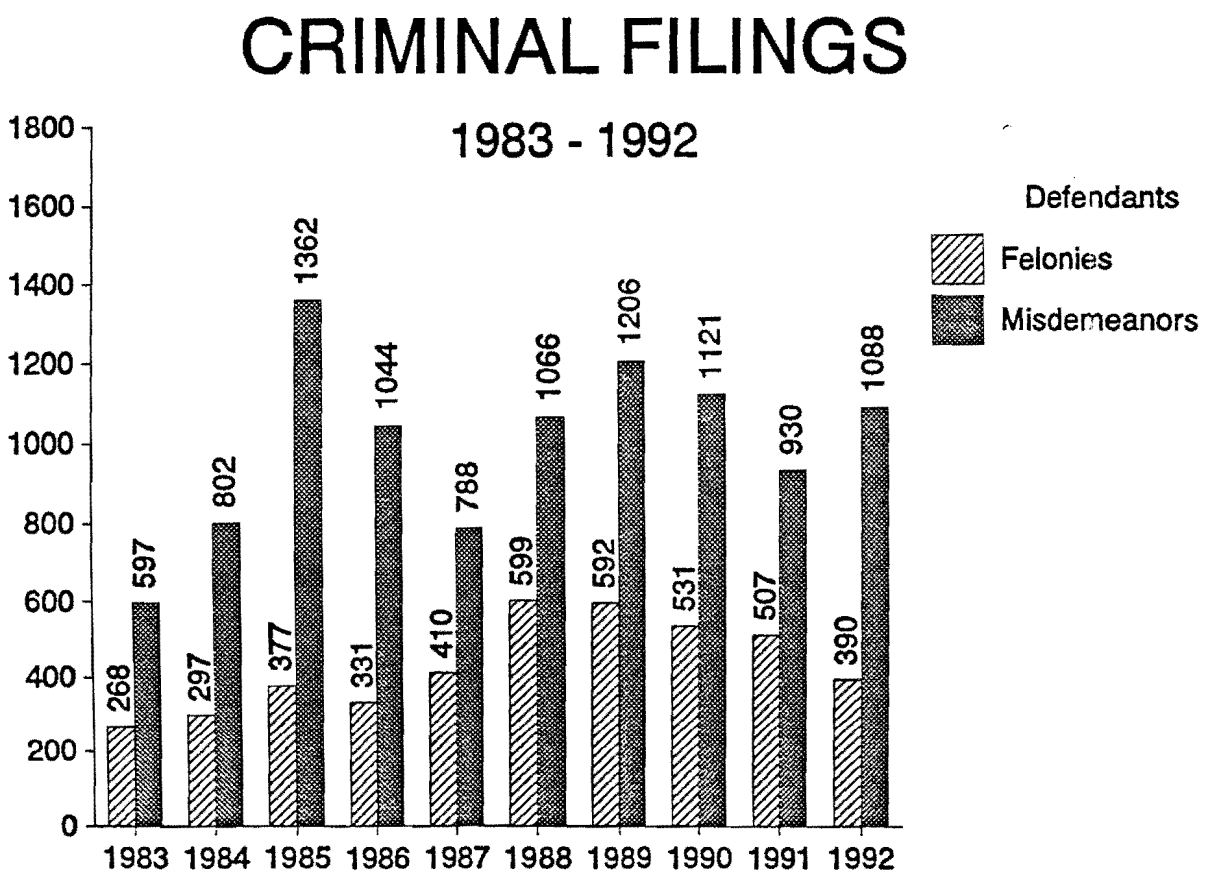
While the student loan cases have steadily declined from a peak in 1985, tort filings in particular have increased. In 1983, there were 316 tort cases filed while in 1992 there were 675 tort cases filed. A change in Washington State law regarding the available remedies for this type of case may be the reason the district has had a steady increase of these cases since 1988.

In addition to tort cases, prisoner litigation and contract cases constitute a substantial portion of the filings in the district. During the ten-year time period of 1983 through 1992 prisoner cases have ranged from a low of 249 cases filed in 1985 to a high of 361 cases filed in 1992. Contract case filings have varied approximately 150 cases during the time period 1983 to 1992, from a high of 491 in 1986 to a low of 356 in 1992. The following graph depicts tort, prisoner, contract and all other non-student loan civil filings in the district from 1983 to 1992.



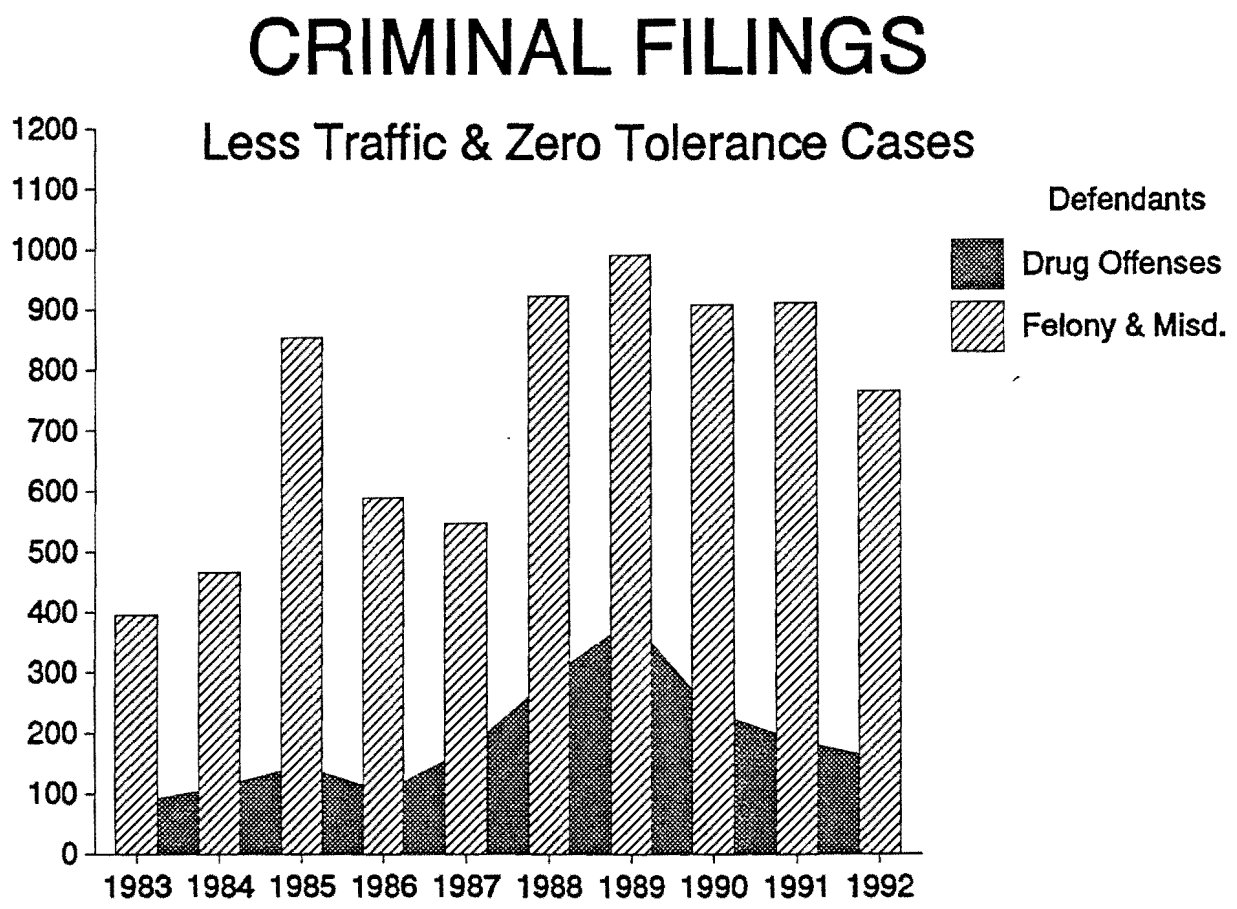
CRIMINAL FILINGS

Total criminal filings (defendants) have risen over 158% from 1983 to 1992 in the Western District of Washington. Felony defendants have increased from 268 in 1983 to 390 in 1992 with a high of 599 defendants charged in 1988. Misdemeanor filings represent the largest number of criminal defendants charged in the district with a low of 597 filings in 1983 to a high of 1362 defendants in 1985.



A portion of the second peak of misdemeanor filings in 1989 can be attributed to the Zero Tolerance drug prosecutions in the district. The Zero Tolerance prosecutions have diminished over the past 3 years resulting in an overall decrease in the criminal misdemeanor caseload of the Western District of Washington. Traffic misdemeanors at the large military

installations located within the boundaries of the district constitutes another significant portion of the misdemeanor caseload.

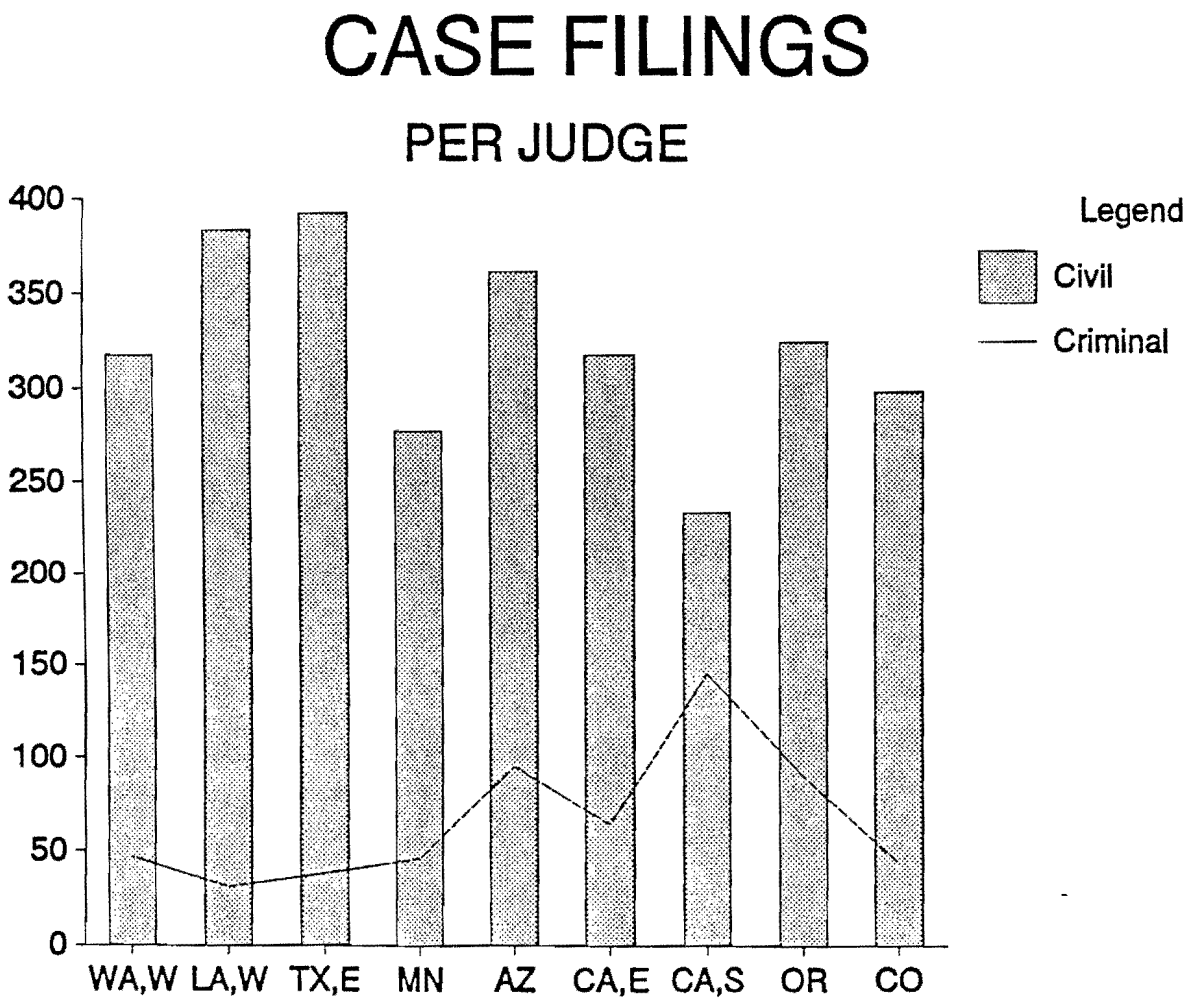


In 1983, 86 defendants were charged with drug offenses. This portion of the caseload continued to rise until 1989, when 540 defendants were charged with drug offenses. The graph above depicts the decrease in drug filings in the past three years with 269 defendants charged with drug offenses in 1992.

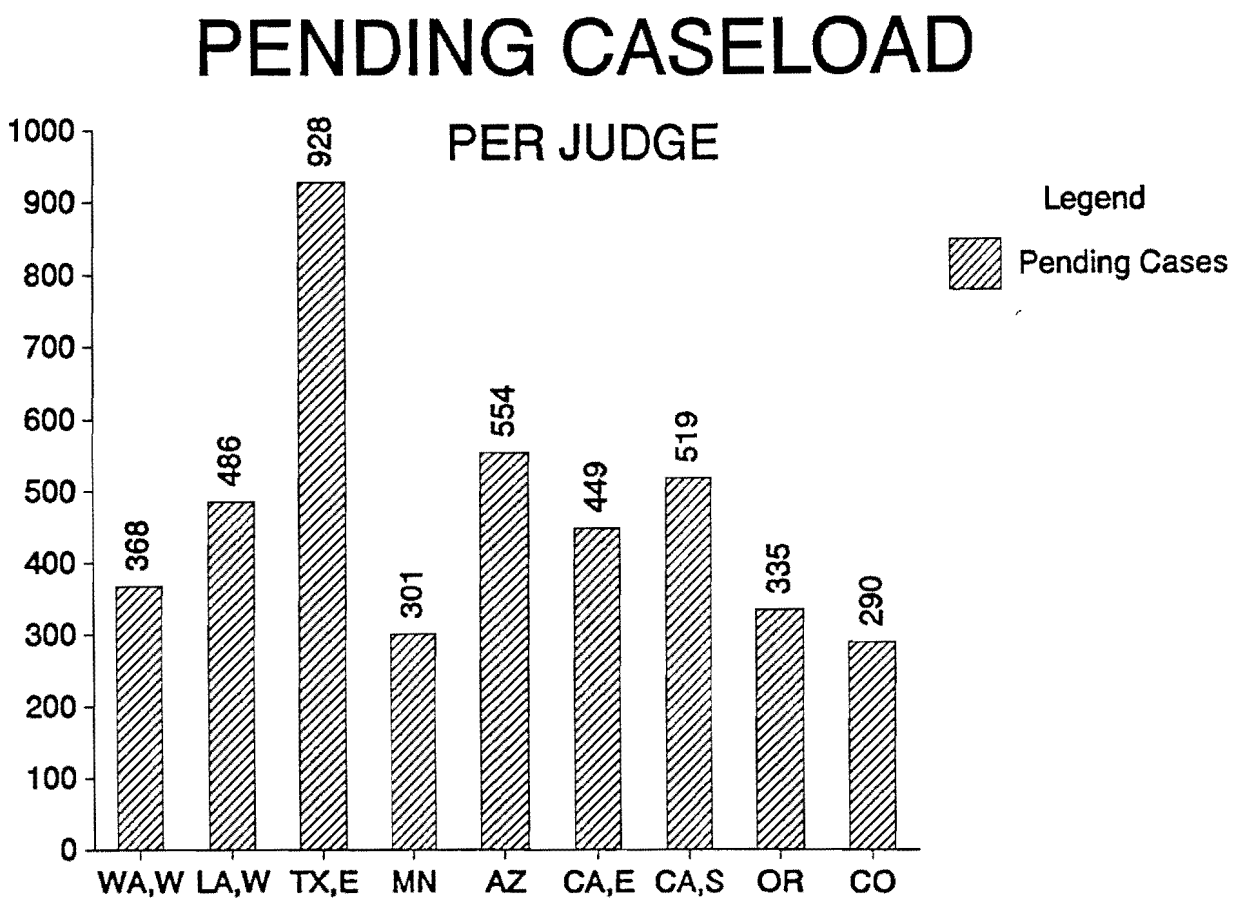
JUDICIAL WORKLOAD PROFILE

To aid in the comparison of our district to other districts, several similar sized courts have been included in the per judge graphs in this section of the report. Statistics in this section are based on the 1991 published statistics from the Administrative Office. The Western District of Washington has received statistics for 1992, however, statistics for other districts was not available for per judge comparisons.

In 1991 on a per judge basis, the Western District of Washington ranked 45th and 44th for civil and criminal filings respectively of the 94 districts in the nation. There were 318 civil filings per judgeship in this district while the national profile was 320 civil filings per judgeship. Criminal felony filings per judgeship in the Western District of Washington was 47 compared to the national profile of 52 filings per judgeship.



This district has fewer pending cases per judge than the national per judge profile. The court ranks 50th in the nation for per judge pending cases and 49th for weighted filings. The following graph illustrates the per judge pending caseload for our district and other similar sized courts.



There are two areas where the Western District of Washington ranks near the top of all the district courts: Filing to Disposition in criminal felonies and the number of civil cases over 3 years old. The median time for filing to disposition of criminal felonies is 4.6 months, ranking the district as 13th in the nation. This number compares with 5.7 months for the national profile.

In 1991 the Western District of Washington had 73 cases which were more than 3 years old, or 3.2% of the entire caseload. The national profile indicates a percentage of civil cases over 3 years old of 11.8%, ranking this district as 18th in the nation for the fewest number of these cases.

The Western District of Washington has a median time from filing to disposition of civil cases of 9 months which is also the national median. The district ranks 34th in the nation for this statistic.

The Federal Judicial Center has taken a different approach to assessing the "delay" or lack of delay in civil litigation in this district. The Center computed a *Life Expectancy* and an *Indexed Average Lifespan (IAL)* for civil cases in statistical years 1982 through 1991. The Life Expectancy is an average age at termination for all cases with an adjustment made for the number of case filings. No adjustment is made for the differing types of cases which constitute the court's caseload. Life Expectancy was calculated to avoid artificial fluctuations caused by filing rates.

Indexed Average Lifespan compares our district's termination rates for particular kinds of cases to all other districts over the past decade. The Center has indexed the IAL at a value of twelve because the Center has determined that the national average for time to disposition is about 12 months.

The IAL on the charts below indicate that the district disposes of cases faster than the average of 12 months. In the chart of Type II cases (the district's cases less student loans, social security and prisoner petitions) the court has terminated cases at a faster rate since 1989 than the national average of 12 months and faster than the life expectancy of the cases.

Chart 5: Life Expectancy and Indexed Average Lifespan, All Civil Cases SY82-91

Western District of Washington

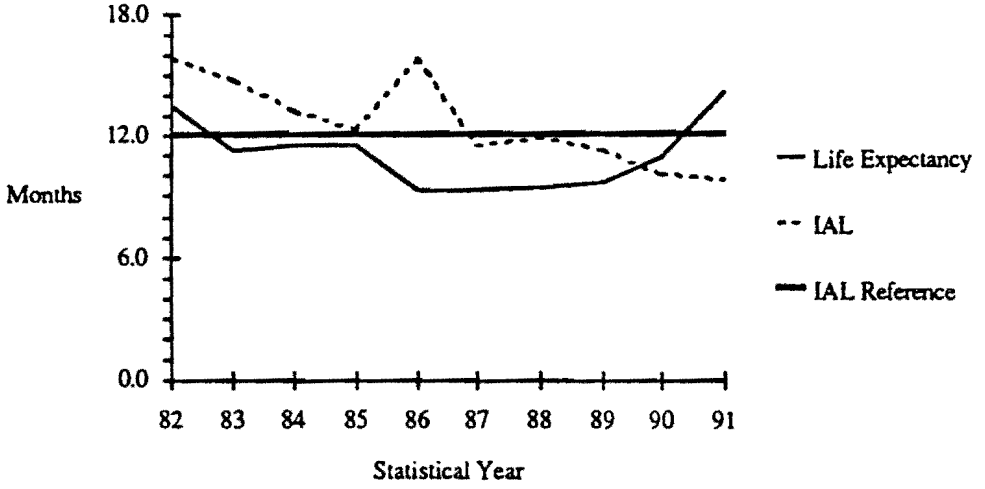


Chart 6 Corrected: Life Expectancy and Indexed Average Lifespan, Type II Civil Cases SY82-91

Western District of Washington

Attorney Survey Subcommittee
Civil Justice Reform Act Advisory Committee
United States District Court
Western District of Washington

Results of the Attorney Survey on the Problems of Delay and Cost in the Western District of Washington

Final Draft
May 25, 1992

The Salisbury Research Group
19817 Sunnyside Drive North, #J-104
Seattle, Washington 98133
206/364-7486

Table of Contents

Executive Summary

The Survey

The objective of the survey is to identify causes and solutions for the problems of delay and cost in federal civil litigation in the Western District of Washington. The survey was conducted among 2,029 attorneys familiar with this court. Four hundred and seventy usable responses were returned.

Attorney Demographics

The attorneys who responded to the survey were an experienced group. They averaged 15.5 years of practice, and over the past five years have handled an average of 13.9 civil cases in this court. Eighty-seven percent of them were in private practice. There was a good balance between attorneys who represent plaintiffs and those who represent defendants.

General Attitudes

Eighty-two percent of the respondents expressed satisfaction with the civil litigation process in the Western District of Washington. Only 13% saw delay as a serious problem in this district, while 42% said that cost was a serious problem.

Main Findings

It appears that most respondents hold their colleagues (not the court) primarily responsible for the problems of avoidable delay and cost in this district. The best solution for these problems, according to the respondents, is the court's management of cases. What the respondents do not appear to support are alternatives that hinder their access to district judges or changes in traditional trial practices. In short, a little more participation by judges in case management, but no drastic changes to the "system" itself.

Causes of the Problem

The process of discovery was viewed by respondents as a primary cause of avoidable delay and cost. Four of the five causes most often identified by respondents concerned this process. Only one of the top five causes dealt the court's management of cases. The causes cited most frequently were:

- Attorneys who seek discovery of insignificant or unnecessary information (48% of respondents).
- Attorneys who use discovery to increase the cost and/or burden of litigation for opponents (47% of respondents).
- Attorneys who unreasonably resist discovery (47% of respondents).
- Delays in rulings on motions (47% of respondents).
- Inadequate management and scheduling of discovery by attorneys (40% of respondents).

Solutions to the Problem

The solutions identified by the respondents mainly dealt with the court's case management practices. The solutions cited most frequently were:

- Expedite rulings on motions that substantially affect future course of proceedings (70% of respondents).
- Make early (and continuing) use of Rule 16 conferences and scheduling orders for the overall scheduling and management of litigation (68% of respondents).
- Establish realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion (61% of respondents).
- Make early (and continuing) use of Rule 16 conferences to narrow and eliminate issues (58% of respondents).
- Establish a procedure for informal court participation in efforts to resolve discovery disputes (e.g., informal chamber conferences) (54% of respondents).

Solutions Not Supported

Of interest are some of the solutions not supported by the respondents. For example, fewer than 30% of the respondents supported any of the proposed solutions that would alter the structure of trials, such as: allocating trial time between parties; establishing in advance the length of the trial or the sequence of issues to be presented at trial; requiring summary testimony; increasing the use of bifurcated trials; or using summary jury trials.

Overview of the Survey

This survey is the first part in a comprehensive analysis to determine if there are problems with delay and cost in the process of civil litigation in the Western District of Washington, and suggest solutions for these problems. This survey is the result of the Civil Justice Reform Act of 1990, which mandates each federal district court to undertake such an analysis and implement changes that will reduce the problems of delay and cost in civil litigation.

This survey is of attorneys who are familiar with civil litigation in the Western District of Washington. It is an attempt to determine what these attorneys see as the causes of delay and cost in this district, and what solutions they would suggest. The results of this survey will help to frame subsequent analysis efforts, which include in-depth interviews with attorneys, court clerks, magistrate judges, and district judges; and a caseload/docket analysis.

The balance of this section provides a brief summary of the relevant aspects of the enabling legislation and the survey's methodology. The discussions here and in the Results section are supplemented by a set of appendices, which consider to a greater extent: survey methodology (Appendix A); the questionnaire (Appendix B); respondent demographics and selected results (Appendix C); and comments made by the respondents (Appendix D).

The Enabling Legislation

The objectives of the survey are framed by the Civil Justice Reform Act of 1990 (Public Law 101-650, 104 STAT. 5089), which identifies the following as important areas for investigation:

- court procedures;
- ways in which litigants and their attorneys approach and conduct litigation;
- systematic, differential treatment of civil cases;
- early and ongoing control of the pretrial process; and
- greater stress on early settlement procedures.

Survey Methodology

The Sample

The survey was conducted among four groups of attorneys familiar with the Western District of Washington: members of the Federal Bar Association, pro hac vice attorneys, conditional government attorneys, and a sample of attorneys in Western Washington who have been exposed to this court. (This last group of attorneys are referred to as "sample attorneys" throughout this report.)

A total of 2,029 surveys were mailed to qualified attorneys, from whom 470 usable responses were received. The response rate, 23.2%, is suitable for identifying causes and solutions for the problems of delay and cost.

A complete discussion of survey methodology is in Appendix A.

The Questionnaire

The questionnaire consists of four main sections: demographics; identification of the existence of problems with delay and cost; identification of the causes of the problems of delay and cost; and identification of solutions to the problems of delay and cost.

To identify the causes and solutions of the problems of delay and cost respondents were offered two sets of statements, one for causes and the other solutions. The respondents were asked to check all statements they felt either contributed to the problems of delay and cost, or served as a solution to these problems.

The questionnaire also asked respondents to make written comments. These comments help to understand the survey's quantitative results.

A copy of the questionnaire is in Appendix B.

Results

The results of the attorney survey are remarkably uniform. Very few significant differences are observed among the attorney groups sampled, none of which point to systematic differences among these groups. Because of the similarity among attorney groups, the results presented here make no distinction on this level. (Appendix A contains a discussion of this decision.)

Causes of the Problems of Delay and Cost

Is There a Problem with Delay and Cost?

The first step is to determine whether the respondents believe there to be problems with delay and cost in the Western District of Washington. To set this framework the respondents were asked whether they agreed or disagreed with these three statements:

- Overall, the process of civil litigation works well in the Western District of Washington.
- Delay is a serious problem in civil litigation in the Western District of Washington.
- Cost is a serious problem in civil litigation in the Western District of Washington.

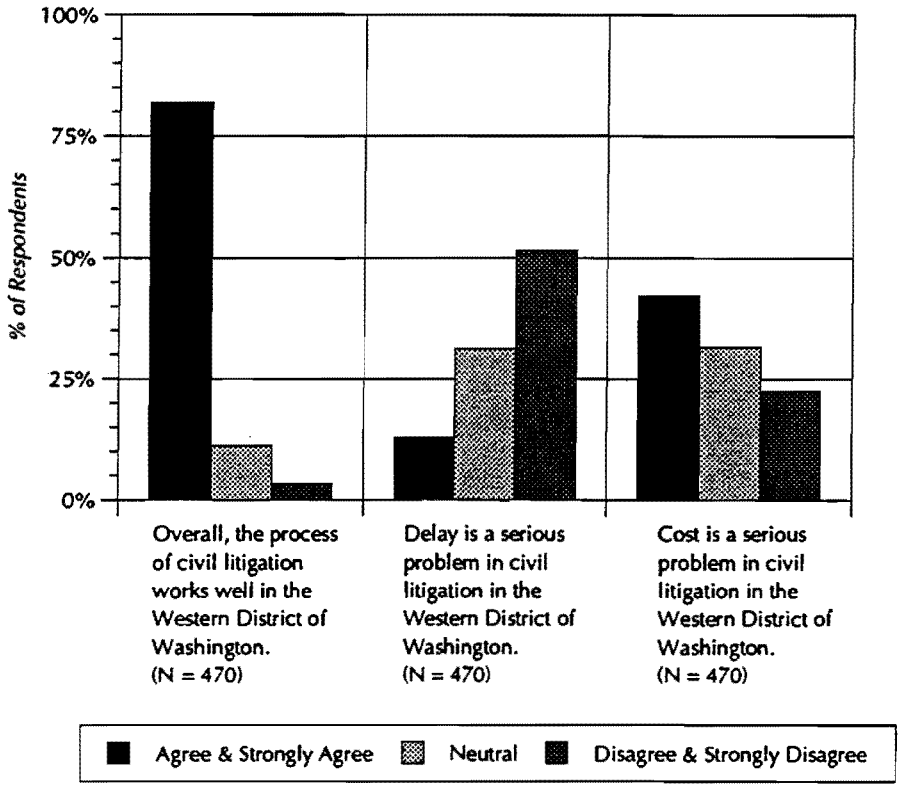
Agreement was measured on a five-point scale ranging from strongly agree to strongly disagree.

Overall, the respondents said that the process of civil litigation in the Western District of Washington works well. Eighty-two percent of them agreed or strongly agreed with this statement (see Figure 1, next page). As for problems with delay and cost, the respondents disagreed that delay is a significant problem, but agreed that cost is. Just 12.6% of the respondents agreed or strongly agreed with the statement that delay is a problem in the Western District of Washington, while 52.6% disagreed or strongly disagreed with it. Forty-two percent of the respondents agreed or strongly agreed with the statement that cost is a serious problem, with 23.4% disagreeing or strongly disagreeing.

The patterns of agreement and disagreement on all three statements are consistent across the attorney groups included in the survey, except for the statement on cost. Local attorneys were stronger in their agreement that cost is

a serious problem then were pro hac vice and conditional government attorneys, who tended to take a neutral stance on this statement. This result may point toward a difference in attorney group perspective. Pro hac vice and conditional government attorneys are more likely to practice in other courts. Thus, they bring with them a broader perspective on cost than do the respondents who mainly practice in the Western District of Washington. While costs may seem high to attorneys who usually practice in this district, attorneys with exposure to other districts do not to see costs here as extraordinary.

Figure 1 Are There Problems With Delay and Cost in the Western District of Washington?



What are the Causes of Delay and Cost?

Respondents were asked to review thirty possible causes of delay and cost and check those they felt were responsible for these problems. The causes were divided into four groups: overall management and scheduling of litigation (5 items), discovery (11 items), settlement (4 items), and miscellaneous (10 items). (See Appendix B for a complete set of the response items presented to the

respondents.) Respondents were asked to check those they felt contribute to delay and cost.

Table 1 The Top Five Causes for Delay and Cost in the Western District of Washington.

Cause of Delay and Cost	Group	Number of Respondents	Percent of Respondents
Attorneys who seek discovery of insignificant or unnecessary information.	Discovery	226	48.1%
Attorneys who use discovery to increase the cost and/or burden of litigation for opponents.	Discovery	223	47.4%
Attorneys who unreasonably resist discovery.	Discovery	222	47.2%
Delays in rulings on motions.	Management	222	47.2%
Inadequate management and scheduling of discovery by attorneys.	Discovery	190	40.4%

Number of Respondents = 470

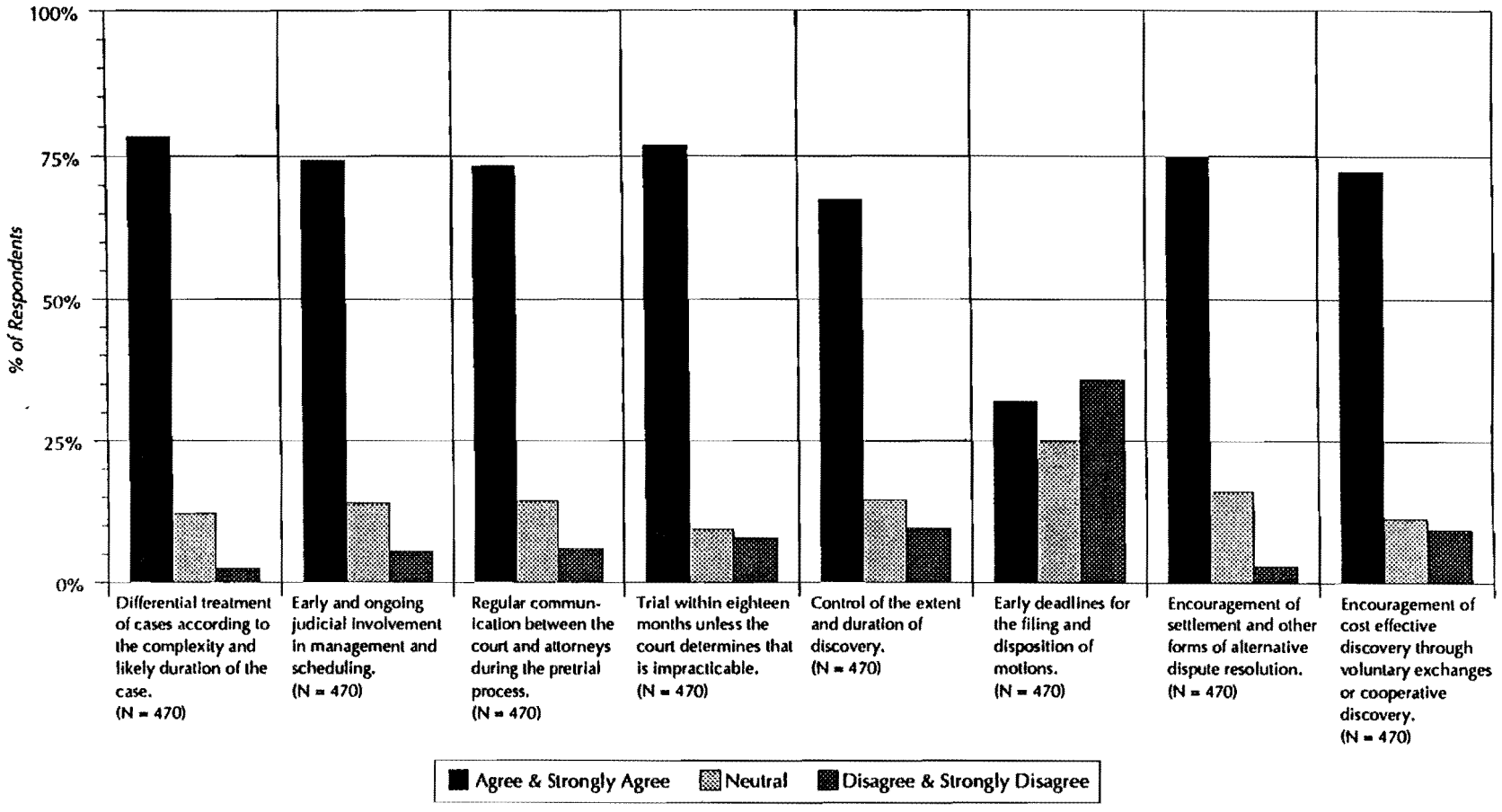
Four of the top five causes pertain to the process of discovery (see Table 1). Furthermore, four of the top five causes checked by the respondents point to attorneys as largely responsible for discovery's contribution to the problems of delay and cost. (A complete set of responses for the causes to the problems of delay and cost are in Appendix C.)

The remaining top-five cause of delay and cost is the only one that relates solely to case management by the court: delays in rulings on motions. This statement was checked by 47.2% of the respondents. However, the impact of delayed rulings may not apply uniformly to all motions. Comments suggest that delayed rulings on dispositive motions are more of a problem, and that delays on these motions have a greater bearing on cost than they do on delay.

Solutions to the Problems of Delay and Cost

Possible solutions to the problems of delay and cost were presented to the respondents in two parts. First, there was a list of eight general solutions suggested by the enabling legislation. Second, there were forty-six specific solutions that were presented in five groups. (Refer to Appendix B for a complete listing of both solution sets.) Each set of solutions is considered in turn.

Figure 2 General Solutions to the Problems of Delay and Cost in the Western District of Washington.



General Solutions

The eight general solutions suggested by the enabling legislation were presented to the respondents for their agreement or disagreement. This was measured on a five-point scale ranging from strongly agree to strongly disagree. The general solutions were:

- Differential treatment of cases (i.e., managing and scheduling cases differently) according to the complexity and likely duration of the case.
- Early and ongoing judicial involvement in management and scheduling.
- Regular communication between the court and attorneys during the pretrial process.
- Trial within eighteen months unless court determines that is impracticable.
- Control of the extent and duration of discovery.
- Early deadlines for the filing and disposition of motions.
- Encouragement of settlement and other forms of alternative dispute resolution.
- Encouragement of cost effective discovery through voluntary exchanges or cooperative discovery.

Respondents' agreement with seven of the eight solutions was high. Six of the eight solutions had agreement rates better than 70%, and a seventh trailed close behind at 67% (see Figure 2). On just one general solution did the respondents vary: early deadlines for the filing and disposition of motions. Thirty-two percent of the respondents agreed or strongly agreed with this solution, while 35.8% disagreed or strongly disagreed with it.

Specific Solutions

Respondents were offered forty-six possible solutions to the problems of delay and cost. These solutions were divided into five groups: overall management and scheduling of litigation (10 items); discovery (19 items); settlement (3 items); trial (6 items); and miscellaneous (8 items). The respondents were asked to check those they felt would help solve the problems of delay and cost.

The top five solutions for the problems of delay and cost look to the court for relief. The top five ranked solutions were chosen by persuasive margins, having been selected by 70% to 55% of the respondents (see Table 2). This is a higher level of agreement than seen for causes. (A complete set of responses for the solutions to the problems of delay and cost are in Appendix C.)

Recall that four of the top five causes of delay and cost concerned the conduct of attorneys, while only one concerned the court. The solutions, however, place

more emphasis on greater judicial involvement throughout the course of proceedings. A clear majority of respondents place as much emphasis on the court's role and involvement in litigation as on the conduct of attorneys. Indeed, the top-ranked solution—identified by 70% of the respondents—rests exclusively with the court: expedite rulings on motions that substantially affect the future course of the proceedings. The remaining top five solutions require greater efforts by both the court and attorneys to improve the overall process by which litigation is scheduled and managed from start to finish.

Table 2 **The Top Five Specific Solutions for the Problems of Delay and Cost in the Western District of Washington.**

Solution for Delay and Cost	Group	Number of Respondents	Percent of Respondents
Expedite rulings on motions that substantially affect future course of proceedings.	Management	329	70.0%
Make early (and continuing) use of Rule 16 conferences and scheduling orders for the overall scheduling and management of litigation.	Management	320	68.1%
Establish realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion.	Management	288	61.3%
Make early (and continuing) use of Rule 16 conferences to narrow and eliminate issues.	Management	273	58.1%
Establish a procedure for informal court participation in efforts to resolve discovery disputes.	Discovery	256	54.5%

Number of Respondents = 470

Generalizations Based on Demographic Characteristics

The uniformity of the responses to this survey is surprising. It was expected that differences among attorneys with different practices or perspectives would emerge, but this is not the case. There are differences, to be sure, but most of these differences are not significant in a statistical sense. And those that are significant do not point to systematic differences among attorney groups. (See Appendix A for a discussion of this point.)

One noticeable division that does exist, and it is slight, is between attorneys who generally represent plaintiffs and those who generally represent defendants. This difference is a matter of degree, and is apparent in the identification of causes and solutions to the problems of delay and cost. For problems, plaintiffs' attorneys place greater emphasis on attorneys who use

discovery to increase the cost and/or burden of litigation; and who prolong or complicate cases to maximize billings. Defendants' attorneys, on the other hand, place greater emphasis on delays in rulings on motions; attorneys who seek discovery of insignificant or unnecessary information; and the inadequate management and scheduling of discovery by attorneys (see Table 3).

Table 3 The Top Causes and Solutions for Attorneys Who Usually Represent Plaintiffs, Who Usually Represent Defendants, and Who Usually Represent Both

		Attorney Group Rankings		
		Attorneys Who Usually Represent Plaintiffs	Attorneys Who Represent Both About Equally	Attorneys Who Usually Represent Defendants
Top Ranked Causes: (For All Respondents, N = 470)				
Rank	Cause			
1	Attorneys who seek discovery of insignificant or unnecessary information. (48.1%)	4 (42.7%)	1 (53.1%)	2 (46.3%)
2	Attorneys who use discovery to increase the cost and/or burden of litigation for opponents. (47.4%)	1 (59.1%)	3 (48.6%)	5 (39.0%)
3t	Delays in rulings on motions. (47.2%)	5 (39.1%)	4 (45.8%)	1 (53.7%)
3t	Attorneys who unreasonably resist discovery. (47.2%)	3 (50.9%)	2 (51.4%)	3 (41.2%)
5	Inadequate management and scheduling of discovery by attorneys. (40.4%)	7 (33.6%)	5 (44.1%)	4 (40.7%)
8	Attorneys who prolong and/or complicate cases to maximize billings.	2 (51.8%)	9 (38.5%)	15 (20.9%)
Top Ranked Solutions: (For All Respondents, N = 470)				
Rank	Solution			
1	Expedite rulings on motions that substantially affect future course of proceedings. (70.0%)	2 (63.6%)	2 (68.2%)	1 (75.7%)
2	Make early (and continuing) use of Rule 16 conferences and scheduling orders for the overall scheduling and management of litigation. (68.1%)	1 (69.1%)	1 (68.7%)	2 (66.1%)
3	Establish realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion. (61.3%)	6 (55.5%)	3 (65.4%)	3 (61.0%)
4	Make early (and continuing) use of Rule 16 conferences to narrow and eliminate issues. (58.1%)	3 (60.0%)	4 (59.8%)	4 (55.4%)
5	Establish a procedure for informal court participation in efforts to resolve discovery disputes. (54.5%)	5 (57.3%)	5 (57.5%)	6 (49.7%)
6	Establish procedures for different categories of cases according to the management and scheduling complexities presented. (48.1%)	11 (41.8%)	6 (49.2%)	5 (50.8%)
9	Establish a procedure for the informal exchange of information. (45.1%)	4 (59.1%)	9 (44.1%)	12 (37.3%)
	N =	110	179	177

Regarding the solutions for delay and cost, plaintiffs' attorneys placed greater emphasis upon the informal exchange of information while defendants' attorneys place greater emphasis on establishing realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion; and on establishing procedures for different categories of cases according to the management and scheduling complexities they present.

This outcome reflects different sides to the same issue: access to information; and it is consistent with an adversarial advocacy process. Attorneys for plaintiffs and defendants appear to be seeking better structure for the process of information exchange. The court's case management capability is identified as the device for imposing this structure.

Respondents' Comments

Respondents were encouraged to add comments at several points in the questionnaire. Respondents obliged, providing 1,056 comments, or 2.4 comments per respondent. Better than 70% of the respondents offered at least one comment.

Most of the comments made came toward the beginning of the questionnaire, with the bulk accompanying Questions 9 and 10, which consider in general the existence and causes of the problems of delay and cost (see Figure 3). The fall-off observed for later questions is not due to the respondents' lack of interest, but rather the completeness of the comments they make early in the questionnaire. Respondents tended to cover both causes and solutions in these early comments.

General Trends Among Comments

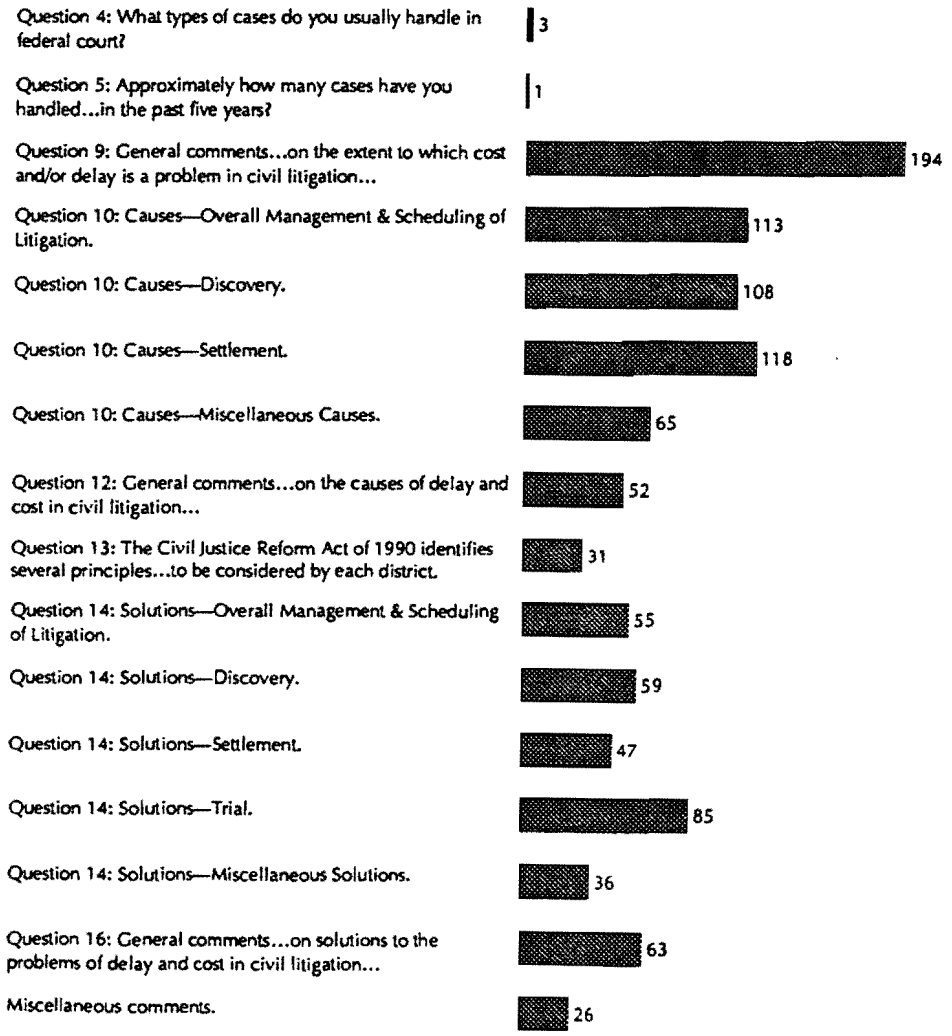
The respondents' comments are supportive of the quantitative results reported here. The comments reflect a high degree of satisfaction with the conduct of civil litigation in the Western District of Washington. They also impart a strong sense that delay is not a serious problem, but that cost is a problem—part of which is unavoidable.

The comments are particularly helpful in identifying specific solutions to the problems of delay and cost, as many of them come from personal experiences and observations. Predominant solutions seen among the comments include:

- Increase the use of magistrate judges for management of discovery and settlement.

- Increase the use of Local Rule 39.1 mediators for settlement negotiations; but make them more effective through training and/or pay.
- Early court involvement in the overall management of litigation.
- Informal access to the court for various disputes and guidance (e.g., telephone conferences).
- More careful scheduling of trials; minimizing last minute continuances; avoid unrealistic schedules.
- Prompt rulings on motions that significantly affect the future course of proceedings to eliminate the unnecessary work that results.
- Judges and clerks adopting uniform procedures to eliminate the judge-to-judge and clerk-to-clerk variations in requirements and procedures.

Figure 3 The Number of Respondents' Comments per Question



Number of Respondents = 470

The comments suggest that respondents are interested and willing to pursue change in the pretrial aspects of civil litigation. However, they share no such interest in changing the process of civil litigation past this point. Once a case is beyond the discovery process the respondents feel quite strongly that they should be allowed to pursue their case with little interference or restriction. They also feel that their case should be handled by, and presented to, a district judge, rather than a magistrate judge or special master (see Table 4).

Table 4 The Five Least Frequently Identified Solutions to the Problems of Delay and Cost in the Western District of Washington

Cause	Group	Number of Respondents	Percent of Respondents
Encourage litigants to use magistrate judges to try civil cases.	Management	76	16.2%
Implement summary jury trials as a means of facilitating settlements.	Settlement	72	15.3%
Increase use of protective orders.	Discovery	51	10.9%
Reduce the scope of diversity jurisdiction.	Misc.	45	9.6%
Require summary testimony, with live examination limited to cross examination.	Trial	45	9.6%

Conclusion

The results of the survey of attorneys familiar with civil litigation in the Western District of Washington are surprisingly uniform and unambiguous. The respondents were generally satisfied with the process of civil litigation in the district, and they saw no major problems with delay. They did view cost as a significant problem. Cost, however, was not considered to be uncontrollable.

Interestingly, respondents blamed themselves and their colleagues for the problems with cost. Many respondents pointed to unreasonable requests for information, or unreasonable delays in producing information, as prime trouble spots. Some respondents also added that the process of discovery was abused by some attorneys who used it to seek advantage over another party or to inflate their billings. Cost control, therefore, can best be achieved in the pretrial phases of civil litigation, particularly in the process of discovery.

The respondents turned to the court for help in solving these problems. They recommended the court's informal involvement in this process, through its case management practices, to make clear attorneys' obligations and responsibilities, and to see that these were met. The respondents also asked that the court make itself available for the informal resolution of discovery disputes, and to expedite motions that have a significant bearing on future proceedings. To accommodate increased court involvement, the respondents suggested a greater role be played by magistrate judges, but largely for overseeing the process of discovery.

Respondents also encouraged strengthening the settlement process. They generally agreed that the current settlement process (defined by Local Rule 39.1) is sufficient for this purpose, but they felt that the quality of mediators needs to be improved. The two most often mentioned means of improvement were increased training for mediators, and paying mediators for their service.

Although the respondents favored changes to the pretrial phases of civil litigation, they were inflexible when it came to changes at the trial phase. Should a case reach this point respondents felt that attorneys should not be unduly restricted in the presentation of their case or their defense.

Appendix A: Survey Methodology

The Questionnaire

The questionnaire is designed to uncover general trends relating to the problems of delay and cost: e.g., do these problems do exist; what are the causes of the problems; and what are the solutions to the problems. The questionnaire consists of four sections:

Section	Contents
1	*Respondent's Background* Demographic information on respondents, including years practicing law; nature of practice; types of cases handled; and number of cases handled.
2	*Existence and Nature of the Problem* Three questions that determine the presence of problems with delay and cost.
3	*Causes of the Problem* Thirty fixed response items that may be responsible for delay and cost. These items are grouped by topic: management, discovery, settlement, and miscellaneous.
4	*Solutions to the Problem* This section has two parts: 1) a general part that solicits agreement or disagreement with eight solutions specified in the enabling legislation; and 2) forty-six fixed response items that may provide solutions to the problems of delay and cost. As in section three, the items are grouped by topic: management, discovery, settlement, trial, and miscellaneous. (Note: a trial subsection appears only in this section.)

The questions in the second section and the first eight questions in the fourth section ask for responses on a five-point scale. This scale ranges from strongly agree to strongly disagree. (Neutral serves as this scale's mid-point.) The remaining questions are statements that the respondent is to check if he or she agrees that it is a cause or a solution to the problems of delay and cost. Respondents are also asked to review the items they check as causes and solutions and circle no more than five from each section which they believe to be the most important.

The questionnaire encourages written comments. Each section, except for demographics, provides opportunities for comments after each set of questions or subsection of statements.

The questionnaire is reproduced in Appendix B.

Problems With the Design

The questions for the last three sections make no distinction between delay and cost. As a result it is not possible to state whether a particular answer or response refers to delay or cost. However, the results for the questions in the second section, coupled with respondents' comments, permit the inference that cost is the respondents' primary concern. Therefore, it can be assumed that the responses in the third and fourth sections are directed more toward the problem of cost than they are toward the problem of delay.

Another shortcoming of the design is the absence of trial related causes for the problems of delay and cost. This oversight has little bearing on the final results, given the dominance of pretrial responses for both causes and solutions.

Subjects

The respondents for this survey are attorneys who have practiced in the Western District of Washington. Four groups of attorneys are included: Federal Bar Association attorneys; local attorneys not members of the Federal Bar Association who have appeared in the Western District (these attorneys are referred to as "sample" attorneys throughout the report); pro hac vice attorneys; and conditional government attorneys.

Pro hac vice and conditional government attorneys are included for the different perspective they can add to the causes and solutions to delay and cost. The service of these two groups of attorneys in other courts permits them to make a comparative assessment of the Western District of Washington with other federal district and/or state courts. (Comments made by respondents from these two attorney groups bear out this assumption.)

Sampling and Response Rates

Sampling Framework

All members of the Federal Bar Association qualify for inclusion in the survey sample. Members of the remaining three attorney groups must meet the

qualifications for group membership, and must have tried at least one civil case in the Western District of Washington during the last three years. The sampling framework is presented in Table 5.

Table 5 The Survey's Sampling Framework

Attorney Group	Requirement for Inclusion	Number
Federal Bar Association	All members.	568
Sample Attorneys	Must have been linked to at least one civil case in the last three years.	3,402
Pro Hac Vice Attorneys	Must have been linked to at least one civil case in the last three years.	752
Conditional Government Attorneys	Must have been granted conditional status and linked to at least one civil case in the last three years.	142

All attorneys in each group, except for the sample attorneys, were mailed a questionnaire. Because of their number only 567 sample attorneys, or one in six, was randomly selected to receive a questionnaire.

Response Rates

The surveys were mailed to respondents in September, 1991. The cover letter specified no return date, but only those surveys received by December 1st were used for analysis.

Table 6 Survey Response Rates†

		Surveys—		Response
Attorney Group	Population	Mailed	Received	Rate
Federal Bar Association	568	568	221	38.9%
Sample Attorneys	3,402	567	114	20.1%
Pro Hac Vice Attorneys	752	752	102	13.6%
Conditional Government Attorneys	142	142	33	23.2%
Total	4,864	2,029	470	23.2%

†These response rates include all surveys returned through December 1, 1991.

The overall response rate is 23.2% (see Table 6). The highest level of response is from the Federal Bar Association (38.9%). The second highest level is for conditional government attorneys (23.2%), followed closely by the sample

attorneys (20.1%). The lowest return rate is for pro hac vice attorneys (13.6%). The lower response rates for these last three groups is expected. These attorneys are not as closely linked to this court, and therefore have less incentive to complete and return the questionnaire.

The overall response rate falls easily within the range expected for a mail survey with no follow-up. In general, no more than a 50% response rate can be expected under these circumstances. However, two factors work to reduce the response rate: the length of the questionnaire, and the salience of the topic for the respondents. Long questionnaires are less likely to be answered because of the time needed to complete them. A nonsalient questionnaire offers no incentive to complete and return. The low response rates for groups other than the Federal Bar Association, which are less closely linked to practice in the Western District of Washington, demonstrate the impact of these factors.

Another factor that may have negatively impacted the return rate is the absence of a due date on the questionnaire. While very few questionnaires were being returned by the December cut-off date, a clearly specified due date may have produced a slightly higher return rate.

The response rate is sufficient to carry out the primary purpose of this study—which is to identify general causes and solutions to the problems of delay and cost. In addition, the uniformity of responses suggests that addition of more respondents would not produce results materially differ from those observed here.

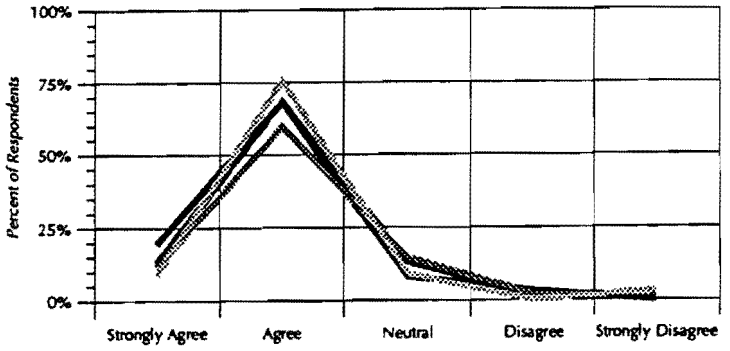
Attorney Group Differences

The survey made a specific effort to include attorneys with varying perspectives on the process of civil litigation in the Western District of Washington. In particular, attorneys with outside perspectives, such as pro hac vice attorneys, conditional government attorneys, and attorneys not members of the Federal Bar Association, are included in the sampling framework. However, the results for attorney groups are so similar that differences among attorney groups are dropped from the analysis presented in this report.

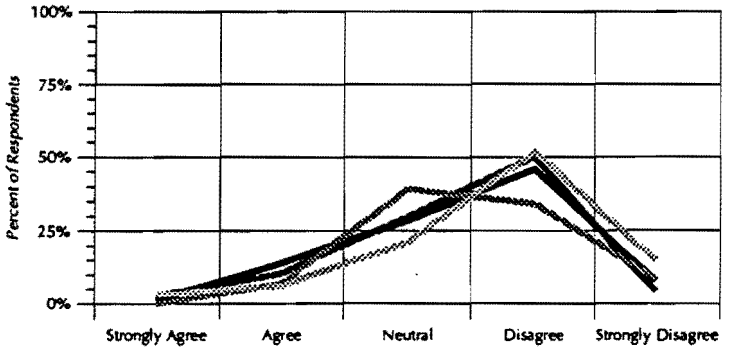
This is not to say that no differences exist among attorney groups. Rather, it means that few statistically significant differences exist, and those that do exist do not point to any systematic differences among the groups. For example, the responses by attorneys groups for the questions that identify the presence of a problem with delay and cost show little difference among these groups (see Figure 4).

Figure 4 Differences Among Attorney Groups for the Questions Identifying the Presence of Problems with Delay and Cost

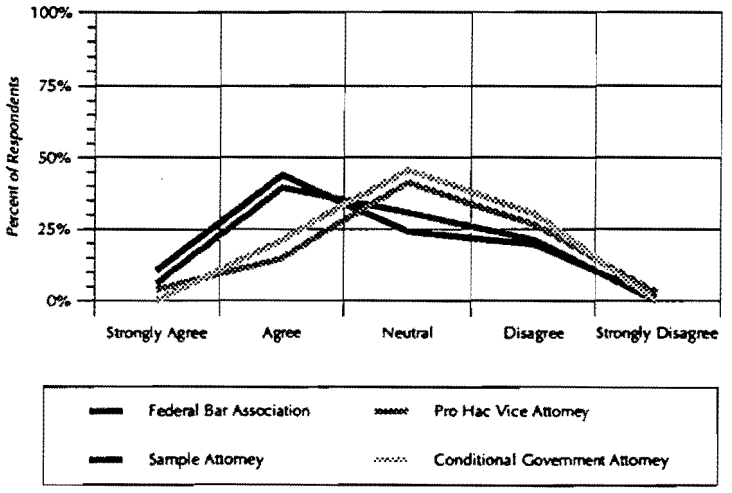
Overall, the process of civil litigation works well in the Western District of Washington.



Delay is a serious problem in civil litigation in the Western District of Washington



Cost is a serious problem in civil litigation in the Western District of Washington



Appendix B: Survey Questionnaire

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE
Western District of Washington

QUESTIONNAIRE ON COST AND DELAY
IN THE U. S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Section I
RESPONDENT'S BACKGROUND

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

2. What is the nature of your practice?

__ Private Practice
__ Government Practice
__ In-House Corporate Practice
__ Other: _____

3. Do you represent plaintiffs or defendants?

__ Usually plaintiffs
__ Both about equally
__ Usually defendants

4. 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
__ Mass Torts
__ Personal Injury
__ Real Property/Condemnation
__ RICO
__ Securities/Commodities
__ Social Security
__ Tax
__ Other: _____

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

Section II
EXISTENCE AND NATURE OF PROBLEM

6. Overall, the process of civil litigation works well in the Western District of Washington.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

7. Delay is a serious problem in civil litigation in the Western District of Washington.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

8. Cost is a serious problem in civil litigation in the Western District of Washington.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

9. General comments (optional) on the extent to which cost and/or delay is a problem in civil litigation in the Western District of Washington. If you have experience in other federal districts, a comparison of the extent of cost and/or delay in those districts to that in the Western District of Washington would be helpful. (Please attach additional sheets if needed.)

_____

_____

_____

Section III
CAUSES OF THE PROBLEM

10. Listed below (under general subject matter headings) are various causes of delay and cost in civil litigation. Please check those that you believe contribute significantly to unnecessary delay and cost in the Western District of Washington. You may check as many as you believe are applicable.

Overall Management & Scheduling of Litigation

__ Inadequate management and scheduling of cases by attorneys.

__ Inadequate management and scheduling of cases by judges.

__ Failure to establish realistic schedules (including trial dates) by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion.

__ Delays in rulings on motions.

__ Delays in getting trial dates once cases are ready for trial.

Comments (optional) on these and/or other management and scheduling related causes of cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Discovery

__ Inadequate management and scheduling of discovery by attorneys.

__ Inadequate management and scheduling of discovery by judges.

__ Attorneys who seek discovery of insignificant or unnecessary information.

__ Attorneys who use discovery to increase the cost and/or burden of litigation for opponents.

__ Attorneys who unreasonably resist discovery.

__ Attorneys' failure to resolve discovery disputes without judicial involvement.

__ Inefficient deposition practices by attorneys.

__ Disruptive conduct by attorneys during depositions (e.g., excessive colloquy, objections and/or coaching of witnesses).

__ Excessive use of interrogatories.

__ Excessive use of requests for production.

__ Excessive number and/or duration of depositions.

Comments (optional) on these and/or other discovery related causes of cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Settlement

__ Inadequacies of Local Rule 39.1 settlement procedures.

__ Insufficient use of/emphasis upon early settlement/mediation/alternative dispute resolution proceedings.

__ Insufficient use of/emphasis upon settlement/mediation/alternative dispute resolution proceedings throughout later stages of litigation.

__ Insufficient use of bifurcated trials to facilitate settlements.

Comments (optional) on these and/or other settlement related causes of cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Miscellaneous Causes

__ Increasing complexity of civil litigation generally.

__ Inexperienced or incompetent attorneys.

__ Shortage of judges.

__ Attorneys who prolong and/or complicate cases to maximize billings.

__ Attorneys/clients who use more lawyers than are reasonably necessary.

__ Attorneys who abuse (i.e., invoke without reasonable cause or justification) Rule 11.

__ Attorneys who take actions out of fear of malpractice suits.

__ Corporate counsel who defer too much to their outside attorneys.

__ Insufficient use of magistrate judges and special masters for scheduling and management of litigation (including discovery and settlement/mediation/alternative dispute resolution).

__ Criminal cases being given priority over civil cases (Speedy Trial Act/Sentencing Guidelines).

Comments (Optional) on these and/or other (please describe) causes of cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

11. Please review the causes that you checked above and circle the checks by no more than five of those which you consider the major causes of delay and cost in civil litigation in the Western District of Washington.

12. General comments (optional) on the causes of delay and cost in civil litigation in the Western District of Washington. (Please attach additional sheets if needed.)

_____

_____

_____

Section IV
SOLUTIONS TO PROBLEM

13. The Civil Justice Reform Act of 1990 identifies several principles of effective litigation management and cost and delay reduction to be considered by each district. The principles are listed below. Please indicate whether you believe increased use of these principles are effective ways to manage litigation and reduce cost and delay in this District.

Differential treatment of cases (i.e., managing and scheduling cases differently) according to the complexity and likely duration of the case.

__ Strongly Agree __ Agree __ Neutral __ Disagree __ Strongly Disagree

Early and ongoing judicial involvement in management and scheduling.

__ Strongly Agree __ Agree __ Neutral __ Disagree __ Strongly Disagree

Regular communication between the court and attorneys during the pretrial process.

__ Strongly Agree __ Agree __ Neutral __ Disagree __ Strongly Disagree

Trial within eighteen months unless court determines that is impracticable.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

Control of the extent and duration of discovery.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

Early deadlines for the filing and disposition of motions.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

Encouragement of settlement and other forms of alternative dispute resolution.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

Encouragement of cost effective discovery through voluntary exchanges or cooperative discovery.

Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
__	__	__	__	__

14. Listed below (under general subject matter headings) are a variety of possible solutions to the problems of delay and cost in civil litigation. Please check those which you believe would contribute significantly to the reduction of delay and cost in the Western District of Washington. You may check as many as you believe are applicable.

Overall Management & Scheduling of Litigation

__ Make early (and continuing) use of Rule 16 conferences and scheduling orders for the overall scheduling and management of litigation.

__ Make early (and continuing) use of Rule 16 conferences to narrow and eliminate issues.

__ Establish realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion.

__ Refer cases to magistrate judges or special masters for scheduling and management.

__ Develop a uniform "check list" of matters to be considered by judges and attorneys in scheduling and managing litigation.

__ Establish procedures for different categories of cases according to the management and scheduling complexities presented.

__ Use sanctions to penalize attorneys' failure to manage and schedule litigation.

__ Increase use of bifurcated trials (e.g., liability/damages).

__ Expedite rulings on motions that substantially affect future course of proceedings.

__ Encourage litigants to use magistrate judges to try civil cases.

Comments (optional) on these and/or other innovative techniques or procedures related to management and scheduling to minimize cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Discovery

___ More initiative by attorneys to use conferences and scheduling orders under Rules 16 & 26 to schedule, manage and control discovery.

___ Require attorneys to submit a proposed discovery plan in advance of an early discovery conference under Rules 16 & 26.

___ More initiative by judges to use conferences and scheduling orders under Rules 16 & 26 to schedule, manage and control discovery.

___ Increase judicial involvement in and control over the scheduling and management of discovery.

___ Develop a uniform "check list" of matters to be considered by judges and attorneys in scheduling and managing discovery.

___ Increase the use of magistrate judges and special masters to manage and schedule discovery.

___ Conduct bifurcated or phased (in seriatim) discovery in certain categories of cases (e.g., liability/damages; stages of discovery limited to specific issues/claims/parties).

___ Limit and/or otherwise control the use of interrogatories, requests for production and depositions.

___ Condition discovery beyond a certain point on a showing of "reasonable need."

___ Monitor use of different discovery methods to assure they are used in the most effective, economic, expeditious and/or practicable manner under the circumstances.

___ Establish a procedure for the informal exchange of information.

___ Increase use of protective orders.

___ Use sanctions to penalize attorneys who unreasonably use or resist discovery.

___ Use sanctions to penalize disruptive deposition practices by attorneys (e.g., excessive colloquy, objections and/or coaching of witnesses).

___ Use magistrate judges and special masters to preside over depositions in certain cases/circumstances.

___ Use sanctions to penalize attorneys' failure to diligently and earnestly negotiate discovery disputes among themselves.

___ Establish a procedure for informal court participation in efforts to resolve discovery disputes (e.g, informal chambers conferences).

___ Grant judges discretion under certain circumstances to impose some or all discovery costs on the requesting party.

___ Amend Rule 26(b) to limit the scope of discovery to matters relevant to the claims or defenses of the parties rather than the subject matter of the action.

Comments (optional) on these and/or other innovative techniques or procedures related to discovery to minimize cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Settlement

___ Increase the use of Rule 16 and Local Rule 39.1 to conduct or facilitate settlement/mediation/alternative dispute resolution efforts at every appropriate stage of the litigation.

___ Implement summary jury trials as a means of facilitating settlements.

___ Increase the use of bifurcated trials as a means of facilitating settlements.

Comments (optional) on these and/or other innovative techniques or procedures related to settlement to minimize cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Trial

___ Establish procedures to expedite trials.

___ Establish in advance the length of trial.

___ Strictly allocate trial time between/amongst the parties.

___ Establish in advance the sequence of issues to be presented at trial.

___ Extend the hours of trial days.

___ Require summary testimony, with live examination limited to cross examination.

Comments (optional) on these and/or other innovative techniques or procedures related to trial to minimize cost and delay. (Please attach additional sheets if needed.)

_____

_____

_____

Miscellaneous

___ Appoint more judges.

___ Improve/establish dialogue with the court as to how it would like attorneys to manage and schedule cases.

___ Establish a court code of professional conduct that addresses conduct to minimize cost and/or delay.

___ Implement procedures for the voluntary use of binding summary trials.

__ Require the losing party under certain circumstances to pay opponent's legal fees/court costs.

__ Increase the use of sanctions to penalize assertion of frivolous claims or defenses and/or conduct that unreasonably prolongs or multiplies the proceedings.

__ Minimize the impact on civil litigation of the Speedy Trial Act and Sentencing Guidelines.

__ Reduce the scope of diversity jurisdiction.

Comments (optional) on these and/or other innovative techniques or procedures to minimize cost and delay. (Please attach additional sheets if necessary.)

_____

_____

_____

15. Please review the solutions that you checked above and circle the checks by no more than five of those which you consider the best solutions to the problems of delay and cost in civil litigation in the Western District of Washington.

16. General comments (optional) on solutions to the problems of delay and cost in civil litigation in the Western District of Washington. (Please attach additional sheets if needed.)

_____

_____

_____

Optional Information:

Name: _____

Address: _____

_____

_____

_____

Phone: _____

Appendix C: Selected Results

This appendix contains selected results. These results provide information necessary to assess the validity of the survey's results, and complete sets of outcomes for causes and solutions to the problems of delay and cost.

Demographic Characteristics of Respondents

The demographic characteristics of respondents indicate that a wide variety of attorneys are represented, which reinforces the general usefulness of the results. The typical respondent works in a private practice, has an average of 15.5 years of experience, and shows a preference for representing defendants. Most of his or her time is spent arguing contract and personal injury cases.

The demographic characteristics of the respondents are summarized in Figures 5 through 8 and Table 7.

The number of members in each group are: Federal Bar Association, 221; Sample Attorneys, 114; Pro Hac Vice Attorneys, 102; Conditional Government Attorneys, 33.

Figure 5 Average Years Practicing Law: All Respondents and by Attorney Group

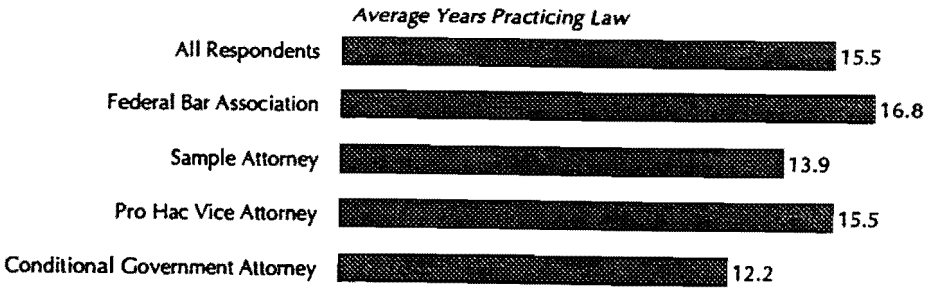


Figure 6 Average Number of Cases in the Last Five Years in the Western District of Washington: All Respondents and by Attorney Group

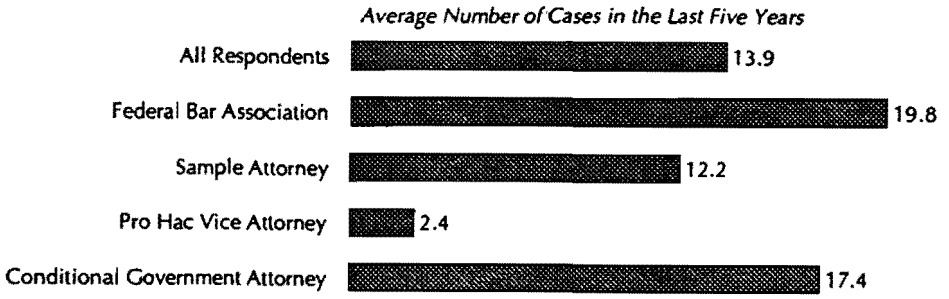


Figure 7 Nature of Respondents' Practice: All Respondents and by Attorney Group

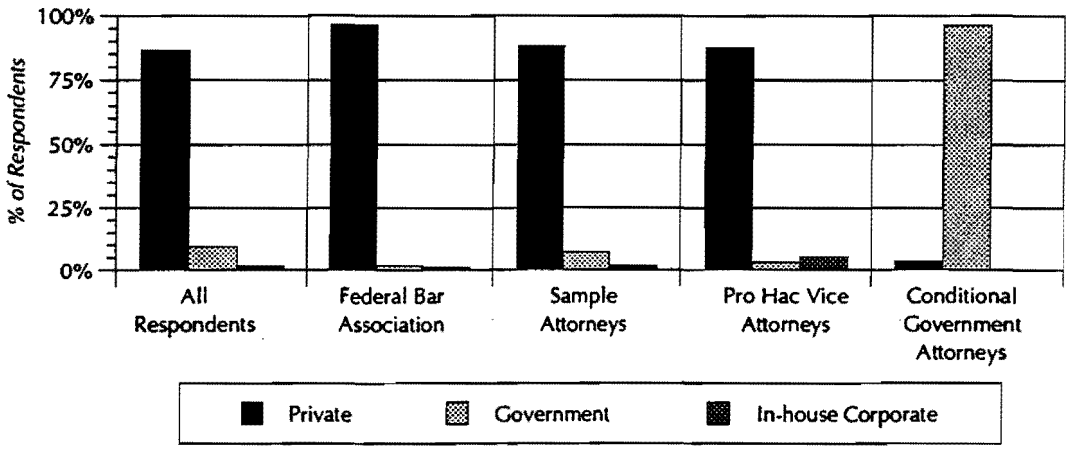


Figure 8 Type of Client Usually Represented: All Respondents and by Attorney Group

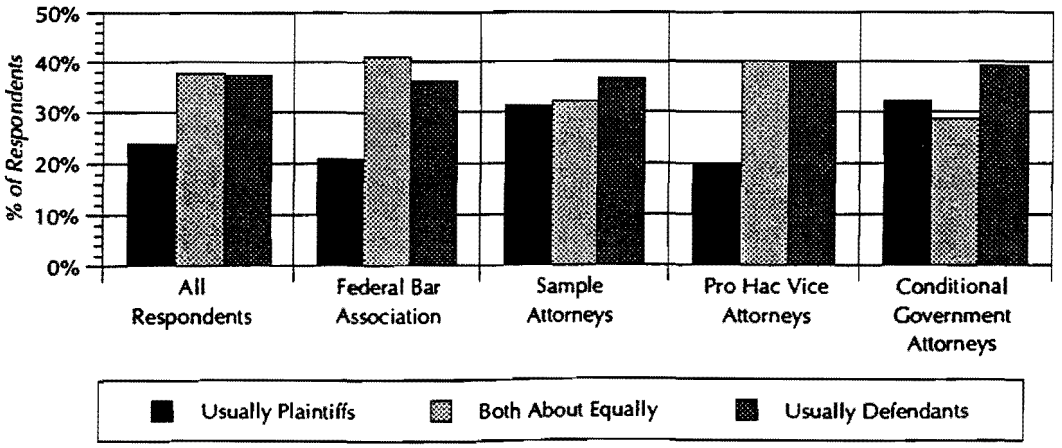


Table 7 Types of Cases Usually Handled in Federal Court: All Respondents and by Attorney Group

	Admiralty	Administrative Law	Antitrust/ Unfair Competition	Bankruptcy	Banks and Banking
Federal Bar Assoc.	24.8%	7.6%	24.8%	17.6%	15.2%
Sample Attorney	16.5%	6.4%	13.8%	16.5%	8.3%
Pro Hac Vice	6.2%	7.2%	23.7%	9.3%	10.3%
Conditional Govt.	10.7%	28.6%	3.6%	28.6%	7.1%
All Respondents	17.8%	8.6%	20.5%	16.2%	11.9%

	Civil Rights/ Prisoner Rights	Contracts	Copyrights/ Trademarks/ Patents	Environmental	ERISA
Federal Bar Assoc.	11.0%	49.5%	11.4%	21.9%	6.7%
Sample Attorney	17.4%	35.8%	5.5%	17.4%	6.4%
Pro Hac Vice	13.4%	36.1%	30.9%	18.6%	6.2%
Conditional Govt.	14.3%	14.3%	0.0%	35.7%	3.6%
All Respondents	13.3%	41.0%	13.5%	20.9%	6.3%

	Fraud/ Truth-in-Lending	Labor	Mass Torts	Personal Injury	Real Property/ Condemnation
Federal Bar Assoc.	3.8%	14.8%	9.0%	28.6%	6.2%
Sample Attorney	5.5%	10.1%	10.1%	35.8%	4.6%
Pro Hac Vice	6.2%	9.3%	10.3%	21.6%	1.0%
Conditional Govt.	3.6%	17.9%	0.0%	17.9%	3.6%
All Respondents	4.7%	12.6%	9.0%	28.2%	4.5%

	RICO	Securities/ Commodities	Social Security	Tax	Other
Federal Bar Assoc.	14.3%	21.9%	1.0%	3.3%	11.0%
Sample Attorney	7.3%	11.0%	1.8%	0.0%	17.4%
Pro Hac Vice	15.5%	17.5%	0.0%	4.1%	21.6%
Conditional Govt.	7.1%	7.1%	0.0%	14.3%	25.0%
All Respondents	12.4%	17.3%	0.9%	3.4%	15.8%

(Number of Respondents = 470)

Causes And Solutions Response Sets

Figures 9 and 10 contain complete response sets for the causes and solutions for the problems of delay and cost. The response sets consists of 30 causes and 46 solutions. Respondents were asked to check those they felt applied to the Western District of Washington.

The results presented in Figures 9 and 10 are the percentage of respondents who checked each item. Furthermore, the items are rank-ordered from high to low within the subgroups of each response set.

Figure 9 Causes of the Problems of Delay and Cost in the Western District of Washington.

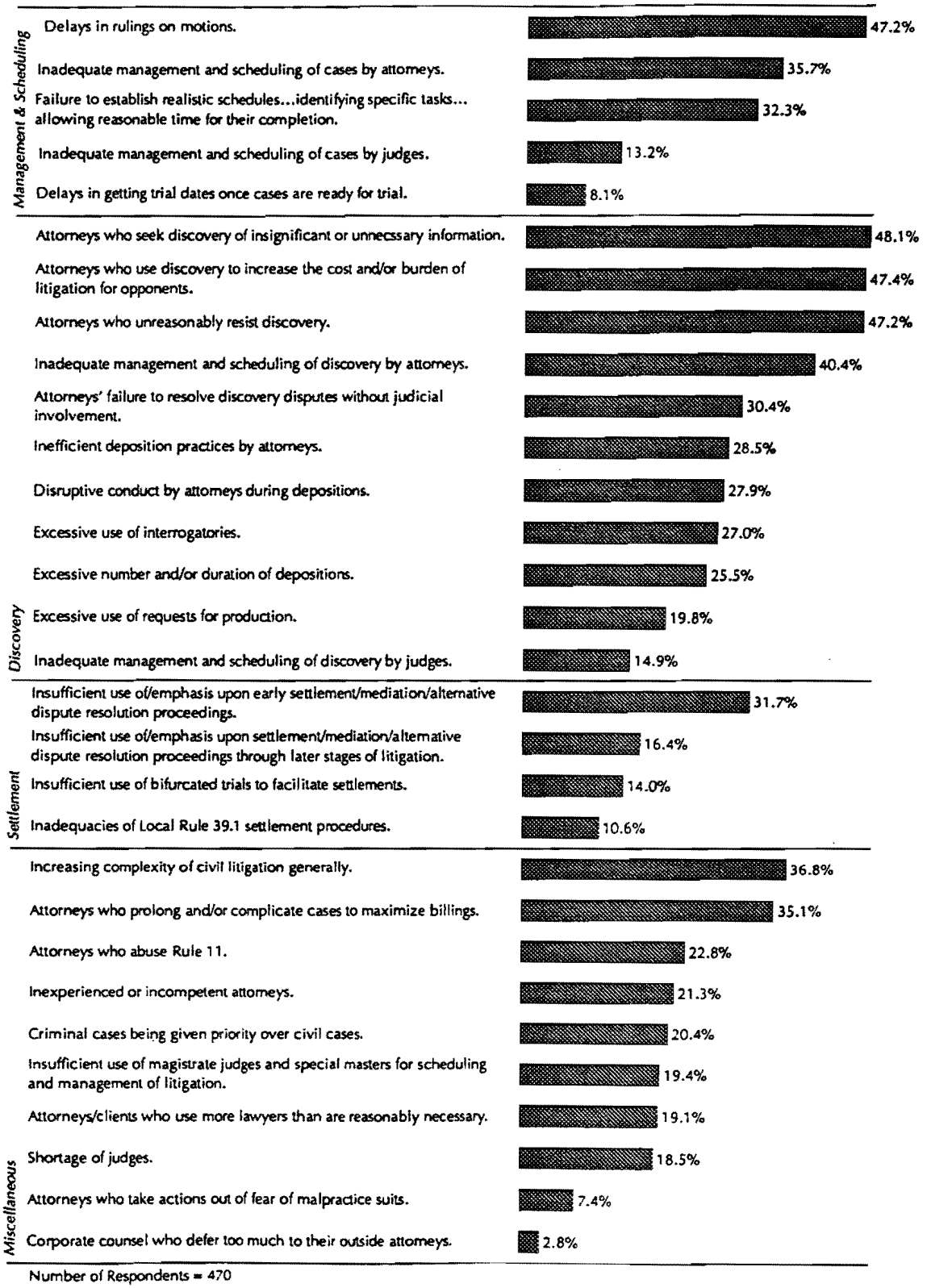
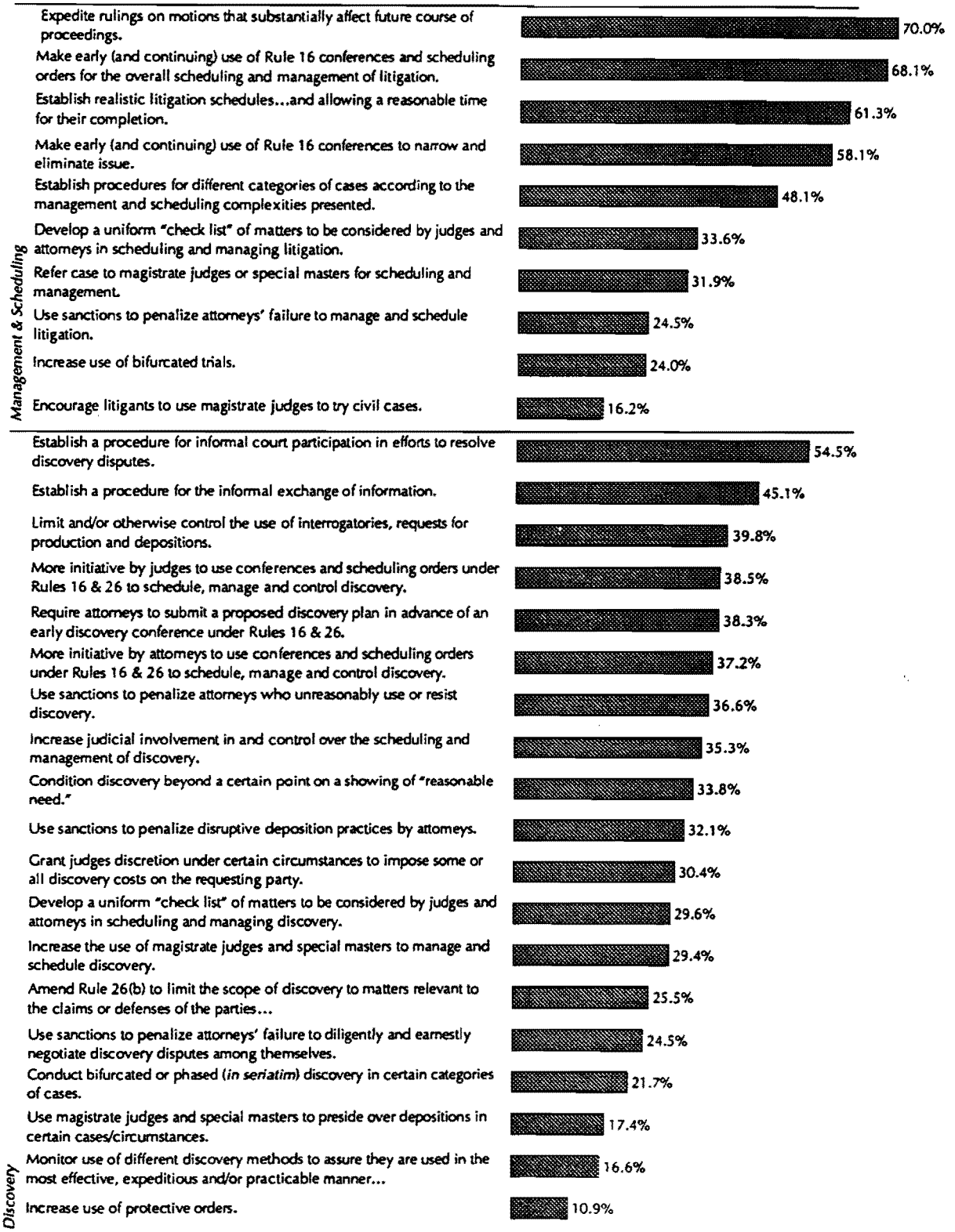
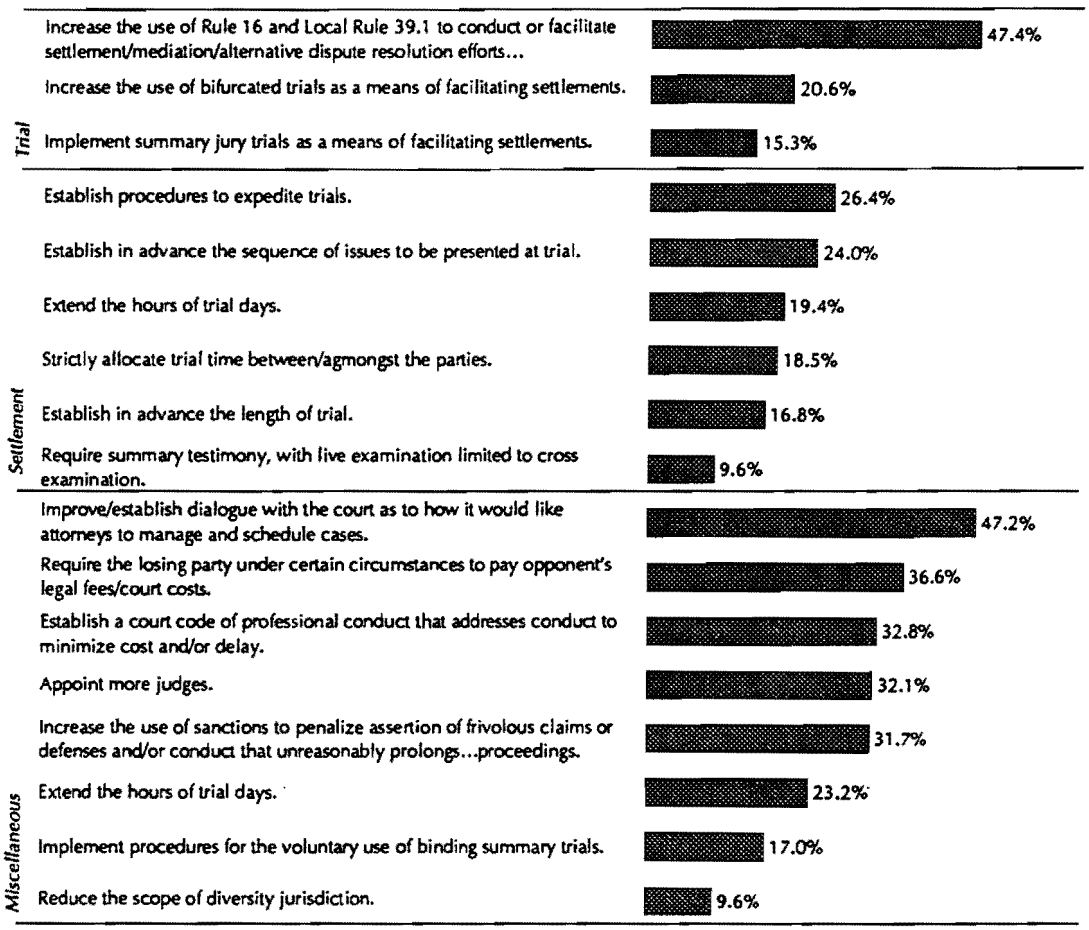


Figure 10 Solutions to the Problems of Delay and Cost in the Western District of Washington



Number of Respondents = 470

Figure 10 Solutions to the Problems of Delay and Cost in the Western District of Washington, continued



Number of Respondents = 470

Appendix D: Respondents' Comments

The survey of attorneys possessed distinctive quantitative and qualitative aspects. In addition to responding to fixed questions regarding the problems of delay and cost, respondents were also asked to include comments. Comments are asked for at twelve locations on the questionnaire.

The respondents obliged to these requests, providing a total of 1,056 comments, or 2.4 comments for each of the 470 respondents. These comments are useful as verification for the quantitative results, and as a resource for better understanding the meaning of the quantitative results.

This appendix contains a subset of respondents' comments. These comments were selected for their relevance to the findings presented in this report. This subset of comments is not intended to be representative of all comments made by respondents. Rather, they were selected for their illustrative character. A full set of respondents' comments is available through the Clerk's Office of the Western District of Washington.

Selected Comments

Overall Scheduling and Management: Causes

Artificially fast tracks without regard to the fact that most attorneys have more responsibility than the given case do more to increase cost than mere "delay." Having to change attorneys within an office or use more than 1 or 2 attorneys on a case to meet court imposed deadlines significantly increases costs.

Cases sometimes set for trial on unrealistic schedule in effort to "speed up" the process.

Delay is not a problem. Refusal to manage, slavish adherence to procedures, and unwillingness to alter even when all lawyers believe it best, is a problem.

Delays in ruling on motions, particularly dispositive motions, are a leading cause of needless delay and cost. Often discovery and other pre-trial work must proceed for months, only to have a long overdue ruling render all that work needless.

Getting a decision on a motion should not take weeks/months. Serious damage is caused to litigants and none of the staff at the Court seems to care or respond.

I believe attorneys are their own biggest problem. Don't stop being demanding of them.

I welcome the joint status report. My recent experience with the court is that once the status report has been prepared and filed, realistic trial settings and pretrial discovery scheduling have been set.

In my recent experience the court has been assigning early trial dates with no apparent consideration for the complexity of the case, the discovery necessary, the time reasonably necessary for the discovery or the schedules of the parties and counsel.

In some cases prompt rulings on motions would have significantly reduced cost in trial preparation. In that respect a longer time between the last date for filing summary judgment motions and the trial date would be helpful.

Inadequate management equals deliberately waiting to last minute as well as being too busy to do timely.

It is frustrating to receive a schedule as from on high without any input.

It is my opinion that although it is important to expedite some cases, there are many in which "haste makes waste."

Motions are a problem in general. However, the excessive delay in rulings on motions has caused frustrations, excess costs and increased discovery and other litigation activity.

Number one problem everywhere are disincentives for lawyers to frame case precisely and quickly; some are monetary, some are systematic, some are due to poor lawyering. All need addressing and judiciary should take the lead (only ones who can enforce discipline on lawyers).

One thing that would improve scheduling in civil cases is a little more specificity in scheduling orders. Such orders should provide sequential dates and cutoffs for: (1) merits discovery; (2) amendment of pleadings and joinder; expert reports, expert discovery; motion cutoff; pretrial conference. I would be happy to elaborate further or provide a sample order.

Our judges are setting schedules in an arbitrary fashion with little or no input from the lawyers.

Sometimes defendants engage in manipulation of the discovery process to cause delay and avoid appropriate discovery. The court sometimes does not adequately police this conduct.

Overall Scheduling and Management: Solutions

As long as the attorney is diligent, the Court should be flexible in scheduling. Should avoid too much rigidity, if in effect, it means just more busy work for court and attorneys.

By telephone conference. [Referring to make early (and continuing) use of Rule 16 conferences and scheduling orders for the overall scheduling and management of litigation.]

Especially useful where counsel have less familiarity with pretrial scheduling. [Referring to establishing realistic litigation schedules by identifying the specific tasks that need to be accomplished and allowing a reasonable time for their completion.]

Masters and magistrates do not always help. Early and continuing scheduling with continuous communication with the judge is the most helpful.

Most judges send a strong message to resolve the dispute yourself and don't bother me - I believe this tends to increase discovery abuses.

The court should avoid rigid scheduling deadlines that are the same for all cases or all "categories" of cases. An early pretrial conference with counsel's input in setting deadlines is appropriate.

The rules are there—courts have the facility to enforce the rules. No new procedures are really necessary. Monitor the cases with status conferences.

Too much judicial micro-management can cause delay and expense - as when counsel are prohibited from resolving scheduling problems, especially discovery, by stipulation and are required to seek an order.

Unrealistic and rigid schedules add to expense at the expense of justice.

What is needed is the time and energy of judges or their proxies. A German client of mine attributes the lessen costs of litigation there to the relatively greater number of judges, and the lesser role of lawyers in dispute resolution. He makes a good case.

Discovery: Causes

All parties know that the judges have little tolerance or interest in discovery disputes. Because discovery is policed laxly, it encourages abuses.

Caused by lack of court supervision. [Referring to attorneys who unreasonably resist discovery and inefficient deposition practices by attorneys.]

Conduct by almost all opposing counsel on my cases has been obstructive, oppressive, conniving, and even unethical; i.e., lying to court, to which I can only respond not true but the judge certainly doesn't know who is telling the truth.

Discovery seems to work best when the judges will make themselves available, on short notice and with limited briefing, to resolve discovery disputes and are willing to be firm in their resolution of unreasonable objections.

Having judge available by phone to respond to discovery disputes is a great practice.

I believe judges need to be pro active with respect to discovery abuses. The perception of litigants of the judicial process damages both the bench and the bar.

I believe that discovery cut off dates are often unrealistic and cause the parties to waste time and money on cases that ultimately settle in most instances.

I want the judges to intervene and compel compliance with the rules. If everyone knows there will be consequences with abuse then abuse will be deterred.

I would like to see an actual pretrial conference at the outset of every case. A realistic schedule, subject to "subtle" court control could then be put in place.

Judges or magistrates should be willing to manage discovery problems early rather than avoid issue and let parties become vested in arguments over nondispositive or posturing issues.

Most significant. [Referring to attorneys who unreasonably resist discovery.]

Need periodic meetings on status/discovery and that will help avoid problems; these should be automatic status conferences every six weeks or so.

Primary abuses are caused by inexperience of counsel on what is reasonable or necessary, therefore, demand all or resist all. Courts should impose sanctions on discovery motions to losing side.

Some lawyers (or their clients) seem to have no cost/benefit analysis in mind in discovery. Lawyers, it seems, don't try cases; they don't even litigate. Rather, they are ferrets.

The major problem seems to be attorneys who are unwilling to directly contact and discuss the procedures with their opponent.

There is no substitute for hands-on involvement by the court from the beginning, including with respect to discovery matters. Informal status conferences are good.

This is the "big kahuna." [Referring to inadequate management and scheduling of discovery by attorneys.]

Why not use judicial involvement as the norm, rather than the exception. [Referring to attorney's failure to resolve discovery disputes without judicial involvement.]

Discovery: Solutions

Again, early intervention when a problem develops would cure many issues. Judges' reputation for "not waiting to hear about discovery disputes" does not help, but rather causes delays and recalcitrant behavior.

Attorneys, especially from larger firms, have shown little ability to control scope of requests and responses. Court should require reasonableness and use sanctions to educate.

Having a judge or magistrate available for telephone conferences can expedite resolution of discovery disputes.

I think many discovery abuses are by lawyers who think they can get away with it. When the court limits these activities it will be less of a problem.

Most of the rules/remedies are already in place. Maybe it's an enforcement problem. The more involvement by a federal judge in a case, the better run the case. There are not enough judges to baby sit jerk attorneys, and they shouldn't have to.

One 5-minute call to the judge (or the threat or even the option to place such a call) can resolve immediately what otherwise could take many weeks - or even months - of briefing to resolve.

Shortly after appearance by all parties, schedule trial date and discovery schedule; ask the court to set aside a few minutes each day to resolve scheduling problems by phone conference with the parties.

The court is always going to have difficulty determining if the cause of the problem is the attorney or the party. This creates serious client relationship problems for the attorney. All that is required is an "order" from the court or special master. Let's find cheap methods of getting discovery disputes to the order stage rather than use threat of sanctions. [Referring to use of sanctions to penalize attorneys who unreasonably use or resist discovery.]

The judges' use of Rule 16 and 26 conferences is vital to his/her involvement in "pushing the case along."

While greater judicial control and management will be helpful, the courts must be careful not to use valuable judicial time managing discovery set up limits and guidelines for attorneys with sanctions as deterrent for abuse.

Miscellaneous Causes

If, as it appears, the judges are too busy to be actively involved in supervising discovery, special masters should be routinely appointed at the first instance of a discovery dispute.

The faster a complex case is pushed the more attorneys are required to meet the schedule, driving up cost. A balance between speed/delay and cost requires thoughtful judicial management.

Miscellaneous Solutions

As you can see, I feel the primary problem is abuse of the system by attorneys with relative impunity except in the most egregious cases. It's time to call "bull shit" on frivolous claims and unethical conduct and sanction appropriately.

General Comments

Discovery is drawn out and expensive. It could be curtailed by closer court control and scrutiny during the first year of litigation. (Question 9)

Fee churning seems to dictate whether or not to do discovery or file motions instead of whether case really warrants effort. (Question 9)

I think that the system whereby there is no definite time for the judge to rule on dispositive motions can cause delay and, more likely, expense associated with having to proceed with the case to trial. (Question 9)

Status conferences are useful for getting opposing counsel face to face, in a friendly neutral context. It is easy to let resentments build up when the only contact one has with the opposition is on paper or by telephone. (Question 9)

The "counsel work it out" approach doesn't work. (Question 9)

Most of the problem is in the discovery area. In addition, however, I perceive judges as essentially reactive. They do not seem to view it as their job to ensure that the issues in a particular piece of litigation are resolved as efficiently as possible. Unfortunately, it is not anyone else's job either. The lawyer for one party, even if so inclined, cannot do it alone. (Question 12)

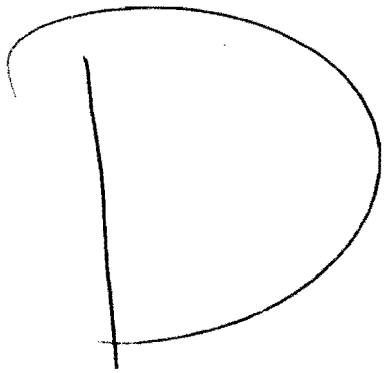
The key is for the court to have sufficient time and understanding to deal with each case early on in the process. This will prevent delays, improve attorney attitudes, and decrease the number of later hearings and trials. (Question 12)

Discovery abuse is the most significant problem. It causes unnecessary expense; clouds the issues, and delays the end of the matter. More early planning and scheduling - together with closer judicial control over the process will help address this problem - as will an abandonment of the American rule concerning attorney fees together with greater use of available sanctions. (Question 16)

In general, judicial involvement is the best cure for the unneeded cost and delay. Attorneys (including myself) need to be accountable to the court throughout discovery as well as at trial. (Question 16)

Jerk attorneys are the biggest problem. If everyone got along, things would be 100% more efficient. (Question 16)

The key is for the court to assert authority, and demonstrate that it understands the issues, early in the litigation. (Question 16)



AUDIT OF CIVIL DOCKETS

CIVIL JUSTICE REFORM ACT COMMITTEE

WESTERN DISTRICT OF WASHINGTON

September, 1992

AUDIT OF CIVIL DOCKETS

CIVIL JUSTICE REFORM ACT COMMITTEE
WESTERN DISTRICT OF WASHINGTON

TABLE OF CONTENTS

AUDIT OF CIVIL DOCKETS

CIVIL JUSTICE REFORM ACT COMMITTEE

September, 1992

INTRODUCTION

In July and August, 1992, staff of the Clerk's Office conducted an audit of the dockets of 124 civil cases terminated during the previous twelve months. The cases randomly selected included:

14 for Chief Judge Rothstein
19 for Judge Coughenour
14 for Judge Dimmick
16 for Judge Bryan
20 for Judge Dwyer
21 for Judge Zilly
7 for Senior Judge McGovern
5 for Senior Judge Tanner
5 for Magistrate Judge Weinberg
0 for Magistrate Judge Sweigert
0 for Magistrate Judge Burgess
0 for Magistrate Judge Wilson
3 for the unassigned judge (i.e., student loan or veterans' overpayment cases)

Of these cases, 94 were filed in Seattle and the remaining 30 originated in Tacoma. They included the following distribution of case weights[1]:

34 cases (27%) which were weight 1 (24 from Seattle; 10 from Tacoma)
32 cases (26%) which were weight 2 (24 from Seattle; 8 from Tacoma)
46 cases (37%) which were weight 3 (40 from Seattle; 6 from Tacoma)
12 cases (10%) which were weight 4 (6 from Seattle; 6 from Tacoma)

Please see the attached list for a description of weights assigned to each nature of suit. Also attached is a copy of the audit instrument used in analyzing these cases.

---

[1]Regarding the representativeness of this sample, the following types of cases were filed in the Western District of Washington during the same twelve-month period:
Weight 1 - 34%; Weight 2 - 29%; Weight 3 - 30%; Weight 4 - 7%.

LENGTH OF TIME TO DISPOSITION

Filing to Disposition:

The average time from **filing to disposition** for all of the audited cases:

10 MONTHS

Sorted by-weight, the average time from filing to disposition was as follows:

9 months for weight 1 cases
10 months for weight 2 cases
11 months for weight 3 cases
13 months for weight 4 cases

Of the sub-sample of cases which went to trial, the average time from filing to disposition was 11 months.

Viewed another way:

42% of the cases (52) were terminated within six months of the filing date
23% of the cases (29) were terminated 7-12 months after the filing date
26% of the cases (32) were terminated 13-18 months after the filing date
9% of the cases (11) were terminated more than 18 months after the filing date

Joinder to Disposition:

The average time from **joinder to disposition** for all of the audited cases:

8 MONTHS

By weights, the average times from joinder to disposition were:

6 months for weight 1 cases
8 months for weight 2 cases
8 months for weight 3 cases
11 months for weight 4 cases

Of the sub-sample of cases which went to trial, the average time from joinder to disposition was 9 months.

HOW CASES WERE TERMINATED

Total Sample: ..... Total of 124 cases

52 cases (42%)	Settlement or dismissal prior to ruling on dispositive motions
27 cases (22%)	Judgment entered on dispositive motion
16 cases (13%)	Settlement or dismissal after ruling on dispositive motions
12 cases (10%)	Jurisdictional transfer (remand, transfer, or consolidation)
7 cases (6%)	Dismissed for lack of prosecution or default
6 cases (5%)	Other
4 cases (3%)	Trial[2]

Weight 1 Cases: ..... Total of 34 cases

15 cases (44%)	Judgment entered on dispositive motion
8 cases (24%)	Settlement or dismissal prior to ruling on dispositive motions
4 cases (12%)	Dismissed for lack of prosecution or default
4 cases (12%)	Other
2 cases (6%)	Settlement or dismissal after ruling on dispositive motions
1 case (3%)	Jurisdictional transfer (remand, transfer, or consolidation)

Weight 2 Cases: ..... Total of 32 cases

12 cases (38%)	Settlement or dismissal prior to ruling on dispositive motions
7 cases (22%)	Settlement or dismissal after ruling on dispositive motions
7 cases (22%)	Judgment entered on dispositive motion
2 cases (6%)	Trial
2 cases (6%)	Other
1 case (3%)	Jurisdictional transfer (remand, transfer, or consolidation)
1 case (3%)	Dismissed for lack of prosecution or default

Weight 3 Cases: ..... Total of 46 cases

29 cases (63%)	Settlement or dismissal prior to ruling on dispositive motions
6 cases (13%)	Settlement or dismissal after ruling on dispositive motions
4 cases (9%)	Judgment entered on dispositive motion
4 cases (9%)	Jurisdictional transfer (remand, transfer, or consolidation)
2 cases (4%)	Trial
1 case (2%)	Dismissed for lack of prosecution or default

Weight 4 Cases: ..... Total of 12 cases

6 cases (50%)	Jurisdictional transfer (remand, transfer, or consolidation)
3 cases (25%)	Settlement or dismissal prior to ruling on dispositive motions
1 case (8%)	Settlement or dismissal after ruling on dispositive motions
1 case (8%)	Dismissed for lack of prosecution or default
1 case (8%)	Judgment entered on dispositive motion

---

[2]For the whole district, approximately 2.9% of the cases terminated during this period went to trial. In contrast, in statistical year 1992 the Administrative Office's figures show an average of 416 case terminations and 31 trials per-judge, resulting in a 7.5% trial rate.

MOTIONS

Number of Motions Filed in Cases:

Total case sample:	124 cases	373 motions (97 dispositive and 276 non-dispositive) Average of 3 motions per case 31% of the cases had no motions whatsoever
Weight 1 (34 cases):		120 motions (43 dispositive and 77 non-dispositive) Average of 3.5 motions per case 21% of the cases had no motions filed
Weight 2 (32 cases):		125 motions (28 dispositive and 97 non-dispositive) Average of 3.9 motions per case 25% of the cases had no motions
Weight 3 (46 cases):		96 motions (19 dispositive and 77 non-dispositive) Average of 1.6 motions per case 46% of the cases had no motions
Weight 4 (12 cases):		32 motions (7 dispositive and 25 non-dispositive) Average of 3 motions per case 31% of the cases had no motions

Time from Noting to Ruling:

The average number of days from the final noting date to the date of the judge's ruling on the motion, for the district as a whole, is as follows:

All motions	18 days
Dispositive motions	21 days
Non-dispositive motions	18 days

Percentage of motions ruled on within **less than 10 days after the noting date**:

53% of the motions (196)

Percentage of motions ruled on within **10-30 days after the noting date**:

30% of the motions (112)

Percentage of motions ruled on **more than 30 days after the noting date**:

17% of the motions (64)

DISCOVERY DISPUTES

There was little evidence of discovery disputes on the dockets; our assumption is that most such disputes are resolved without the filing of motions. The following reflects the number and percentage of cases in which any evidence of discovery problems was found on the docket:

Total sample of dockets: 124

Number of cases in which discovery motions were filed: 22

Percent of cases in which discovery motions were filed: 18%

Weight 1 cases: 34

Number of cases in which discovery motions were filed: 4

Percent of cases in which discovery motions were filed: 12%

Weight 2 cases: 32

Number of cases in which discovery motions were filed: 7

Percent of cases in which discovery motions were filed: 22%

Weight 3 cases: 46

Number of cases in which discovery motions were filed: 10

Percent of cases in which discovery motions were filed: 22%

Weight 4 cases: 12

Number of cases in which discovery motions were filed: 1

Percent of cases in which discovery motions were filed: 8%

EXTENSIONS OF TIME

Frequency of Requests for Extension of Time:

The audit examined the frequency and the reasons for extensions of time because continuances contribute to delay and costs in civil case processing. The incidences and types of extensions are as follows:

Total number of cases in which extensions of time were requested:

37 (30% of the total 124 cases)

Weight 1 cases:	8	(24% of the total 34 Weight 1 cases)
Weight 2 cases:	14	(44% of the total 32 Weight 2 cases)
Weight 3 cases:	12	(26% of the total 46 Weight 3 cases)
Weight 4 cases:	3	(25% of the total 12 Weight 4 cases)

Reasons for Requesting Extensions of Time:

Although it was difficult to determine in every instance who requested the extension or continuance, it appears that extensions were ordered sua sponte in only about 10% of the cases. Most frequent reasons for requesting extensions of time were for:

Additional time to respond

Extension of discovery cut-off

Extension of a variety of dates such as joint status report deadlines, status conferences, time to file pretrial orders, trial brief deadlines, date to add new parties, filing date for motions, etc.

Trial continuances occurred seven times

Less frequently requested were extensions of time to complete settlement negotiations, to effect service, to comply with a court order, or to continue oral argument

REFERRALS TO ALTERNATE DISPUTE RESOLUTION

It was often difficult to determine from the docket if a referral had been made to mediation, a settlement judge, or other form of alternate dispute resolution. It was even more difficult to determine if the ADR session had actually taken place. Unless there was some explicit indication on the docket, a response of "No" was entered for whether or not a case had been referred to mediation, and "Unknown" was recorded for whether or not the parties actually participated in ADR.

Mediation:

The following lists the number and percentage of cases which were referred to mediation and which participated in mediation:

Total number of cases eligible[3] for mediation: **90**

Of those 90 cases, the number referred to mediation: **43 (48%)**

Of the 43 cases referred to mediation, the number and percent that participated in mediation:

Participated:	12 (28%)
Did not participate:	7 (16%)
Unknown (no record on the docket):	24 (56%)

Other ADR:

Referrals to other forms of ADR were as follows:

Total number of cases eligible for ADR: **90**

Of those 90 cases, the number referred to other forms of ADR: **6 (7%)**

Of the 6 cases referred to other forms of ADR, the types of ADR were:

3 referrals to a settlement conference with a district judge

2 referrals to a settlement conference with a magistrate judge

1 referral to outside arbitration

---

[3]"Eligible" cases mean all cases except prisoner petitions, bankruptcy appeals, forfeitures, student loans, and veterans' overpayment cases.

CASE WEIGHTS FOR NATURES OF SUIT

Weight 1

CONTRACT
140 Negotiable Instruments
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans
153 Recovery of Overpayment of Veteran's Benefits

REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease and Rejectment

PERSONAL PROPERTY
370 Other Fraud
380 Other Personal Property Damage

BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157

PRISONER PETITIONS
510 Motions to Vacate Sentence
530 Habeas Corpus
540 Mandamus and Other
550 Civil Rights

FORFEITURE/PENALTY
610 Agriculture
620 Food and Drug
630 Liquor Laws
640 R R and Truck
650 Airline Regs
660 Occupational Safety/Health
690 Other

SOCIAL SECURITY
861 HIA (1395)
862 Black Lung (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))

OTHER STATUTES
450 Commerce/ICC Rates/etc.
460 Deportation
891 Agricultural Acts
900 Appeal of Fee Determination under Equal Access to Justice

Weight 2

CONTRACT
110 Insurance
120 Marine
130 Miller Act
190 Other Contract

REAL PROPERTY
240 Torts to Land

TORTS
350 Motor Vehicle
371 Truth in Lending
385 Property Damage Product Liability

CIVIL RIGHTS
442 Employment
443 Housing/Accommodations
444 Welfare

LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act

FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS - Third Party 26 USC 7609

OTHER STATUTES
875 Customer Challenge 12 USC 3410
895 Freedom of Information Act
890 Other Statutory Actions

Weight 3

REAL PROPERTY
290 All Other Real Property

TORTS
320 Assault, Libel and Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
355 Motor Vehicle Product Liability
360 Other Personal Injury

CIVIL RIGHTS
441 Voting
440 Other Civil Rights

LABOR
740 Railway Labor Act

PROPERTY RIGHTS
820 Copyrights
830 Patents
840 Trademarks

OTHER STATUTES
810 Selective Service
850 Securities/Commodities/Exchange

Weight 4

CONTRACT
160 Stockholders Suits
195 Contract Product Liability

REAL PROPERTY
245 Tort Product Liability

TORTS
310 Airplane
315 Airplane Product Liability
362 Personal Injury - Medical malpractice
365 Personal Injury - Product Liability
368 Asbestos Personal Injury Product Liability

LABOR

730 Labor/Management Reporting and Disclosure Act

OTHER STATUTES

400 State Reapportionment
410 Antitrust
430 Banks and Banking
470 Racketeer Influenced and Corrupt Organizations
892 Economic Stabilization Act
893 Environmental Matters
894 Energy Allocation Act
950 Constitutionality of State Statutes

DOCKET REVIEW CHECKLIST

A. Identifying Information

_____ **Docket No.**

Case Name:_____

Pltf/Firm/Atty:

(1) _____/_____/_____

(2) _____/_____/_____

(3) _____/_____/_____

Addit. Pltf: Yes? No? See Attached

Def/Firm/Atty:

(1) _____/_____/_____

(2) _____/_____/_____

(3) _____/_____/_____

Addit. Def: Yes? No? See Attached

_____ **Nature of Suit**

.....

B. Filing to Disposition

_____ **Filing** Date

_____ **Last Answer,** Date Filed

_____ **Final Disposition,** Date of

_____ **Total Time** For Disposition (in months, rounded)

_____ **How** Was Case **Disposed of: (circle** one **or specify)**

a. Dismissed for lack of prosecution or default judgment

b. Judgment entered on dispositive motion

c. Settlement or dismissal **prior** to court ruling on dispositive motions

d. Settlement or dismissal **after** court ruling on dispositive motions

e. Settlement **after** trial begins

f. Trial

g. Jurisdictional transfer (remand, transfer, or consolidation

k. Other

. . . . . .

C. Discovery and Other Motion Issues

_____ **Cut-Off** Discovery Date

_____ **Extensions** of Time Granted (Total)

_____ a. At plaintiff's request

_____ b. At defendant's request

_____ c. Stipulated by parties

_____ d. At direction of court

_____ **Dispositive** Motions Filed (Total)

_____ **Time** (avg) From Noting to Ruling (**Dsp**)

_____ **Nondispositive** Motions Filed (Total)

_____ **Time** (avg) from Noting to Ruling (**Ndsp**)

_____ **Discovery** Disputes? Yes? No?

_____ If Yes, **Total** and **Type.**_____

_____

.....

D. Alternative Dispute Resolution Issues

MEDIATION

_____ **Mediation** Referral? Yes? or No?

_____ If Yes, **Date** of Referral

_____ Mediation **Actually Occur?** Yes? No? Unknown?

OTHER ADR

_____ **Referral** to Any **Other** Form of **ADR**? Yes/No

_____ If Yes, What **Kind?** (**circle** one **or specify**)

a. Referral to district judge for settlement

b. Referral to magistrate judge for settlement

c. Other_____

_____ **Date** of Referral

_____ **Outcome** of Referral (Settlement or Other--Specify)

_____

MOTIONS DETAIL SHEET

Case No._____

Mot Type 1,2,3	Description of Motion	Filing Date	Original Noting Date	Final Noting Date	Ext Rqst by atty? Y/N/Unkn	Date of Ruling	# of Days Noting to Ruling

NOTE: 1 = Dispositive 2 = Discovery 3 = All Others

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Plaintiff(s),	NO.
v.	ORDER REGARDING DISCOVERY AND DEPOSITIONS
Defendant(s).	

IT IS ORDERED that:

1. DISCOVERY. All discovery matters are to be resolved by agreement if possible. If a ruling is needed as to any discovery question, and counsel wish to avoid the time and expense of a written motion, they may obtain an expedited ruling through a telephone conference call to the court at (206) 553-0103.

2. DEPOSITIONS. Depositions will be conducted in compliance with the following rules:

(a) Examination. If there are multiple parties, each side should ordinarily designate one attorney to conduct the main examination of the deponent, and any questioning by other counsel on that side should be limited to matters not previously covered.

(b) Objections. The only objections that should be raised at the deposition are those involving a privilege against disclosure, or some matter that may be remedied if presented at the time (such as the form of the question or the responsiveness of the answer), or that the question seeks information beyond the scope of discovery. Objections on other grounds are unnecessary and should generally be avoided. All objections should be concise and must not suggest answers to, or otherwise coach, the deponent. Argumentative interruptions will not be permitted.

(c) Directions Not to Answer. Directions to the deponent not to answer are improper, except on the ground of privilege or to enable a party or deponent to present a motion to the court or special master for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass or oppress the party or the deponent, or for appropriate limitations upon the scope of the deposition (e.g., on the ground that the line of inquiry is not relevant nor reasonably calculated to lead to the discovery of admissible evidence). When a privilege is claimed, the witness should nevertheless answer questions relevant to the existence, extent or waiver of the privilege, such as the date of the communication, who made the statement in question, to whom and in whose presence the statement was made, other persons to whom the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

(d) Responsiveness. Witnesses will be expected to answer all questions directly and without evasion, to the extent of their testimonial knowledge, unless directed by counsel not to answer.

(e) Private Consultation. Private conferences between deponents and their attorneys during the actual taking of the deposition are improper, except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the court for good cause shown, such conferences may, however, be held during normal recesses and adjournments.

(f) Conduct of Examining Counsel. Examining counsel will refrain from asking questions he or she knows to be beyond the legitimate scope of discovery, and from undue repetition.

(g) Courtroom Standard. All counsel and parties should conduct themselves in depositions with the same courtesy and respect for the rules that are required in the courtroom during trial.

3. RESPONSIBILITY OF PLAINTIFF'S COUNSEL. This order is issued at the outset of the case, and a copy is delivered by the clerk to counsel for plaintiff. Plaintiff's counsel (or plaintiff, if pro se) is directed to deliver a copy of this order to each other party within ten days after receiving notice of that party's appearance.

Dated: _____.

William L. Dwyer
United States District Judge