REPORT OF

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CIVIL JUSTICE REFORM ACT ADVISORY COMMITTEE

DECEMBER 1991

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INTRODUCTION

The Judicial Improvements Act of 1990, Public Law No. 101-650, was signed into law by the President on December 1, 1990. Title I of the statute consists of the Civil Justice Reform Act of 1990 ("CJRA"), which requires implementation of a Civil Justice Expense and Delay Reduction Plan ("Plan") in all United States district courts within three years of its enactment. Section 472 of Title I directs that development of the Plan shall proceed after the court has considered recommendations of an advisory group appointed pursuant to § 478 of the Title. The recommendations are to be included in a report submitted by the advisory group to the court for its consideration.

This report and the recommendations in it are being submitted to the United States District Court for the District of Utah ("Court") for its review pursuant to the requirements of Section 478 of Title I of the CJRA. It is a product of the work of the Civil Justice Reform Act Committee ("Committee") whose members[1] were appointed by Chief Judge Bruce S. Jenkins, in consultation with the other district judges, early in calendar 1991. The members have been meeting as a Committee and subcommittees of that Committee since April.[2] The text and recommendations in this report were formulated by the Committee in the course of those meetings and, except as noted, reflect the unanimous views of its members.

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[1] The names of the Committee members and the offices they hold are listed in Appendix A to this report.

[2] A brief description of the operating procedures of the Committee is in Appendix B.

TABLE OF CONTENTS

SECTION IV ATTORNEY AND CLIENT ASSESSMENTS OF THE COURT

SECTION V COMMITTEE PROPOSALS AND RECOMMENDATIONS

APPENDICES

SECTION I

DESCRIPTION OF THE DISTRICT OF UTAH

A. GEOGRAPHIC AND DEMOGRAPHIC OVERVIEW:

The geographic jurisdiction of the United States District Court for the District of Utah ("District") covers the entire State of Utah. The population of the District in 1990 was 1,722,850. Lifestyles in the District vary from farmers and ranchers in arid and sparsely populated counties that are dotted with small spreads and townships to technical, professional, clerical, and blue collar workers employed by businesses and local, state, and federal government agencies in a mid-size urban metropolitan area. The majority of the District's inhabitants reside and work along the Wasatch Front, an area extending north roughly from the small but economically vibrant cities of Provo and Orem to the Salt Lake City metropolitan area and a succession of smaller cities anchored by Ogden and Brigham City on the north. The northern end of the front includes a variety of federal tax and defense facilities. The front is defined on the east by the Wasatch Mountains and on the west by the Great Salt Lake, Utah Lake, and the Oquirrh Mountains.

The population of the District increased by 17.89% between 1980 and 1990. Demographic forecasts based on current growth patterns project population growth in the 11% range between 1990 and 2000. Those projections may be exceeded as a result of factors that have to do with fluctuating regional economies, urban fatigue, retirement trends, and other unforeseen developments. Traditional perceptions of the State of Utah appear to be undergoing a transformation. According to the national press, Utah has become a highly desirable location for business transplants from larger metropolitan areas because of its favorable tax structure, the work ethic of its population, the clean-living and wholesome image it conveys, and its relatively low wage standard. Cities along the Wasatch Front have been featured in *Money Magazine*, *Fortune*, *Newsweek*, and *The Wall Street Journal* as ideal locations for business enterprises. The Provo/Orem area, home to WordPerfect and Novell, features the nation's third largest center, after California's Silicon Valley and Massachusetts' greater Boston/Route 128 area, for commercially-oriented high-tech research, development, and manufacturing enterprises. As its favorable economy and low unemployment rates are publicized, the state has become more

attractive to individuals and families anxious to escape the constraints of large urban areas facing serious problems such as increased criminal activity, pollution, inner-city decay, congestion, and chronic fiscal deficits. The southwestern portion of Utah has been transformed from a series of sleepy towns originally settled by Mormon pioneers, located on the I-15 corridor to Las Vegas, to an area of desirable retirement communities that recently began what demographers project will be an extended period of substantial and unprecedented growth. That growth currently is fueled in large part by the relocation of senior citizens from Utah as well as out of state; over the next twenty-five years, the growth will accelerate with the relocation of aging baby boomers interested in a moderately priced and relatively safe retirement community. The city of St. George, for example, is expected to grow in thirty years from its current 1990 population of 28,502 to 137,600, more than a quadruple increase.[3]

B. GEOGRAPHICAL DIVISIONS AND PLACES OF DOING BUSINESS:

Currently, the District of Utah is divided into two divisions, Northern and Central. The Northern Division includes the counties of Box Elder, Cache, Davis, Morgan, Rich, and Weber. The Central Division includes all remaining counties: Beaver, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, and Wayne. Cases that originate in the Northern Division are opened and classified as Northern Division cases; those that originate in the Central Division are opened and classified as Central Division cases. The number of Northern Division cases represent approximately 20% of the total civil and criminal caseload of the District. Petit jurors are summoned for trial according to the divisional classification of the case they are to hear. Grand juries currently are called by division and, until recently, heard evidence in matters that originated in their respective divisions. Because the Court is interested in distributing the opportunity for grand jury service as widely as possible among the District's qualified inhabitants, it recently modified its practice. Although it continues to maintain sitting Northern and Central Division grand juries, each is authorized to hear cases that originate

[3] Statistics and estimates were provided by Richard Mann-Waring of the Five-County Association of Governments, September 24, 1991.

anywhere in the geographical boundaries of the state.

All active and senior district judges currently sit in the Central Division in Salt Lake City as do the full- and one of four part-time magistrate judges. The other three part-time magistrate judges, all of which are salaried in the four-figure range reflecting their relatively small workload, are located in Vernal, Monticello, and Cedar City, all in the Central Division. The District maintains a complete Northern Division court facility -- courtroom, chambers, jury room, clerk's suite of offices, holding cell, etc. -- in the Ogden Federal Building, but that facility is not used by the district judges except when counsel in a particular case request that proceedings be conducted there. The Court's full-time magistrate judge uses the facility to hear misdemeanor cases that typically involve infractions committed on federal lands or in federal facilities. Thus, the Salt Lake City headquarters of the Court, the Frank E. Moss Federal Building, is the primary location at which virtually all district court proceedings are conducted and where case-related documents are filed and processed. Although the Salt Lake City location is convenient for most counsel and litigants who live along the Wasatch Front, the lack of any staffed divisional offices at other locations in the Division make access to the Court and its services difficult for counsel and litigants who live in southern and eastern portions of the state. The single court location in this geographically large District poses special hardships for low-income and indigent litigants and their families, including American Indians who are largely confined to reservations in the southern portion of the state. With that interest in mind, the Court recently completed the first stage of a long-range space and facilities planning effort that foresees the establishment over the next 10 - 30 years of permanently staffed divisional offices with sitting judicial officers in Ogden, Provo, and St. George.

C. OVERVIEW OF THE DISTRICT AND COURT RESOURCES:

To the extent that the civil litigation process in the District of Utah is measurable, the analysis of that process must begin with an examination of the current structure and function of the Court.

1. JUDICIAL RESOURCES:

a. Article III Judgeships: The increase in the state's population is

reflected in the Court's expanding caseload and in its growth as an organization. From 1896 to 1954, the Court's bench consisted of one trial judgeship. A second judgeship was authorized in 1954 to assist with a growing caseload. A third judgeship was authorized in 1979, a fourth in 1985, and a fifth in 1990 when President George Bush signed into law the Judicial Improvements Act of 1990. As currently staffed, the Court's bench is comprised of five active district judges and two senior district judges. Currently,new civil cases are apportioned among the full-time and senior judges as follows:

TABLE I

TITLE	PERCENTAGE OF THE TOTAL CASELOAD
Chief Judge	15.0%[4]
Judge	18.9%
Judge	18.9%
Judge	18.9%
Judge	18.9%
Senior Judge	0.0%[5]
Senior Judge	9.4%

Based on the total number of cases filed over the past year and those projected for the current and coming years, the existing ratio of district judges to total cases filed is very adequate. Although there have been months in which judgeships have been vacant, the ability of the Court to process and dispose of its caseload has not been seriously hampered.[6] Had the fifth judgeship been filled

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[4] The Chief Judge traditionally has been assigned 80% of the caseload assigned to the other active district judges to allow time for a variety of administrative duties associated with overseeing the work of the District.

[5] One Senior Judge is not assigned new cases, but serves the Court as a settlement judge, assists the Tenth Circuit Court of Appeals, and serves on the Temporary Emergency Court of Appeals.

[6] During statistical year (SY) 1992, which began on July 1, 1991, the Court experienced four vacant judgeship months; during SY 1991, it experienced six vacant judgeship months. Other recent years in which judgeship vacancies have existed are 1986, four months; 1985, 16.1 months; 1980, 5.7 months; 1979 11 months; and 1978, 3.9 months. The average of vacant

in December 1990, when it was created, the total filings -- civil and criminal -- per judgeship in the District of Utah would have been 277, which contrasts with a national average of 372 cases filed per judgeship. The number of trials completed would have been 19 per judgeship versus a national average of 31. By virtually any standard, with the fifth judgeship now filled, the Court now has sufficient trial judge resources to handle its current caseload. The Court is fortunate to have available the assistance of Senior Judge Aldon J. Anderson, who, as noted in Table I, continues to draw a significant caseload and who participates actively in the ongoing work of the Court. The Court also takes advantage of the expertise and many years of trial court experience of Senior Judge A. Sherman Christensen, who, although drawing no cases, has been for some time the Court's resident settlement conference judge and has achieved significant success in that role. Senior Judge Christensen also provides assistance to the judges of the Tenth Circuit Court of Appeals and the Temporary Emergency Court of Appeals on which he currently serves as the only original appointee.

b. Magistrate Judgeships: The District currently is authorized one full-time and four part-time magistrate judgeships. Three part-time magistrate judgeships, each of which has a relatively small caseload, are located the outlying cities of Vernal, Monticello, and Cedar City, all of which are a considerable distance from the Salt Lake City headquarters of the Court. The current incumbents, respectfully, are Patrick Fenton, F. Bennion Redd, and Ray Nash. The full-time magistrate judgeship and one substantial part-time magistrate judgeship are located in Salt Lake City. The Court is fortunate to have as the incumbent in the Salt Lake City part-time position Magistrate Judge Ronald N. Boyce who, although ranked at and salaried according to a part-time position, invests virtually the equivalent of full-time hours in his court-related work.

At the Court's request, the need for a second full-time magistrate

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judgeship months in the District of Utah is 6.7.

judgeship in the District was documented in a SY 1991 study conducted by the Division of Magistrate Judges of the Administrative Office of the United States Courts. That Division and the Judicial Conference Magistrate Judges Committee both endorsed the Court's request to have the part-time Salt Lake position converted to full-time status. The Judicial Conference approved the request at its September 1991 meeting. A request to fund the position will be incorporated into the 1993 Judicial Branch budget submission and it will be filled on a full-time basis in October 1992.

However, a ratio of two full-time magistrate judges in the Salt Lake area to five Article III judges may prove to be inadequate if the Court's criminal caseload continues to grow. Nationally, the ratio is much nearer to one magistrate judge to two district judges; in some large metropolitan and high criminal caseload courts, the ratio approaches one-to-one. The Court currently refrains from referring some matters to the full-time magistrate judge because of his other responsibilities. Full-time Magistrate Judge Gould typically spends approximately 30% of his working week processing citations for traffic and other misdemeanor violations that occurred on installations or enclaves under the jurisdiction of the federal government. A portion of that work involves travelling to and from a variety of federal installations in northern and western Utah for the purpose of hearing and ruling on such matters.[7] If the fifth active judge opts to refer a large portion of pretrial matters to the magistrate judges, the Court might well request creation of an additional part-time magistrate judge position to whom the citation- and travel-related duties could be assigned.

2. NON-JUDICIAL RESOURCES:

a. Judicial Support Staff: Each active trial judge and Senior Judge Anderson is assisted by one secretary and the equivalent of two full-time law clerks. Senior Judge Christensen currently has no law clerks but is assisted by a secretary who will retire in December 1991. He has no plans to fill the

[7] These include Hill Air Force Base, Tooele Army Depot, and Dugway Proving Ground.

position when she does. The full-time magistrate judge has a secretary and law clerk to support his work. The part-time magistrate judge in Salt Lake City has a full-time secretary and relies on a temporary pro se law clerk and externs for support.

b. Office of the Clerk: The Office of the Clerk currently is authorized 23 full-time permanent positions. Of the full-time employees, five are assigned to serve as docket clerks and five as courtroom deputies for the active trial judges. An additional position serves Senior Judge Anderson in docketing and courtroom functions. Another position serves the courtroom requirements of the full-time magistrate judge both at the courthouse and in other places where he holds court. The remaining positions are allocated among the procurement, financial, automation support, public reception, and management functions of the Clerk's Office.

Staffing allocations for district court clerks' offices are based on a work-measurement formula devised in the early 1980s and based almost entirely on caseload. However, because Article III trial judgeships are not always allocated on the basis of need defined by caseload, application of the formula to a district in which the number of judgeships slightly exceeds what the caseload otherwise would necessitate under the existing formula yields a staffing allocation that is insufficient to respond appropriately to the administrative requirements of the Court and needs of the judicial officers. The disparity with allocations for the Probation and Pretrial Office and the Bankruptcy Clerk's Office are telling. Whereas the Office of the District Court Clerk is allocated 23 positions to support six Article III judges, including Senior Judge Anderson, and two magistrate judges, the Bankruptcy Court Clerk's office, by comparison, is allocated 42 positions to support the work of three bankruptcy court judges.

c. Probation and Pretrial Services: The Court's Probation and Pretrial Services Office is comprised of 32 personnel, 21 of whom are probation and pretrial services officers, and 11 of whom provide clerical, financial, and

limited data processing support. The office has experienced unprecedented growth in the past four years, primarily as a result of the allocation of new positions authorized under various pieces of anti-crime legislation. The office is headquartered in Salt Lake City with satellite offices in Ogden, Provo, and St. George.

3. BANKRUPTCY COURT:

The District of Utah Bankruptcy Court, an adjunct of the District Court, has three authorized judgeships, one of whom serves as chief judge. The work of the Bankruptcy Court is supported by the Bankruptcy Clerk's Office. All bankruptcy judges and bankruptcy supporting personnel are located at the Salt Lake City headquarters of the District of Utah.

D. STATUTORY STATUS OF THE DISTRICT OF UTAH:

Section 105 of Title I of the Judicial Improvements Act of 1990 directs the Judicial Conference of the United States to designate ten pilot districts that shall implement the provisions of the legislation on an accelerated basis. Expense and delay reduction plans in those courts are to be in place no later than December 31, 1991; that deadline is to be contrasted with the December 31, 1993 deadline in effect for the non-pilot districts. In March 1991, the Judicial Conference designated the District of Utah as one of those ten pilot districts. Speaking for the Court, Chief Judge Jenkins notified the Conference that the District of Utah, for purposes of the experiment, would serve as a pilot district.

SECTION II

ASSESSMENT OF THE DOCKET

A. GENERAL OVERVIEW:

During the statistical year (SY)[8] beginning July 1, 1990 and ending June 30, 1991, 1,383 cases were filed in the District of Utah; of those, 1,143 were civil and 235 criminal felony. By contrast, 1,576 cases were terminated during SY 1991. At the close of SY 1991, 1,702 cases were pending before the court and distributed, in varying amounts, among four active judges and one senior judge.[9]

Because federal trial courts differ from each other on the basis of a wide assortment of variables, the size and the complexity of their caseloads and related statistical profiles do not always lend themselves to convenient comparisons, statistical or other, that provide conclusive insights as to causes and effects regarding expense and delay in litigation. Per judgeship statistics, in contrast, serve as a common denominator of sorts that permit direct comparison of a particular court's collective judicial workload on a per judgeship basis with the national average or with that of another court. Throughout this section, the report's docket analysis provides comparisons of national per judgeship trends in case management statistics with those for the District of Utah.

Expressed in terms of per judgeship[10] statistics for SY 1991, the figures referenced above reflect 286 civil and 59 criminal felony filings per judgeship, 426 pending cases per

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[8] The Statistical Analysis and Reports Division of the Administrative Office of the United States Courts, relying on data extracted from monthly reports submitted by the federal trial courts, compiles court management statistics for the "statistical year" July 1 to June 30. Much of this report's discussion of the case management statistics and trends in the District of Utah's civil and criminal workloads is based on Administrative Office data as reported in the annual *Federal Court Management Statistics* and other court productivity publications which it publishes.

[9] The nominee for the fifth judgeship was confirmed in September and entered on duty in November 1991 at which time the court's pending caseload was redistributed to allocate an appropriate percentage to that judgeship. The *1991 Federal Court Management Statistics* reflect per judgeship statistics for SY 1991 as if the fifth judge had been on board since December 1990. Because the judge did not commence service as a judge until November 1991, the SY 1991 per judgeship statistics in this report were calculated to reflect the work of four rather than five active judgeships, thus more accurately reflecting the work of the Court for that statistical year.

[10] The average per judge is based on four authorized judgeships for the District of Utah from 1985-1990. Per judgeship figures for SY 1979-1984 are based on three authorized judgeships, SY 1978 and previous years' figures are based on two authorized judgeships.

judgeship, 384 weighted civil filings, and 394 terminations per judgeship. In SY 1991, each of the District's four active sitting judgeships completed an average of 24 trials of which 14 were civil and 10 criminal.

During the period SY 1972 - SY 1991, the District of Utah experienced an overall increase in total filings, although that total fluctuated widely during the period SY 1982 - SY 1986. Total civil and criminal felony filings for SY 1991 represent a decrease of 6.4% in total filings from SY 1990 and a decrease of 6.2% from SY 1988. However, they also represent an overall increase in total filings of 30.3% since SY 1980 and of about 151%, or two and a half times as many filings, since SY 1972. **Figure 1** illustrates the overall trend in total filings for the District of Utah for the period SY 1972 - SY 1991.

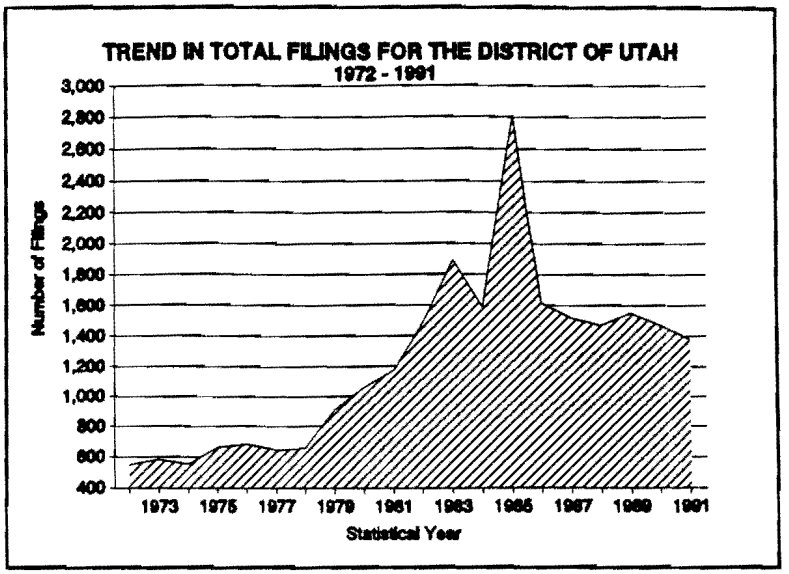

Figure 1

As noted above, the District of Utah terminated a total of 1,576 cases in SY 1991; that number represents a 12.3% increase over SY 1990 case terminations and a 4% increase over SY 1989. It is a 54% increase over total terminations in SY 1980 and a 204% increase over total terminations in SY 1972. Overall, these figures show

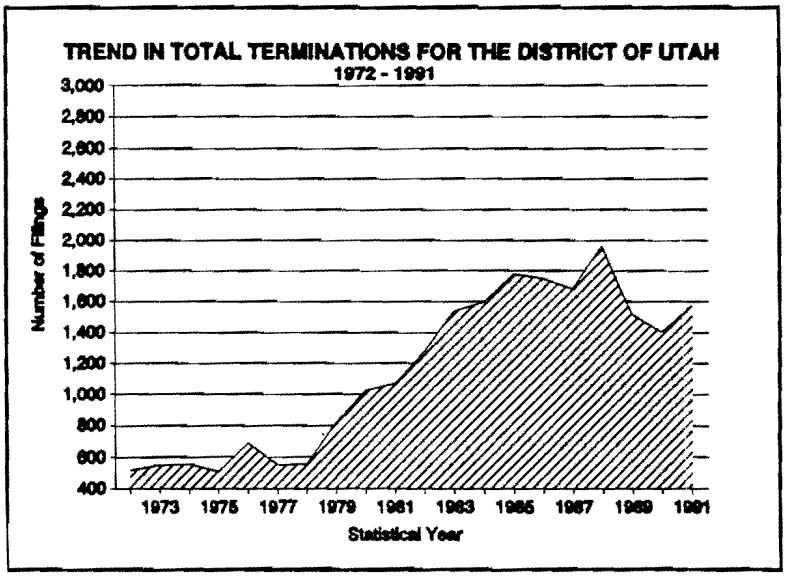

Figure 2

that the Court has kept pace with increased filings in the district through increased termination rates. **Figure 2** illustrates the trend in case terminations in the District of Utah for SY 1972 - SY 1991.

At the end of SY 1991, the Court's total pending caseload was 1,702 cases which represents a decrease of about 11.5% from the previous year. However, it reflects an increase of 89% over the SY 1980 total pending caseload and an increase of 319% over the SY 1972 total. **Figure 3** illustrates the trend in total pending cases in the District of Utah from SY 1972 - SY 1991.

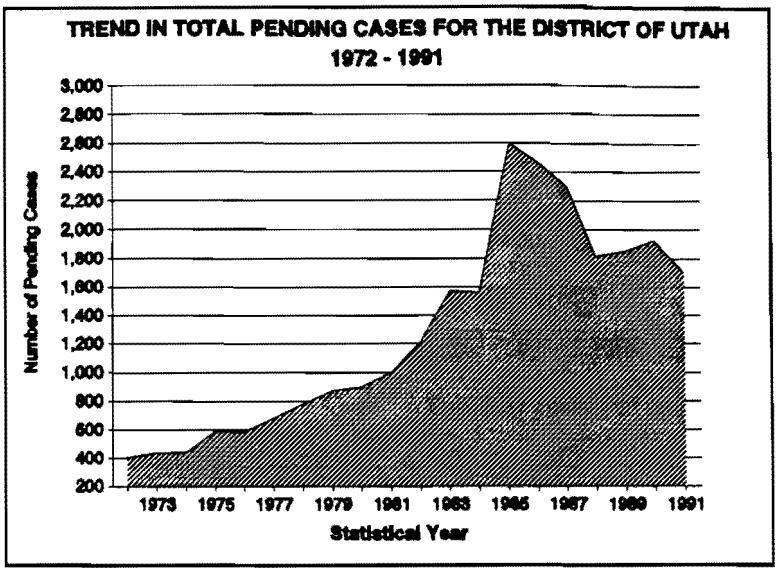

Figure 3

In SY 1991, 394 cases (criminal and civil) were terminated per judgeship, representing an increase of 12.3% over terminations achieved in SY 1990. It also represents an increase of 15.2% over SY 1980 and of 52% over SY 1972. Compared to the national per judgeship figure of 371 case terminations in SY 1991, per judgeship terminations in the District of Utah are approximately 23 cases higher, representing a substantial productivity gain over SY 1990. **Figure 4** compares the national trend in per judgeship terminations with that of

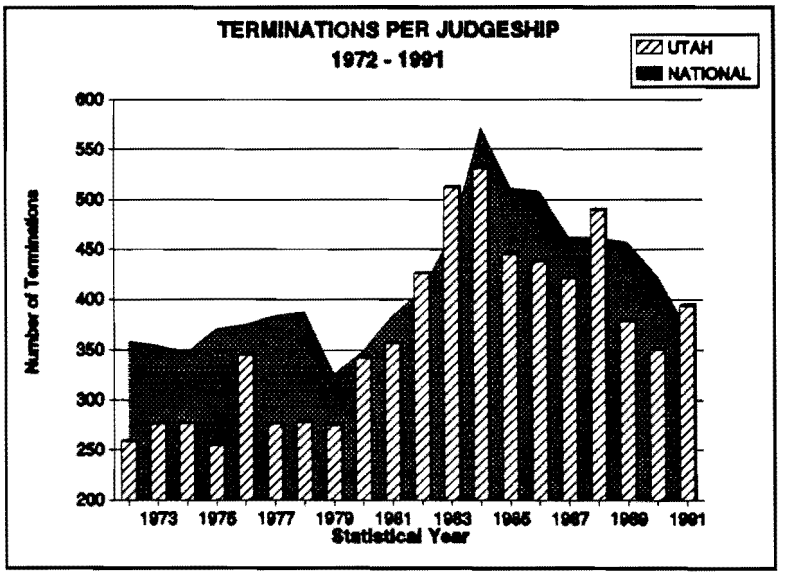

Figure 4

the District of Utah; for most of the years covered, fewer cases were terminated in the District of Utah than the national average.

At the close of the SY 1991, there were 426 pending cases (criminal and civil) per judgeship in the District of Utah. This represents a decrease in the per judgeship caseload of 11.5% since SY 1990, an increase of 41.8% since SY 1980, and an increase of 110% since SY 1972. This figure nearly matches the national per judgeship pending caseload of 422 cases. **Figure 5** plots the national trend in pending cases per judgeship and contrasts it with that of District of Utah for the period SY 1972 - SY 1991.

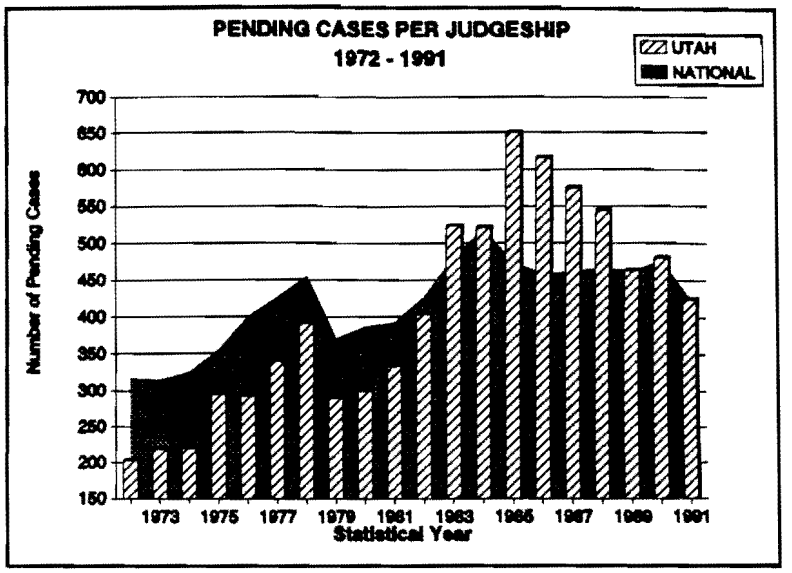

Figure 5

Each judge in the District of Utah completed an average of 24 trials (civil and criminal) in SY 1991. This represents a decrease of 20% (six trials per judgeship) since SY 1990, a decrease of 7.7% (two trials per judgeship) since SY 1980, and a decrease of 29.4% (ten trials per judgeship) since SY 1972, indicating that the judges in the District of Utah are conducting progressively fewer

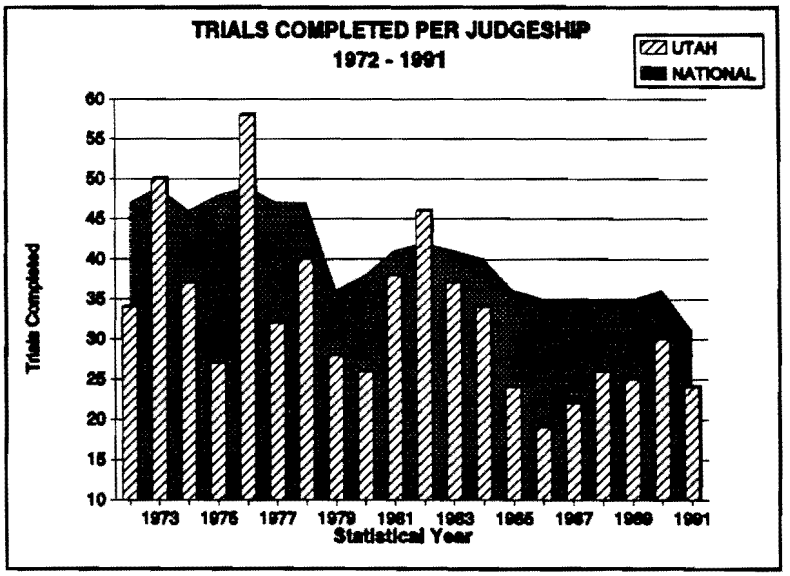

Figure 6

trials. The SY 1991 figure is seven trials below the national average of 31 trials per judgeship.[11] **Figure 6** compares the national trend in number of trials completed per judgeship with that for the District of Utah for the period SY 1972 - SY 1991.

B. STATE OF THE CIVIL DOCKET:

In SY 1991, a total of 1,143 civil cases were filed in the District of Utah. Of these cases, 14 (1.2%) were classified as social security appeals; 18 (1.6%) as actions for recovery of overpayment or enforcement of a judgment; 161 (14.1%) as prisoner petitions and complaints; 121 (10.6%) as forfeiture and tax suits; 54 (4.7%) as real property-related actions; 44 (3.8%) as labor suits; 230 (20.1%) as contract actions; 145 (12.7%) as tort suits; 30 (2.6%) as intellectual property-related actions (copyright, patent, and trademark); 126 (11%) as civil rights actions; 6 (.5%) as antitrust actions; and 194 (17%) as some other type of civil matter.

For SY 1991, these figures compare to a national civil filings mix of 7,692 (3.7%) social security appeals; 7,933 (3.8%) recovery of overpayment or enforcement of judgments; 42,462 (20.4%) prisoner petitions; 8,227 (4%) forfeiture and tax suits; 9,794 (4.7%) real property-related actions; 14,686 (7.1%) labor suit; 35,485 (16.6%) contract actions; 37,309 (18%) tort suits; 5,235 (2.5%) as intellectual property-related actions; 19,340 (9.3%) civil rights actions; 681 (.3%) as

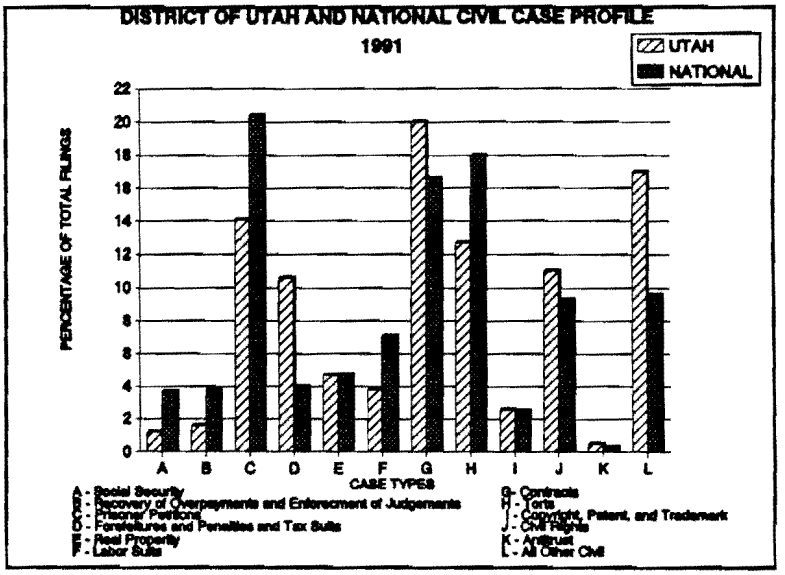

Figure 7

[11] Although this assessment does not analyze the number of days per trial because the data for SY 1991 had not been published by the Administrative Office when this report went to press, the reduction in the number of trials may be offset, at least in part by an increase in the days per trial, reflecting the more complex nature of many of the civil cases being tried. The Committee would welcome a chronological analysis by the Federal Judicial Center and/or Rand Corporation of the relationship between number of trials and days per trial for the period SY 1980 - SY 1991.

civil antitrust actions; and 19,898 (9.6%) as some other type of civil matter. **Figure 7** illustrates the national civil case profile for SY 1991 and contrasts it with the profile for the District of Utah.

A comparison of the District of Utah's per judgeship civil filing and processing statistics with national statistics reveals a slightly lower workload level for the District. For SY 1991, 286 civil filings per judgeship occurred in the District of Utah. This is a decrease of 8% over SY 1980 and an increase of 45% over SY 1972. It compares to a national average of 320 civil filings per judgeship for SY 1991, about 12% higher than the number for the District of Utah. **Figure 8** illustrates the national trend in civil filings per judgeship and contrasts it with the District of Utah for the period 1972-91. District of Utah judges completed an average of 14 civil trials per judgeship in SY 1991, which is 21% fewer trials than the national median of 17 civil trials per judgeship.

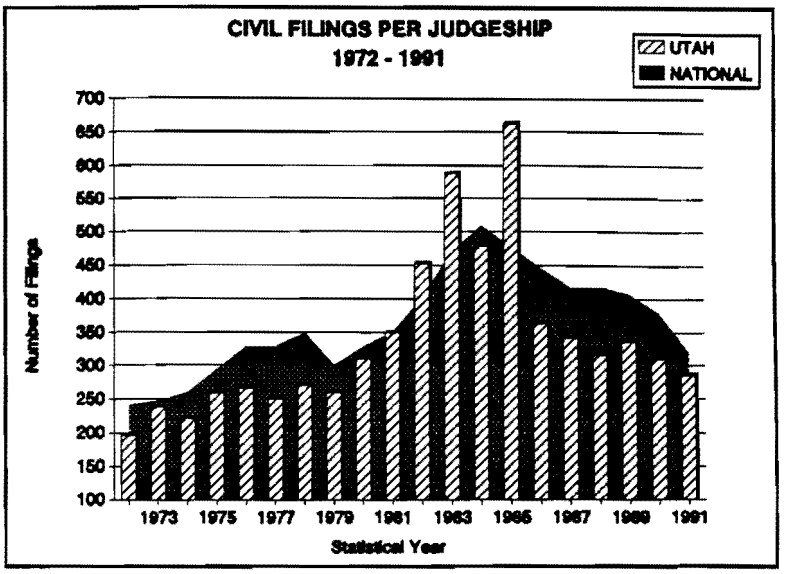

Figure 8

The median time from filing to disposition of civil cases in the District of Utah was 12 months in SY 1991, three months longer than the national median for SY 1991 and an increase of one month over the median time achieved by the District in SY 1990 and SY 1989.[12] It represents an increase of six months in the median time achieved in SY 1980 and an increase of four months in the median time achieved in SY 1972. **Figure 9** compares the national trend in median time from filing to disposition with that of the District of Utah for the period SY 1972 - SY 1991. Apart from the significant upward aberration in the median time for the District of

[12] The "median" reflects the point at which half the total cases fall below and half are above. In other words, half of the civil cases in the District of Utah are resolved in less time; the other half take longer to resolve. In calculating median times for each district court, the Administrative Office excludes five categories of cases: land condemnations, prisoner petitions, deportation review, and recovery of overpayment/enforcement of judgments cases.

Utah during the late 1980s, both trends follow the same general track.

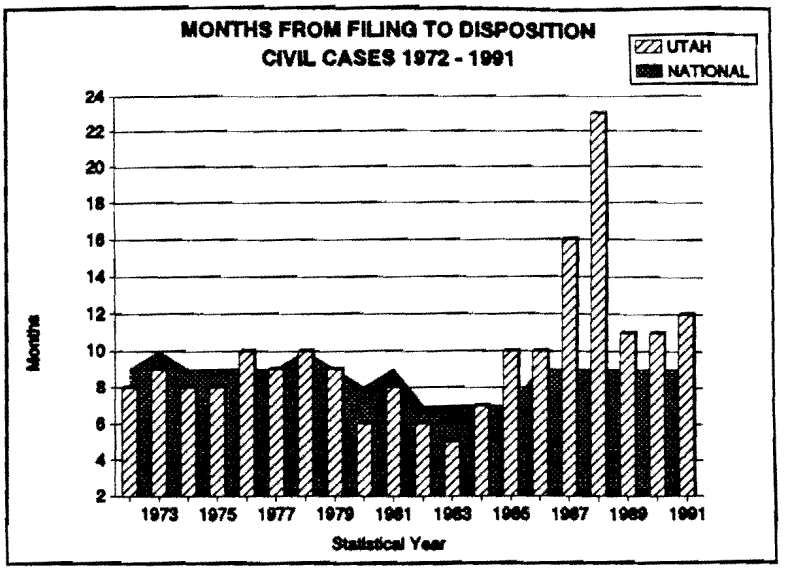

Figure 9

The median time from issue to trial[13] for civil cases that proceed to trial was 20 months in SY 1991 compared to the national median of 15 months, indicating that civil case processing in the District of Utah requires an average of 33% more time than the national average. Whether this is an aberration remains to be seen. In SY 1990, the median time from issue to trial in cases going to trial in the District of Utah was 14 months, which was identical to the national median. The median time for SY 1980 was 18 months and for SY 1972, 12 months. **Figure 10** compares the national trend in median time from issue to trial with that of the District of Utah for the period SY 1972 - SY 1991. Although there are frequent deviations, there is a slight upward trend in the number of months from issue to trial over the past twenty years. That increase reflects, in part, the increasing complexity of civil litigation.

To the extent that the formula used to weight cases is accurate and cases are classified uniformly in all federal trial courts, case weighting functions as an important variable. It allows for comparisons of civil caseloads among districts and within districts over time, because it restates the total civil filings figure in a way that reflects the complexity of those civil cases. The weighted filings per judgeship figure of 384 for SY 1991 in the District of Utah represents a decrease of 5.2% in weighted filings per judgeship from SY 1990, a 13% increase from SY 1980, and a 33.3% increase from SY 1972. It compares to a national weighted filings per judgeship figure of 386 for SY 1991. **Figure 11** illustrates the national trend in weighted filings and compares it with the trend in the District of Utah for the period SY 1972 - SY 1991. This

[13] Issue represents the date an answer or response is filed; filing represents the date a case becomes a record of the court.

trend chart shows that the civil cases filed in the District of Utah, as a group, historically have been comparable in their complexity to the national average.

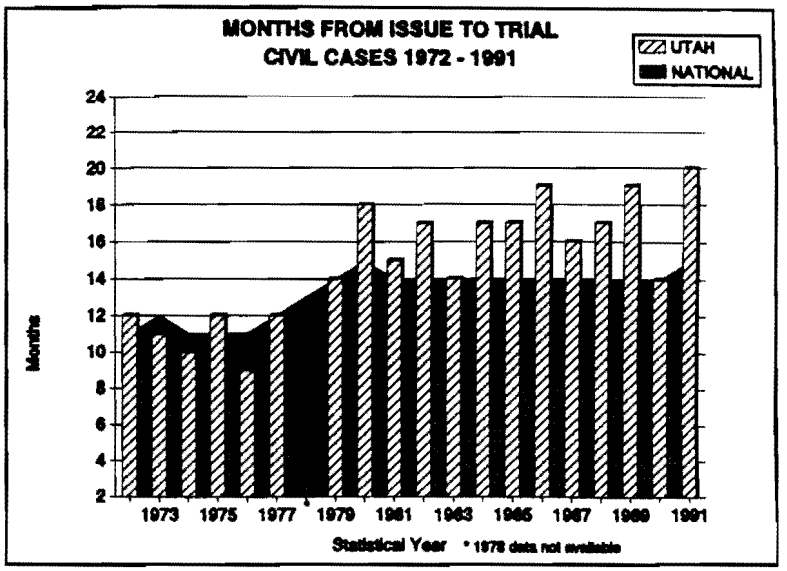

Figure 10

A caseload analysis prepared by the Federal Judicial Center for the District of Utah discusses the "life expectancy" and "indexed average lifespan" of civil cases filed in the district.[14] The Center's Research Division staff consider these statistical measures a more accurate predictor of a court's future efficiency than other more traditional models. Center staff have calculated the average life expectancy of a civil case in the District of Utah at approximately 19 months. The life expectancy equation is used to assess trends in actual case lifespans. The indexed average lifespan, which is used for comparison among districts, is about 14 1/2 months for the District of Utah, some two and one-half months longer than the national average of 12 months. This is another statistical indicator that the District of Utah disposes of its civil cases more slowly than the national average.

At the close of SY 1991, 10.8% (168 cases) of the district's civil cases were over three years old. This is a decrease from 12.3% in SY 1990, and an increase from 6.2% in SY 1980 and from 2.4% in SY 1972. Nationally, 11.8% of civil cases were more than three years old at the close of SY 1991. **Figure 12** plots the national trend in percentage of civil cases more than three years old and compares it with the trend in the District of Utah for the period SY 1972 - SY 1991.

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[14] See "Guidance to Advisory Groups Appointed Under the Civil Justice Reform Act of 1990" (Feb 1991) (version prepared for the United States District Court for the District of Utah), unpublished report prepared by the Research Division of the Federal Judicial Center with assistance from the Court Administration and the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts.

C. STATE OF THE CRIMINAL DOCKET:

This analysis of the criminal docket in the District of Utah includes only felony crimes and is partly expressed in per judgeship statistics. Misdemeanor crimes, disposition of which is primarily referred to the magistrate judges, have been omitted from this analysis in order to more accurately reflect the workload of the district judges.[15]

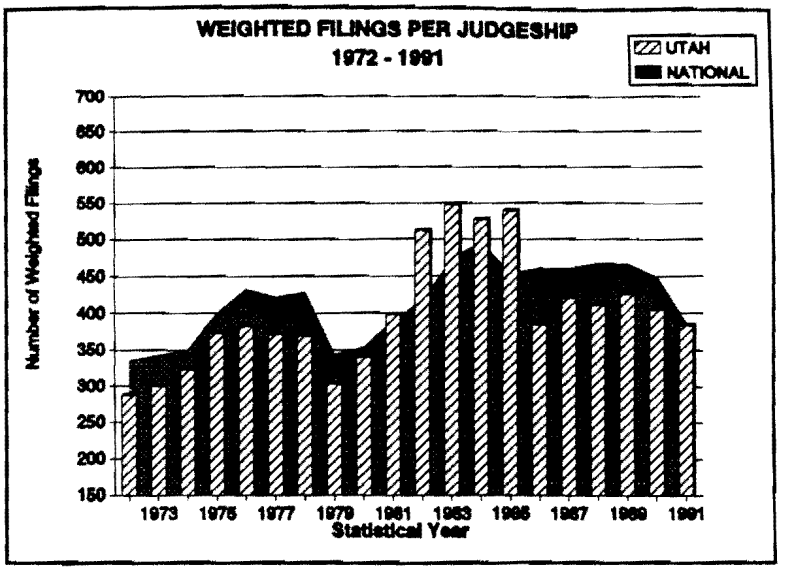

Figure 11

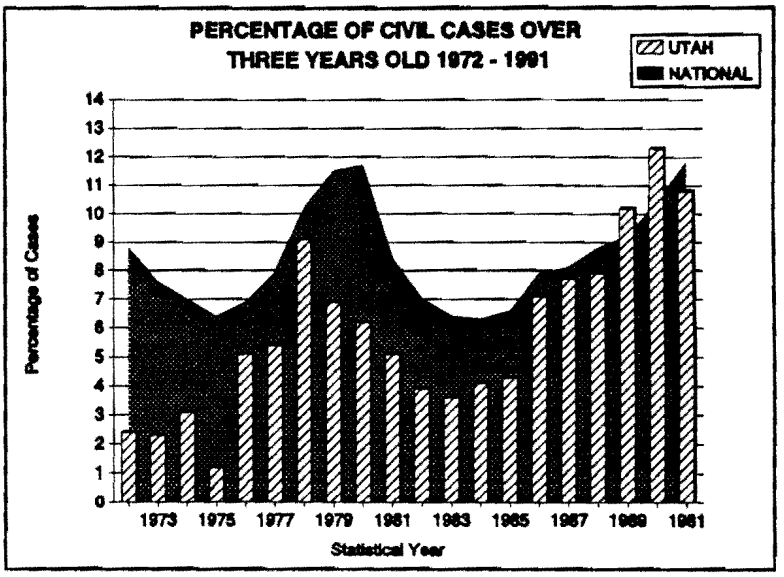

Figure 12

During the statistical year ending June 30, 1991, 235 criminal felony indictments/informations were filed in the District of Utah. These cases included 20 immigration cases (8.5% of all criminal felony cases); 7 embezzlement cases (3%); 23 weapons/firearm cases (9.8%); 5 escape cases (2.1%); 16 burglary/larceny cases (6.8%); 25 marijuana/controlled substances cases (10.6%); 32 narcotics cases (13.6%); 5 forgery/counterfeiting cases (2.1%); 38 fraud cases (16.2%); 10 homicide/assault cases (4.3%);

[15] Statistical analyses of magistrate judges' workload may be obtained from the Division of Magistrate Judges of the Administrative Office of the United States Courts.

15 robbery cases (6.4%); 39 other (unclassified) cases (16.6%). Some 5 cases were transferred to the district, bringing the total number of criminal filings to 240.

Nationally for SY 1991, the criminal felony profile is as follows: immigration, 6%; embezzlement, 5%; weapons/firearms, 9%; escape, 2%; burglary/larceny, 5%; marijuana/controlled substances, 11%; narcotics, 23%; forgery/counterfeiting, 3%; fraud, 19%; homicide/assault, 2%; robbery, 5%; all other, 10%. **Figure 13** profiles the criminal case filings for the District of Utah against the national average for SY 1991.

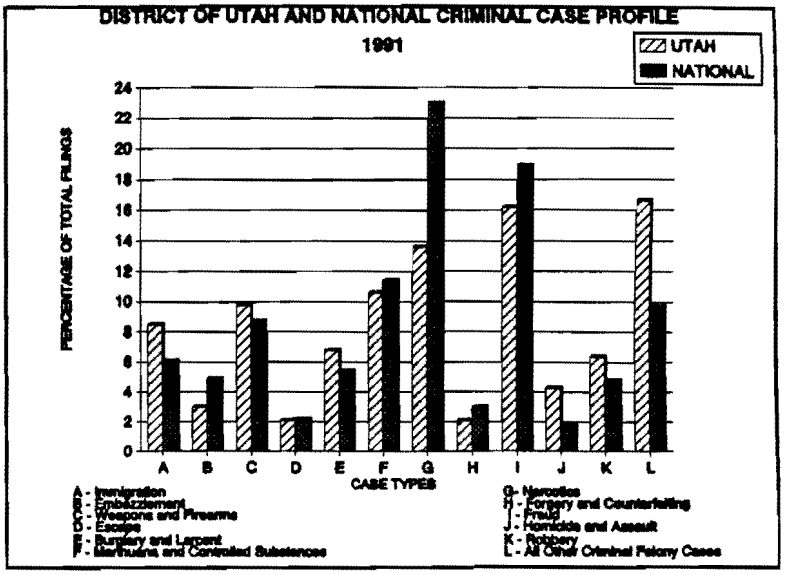

Figure 13

For SY 1991, 310 criminal felony defendants were prosecuted, of which 94 or 30% were charged with drug-related crimes. Nationally, drug defendants represented 36.9% of all defendants prosecuted in the federal courts.

On June 30, 1991, 138 criminal defendants were awaiting disposition of their cases by trial or plea and were considered

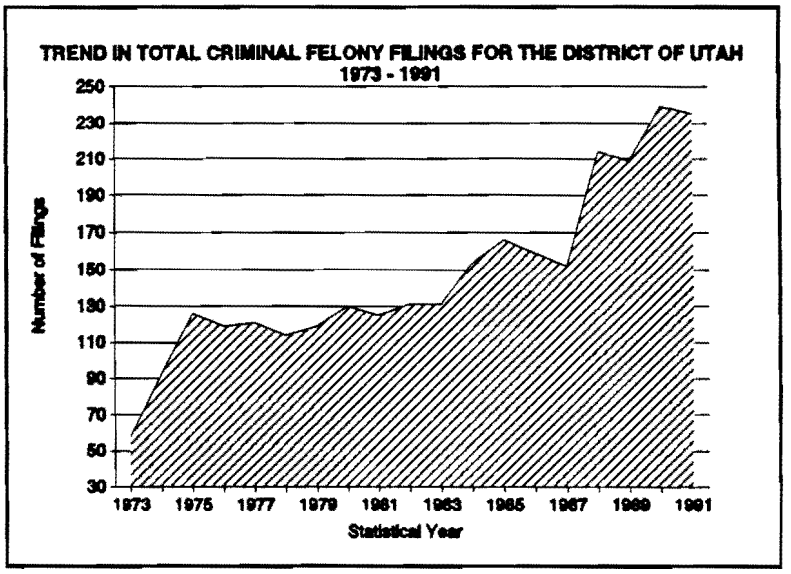

Figure 14

"triable" by the Administrative Office.[16] This figure represents 56.8% of all defendants in the district.

Total criminal felony filings of 240 cases in the District of Utah for SY 1991, including reopens and transfers, reflect an increase of 86% from SY 1980 and of 122% from SY 1973. **Figure 14** illustrates the trend in total criminal filings from SY 1973 to SY 1991 for the District of Utah.

In SY 1991, criminal felony filings represented 17% of total filings in the District of Utah. This is an increase from 16.2% in SY 1990 and from 12.2% in SY 1980. It is a decrease from 18.5% in SY 1973. By comparison, the national average of criminal felony filings was approximately 13.3% of total filings in SY 1990 and 14% in SY 1991. **Figure 15** compares the national trend in criminal filings as a percentage of total filings with the trend in the District of Utah for the period SY 1973 - SY 1991.

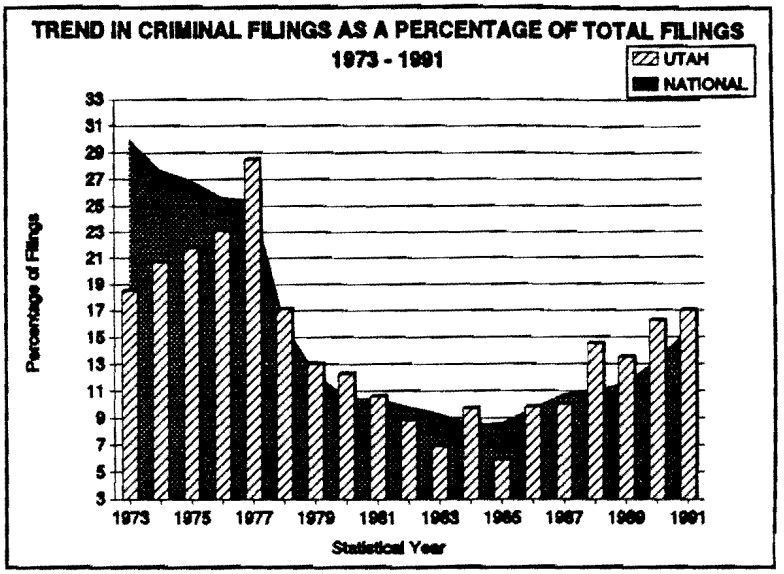

Figure 15

The Federal Judicial Center has indicated that it considers the number of defendants prosecuted within a district to be a more accurate indicator of criminal workload than the number of cases filed by indictment or information. Administrative Office data on this statistic are unavailable prior to SY 1980. Administrative Office statistics show, for the years SY 1980 - SY 1990, that the number of defendants prosecuted increased substantially, both in the District

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[16] Triable defendants include defendants in all pending felony cases who were available for pleas or trial on June 30, as well as those who were in certain periods of excludable delay under the Speedy Trial Act. Excluded from this figure are defendants who on June 30 were fugitives, awaiting sentence after conviction, committed for observation and study, awaiting trial on state or other Federal charges, mentally incompetent to stand trial, or defendants for whom an authorization of dismissal had been requested by the U.S. Attorney to the Department of Justice. (*Federal Court Management Statistics*, p. 167: 1990.)

of Utah and nationally.

In SY 1991, felony indictments or informations were filed against 409 criminal defendants. This is an increase of 3.5% from SY 1990, an increase of 43% from SY 1985, and an increase of 77.8% from SY 1980. **Figure 16** plots the trend in total defendants filed against during the period SY 1980 - SY 1991 for the District of Utah. **Figure 17** plots the national trend during that period.

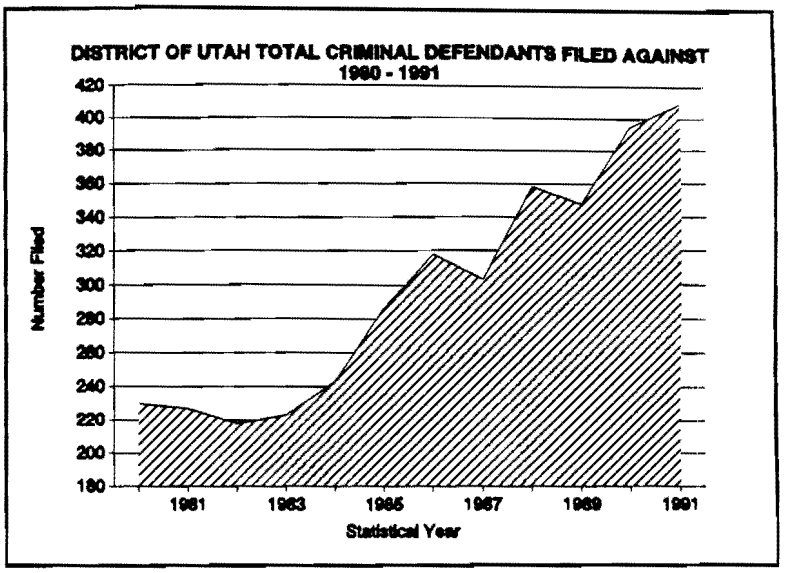

Figure 16

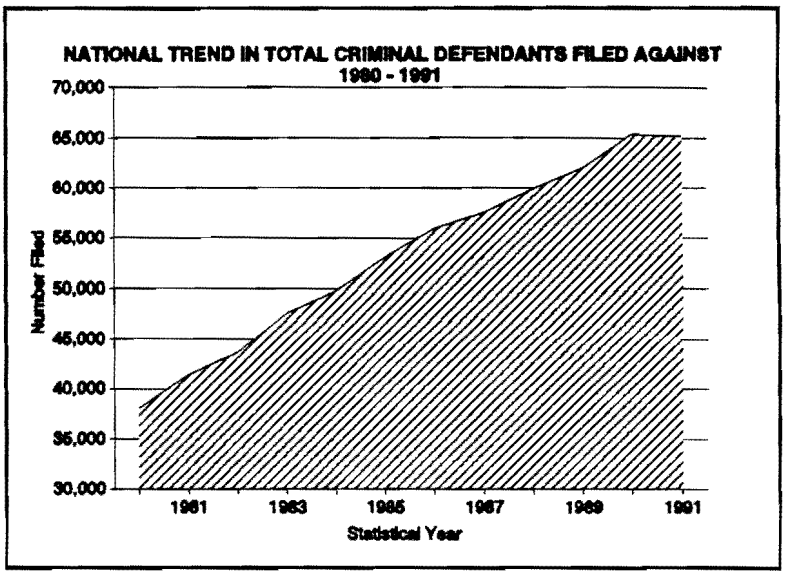

Figure 17

The number of drug defendants prosecuted increased substantially during the period SY 1980 - SY 1990. By SY 1991, there were 70 defendants against whom federal drug-related felony prosecutions were instituted in the District of Utah, representing a decrease of 27.8% from SY 1990 but an increase of 133% over SY 1985 and of 1,650% over SY 1980, when only four drug defendants were prosecuted. This compares to an increase nationally of 263% since SY 1980. **Figure 18** shows the trend in number of criminal drug defendants prosecuted during the period SY 1980 - SY 1991 for the District of Utah. **Figure 19** shows the national trend for this

statistic. **Figure 20** shows drug defendants as a percentage of all defendants.

The number of defendants considered to be "triable"[17] shows an overall upward trend since SY 1980. **Figure 21** illustrates the trend for the District of Utah and can be compared to the national trend illustrated in **Figure 22.**

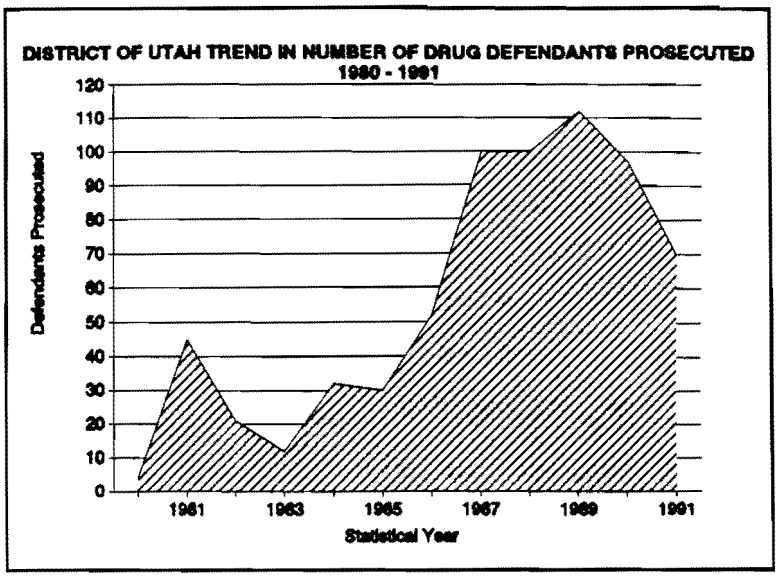

Figure 18

The percentage of total defendants who are considered "triable" as of June 30 shows an overall steady increase nationally since SY 1980. By comparison, annual percentages for the District of Utah fluctuate widely during that period and may be indicative of differing prosecutorial policies by the United States Attorney's office. **Figure 23** profiles the national trend in percentage of defendants who are "triable" and compares it with the trend in the District of Utah for the period SY 1980 - SY 1991.

The median filing-to-disposition rate for a criminal case in the District of Utah has varied from year to year but, for the most part, has tracked the national median. In SY 1991, the rate was 5.5 months, which represents an increase of 3.8% over SY 1990, of 72% or 2.3 months over SY 1980, and of 31% or 1.3 months over SY 1972. The filing-to-disposition rate increased from SY 1985 to SY 1991, but is staggered from SY 1972 to SY 1985. **Figure-24** illustrates the national trend in median filing-to-disposition rates with the trend for the District of Utah for the period SY 1972 - SY 1991.

As is true in the civil context, per judgeship statistics concerning criminal filings can be helpful in assessing an individual court's workload over time and in comparing that workload with other districts and with the national average.

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[17] See footnote 16.

In SY 1991 there were 59 criminal felony filings per judgeship in the District of Utah. This is equal to the per judgeship criminal caseload in SY 1990; it is an increase of 37% over SY 1980 and a decrease of 34% from SY 1972. It compares to a national per judgeship criminal felony filings figure of 52 cases for SY 1991. The per judgeship criminal felony filings in the District of Utah exceeded the national median by 13% during that year. **Figure 25** compares the national trend in criminal case filings per judgeship with that for the District of Utah for the period SY 1972 - SY 1991.

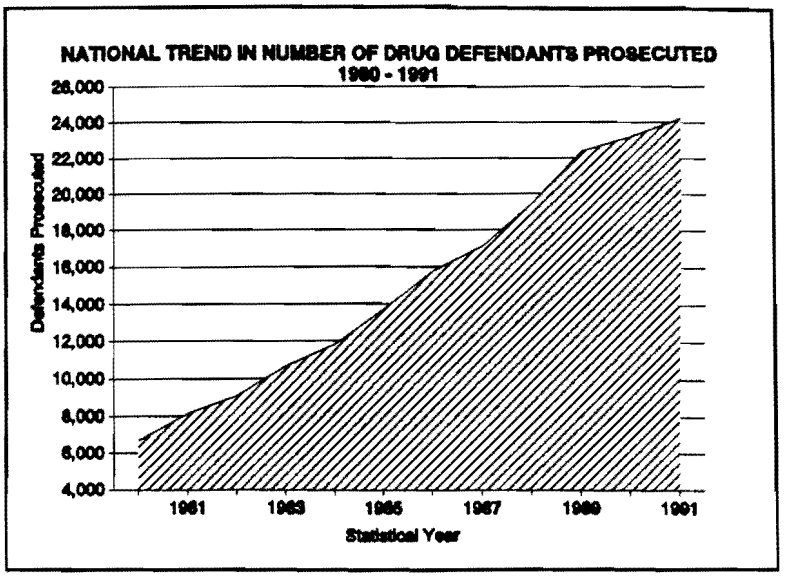

Figure 19

The figure of 409 felony indictments or informations filed against criminal defendants in the District of Utah for SY 1991 represents a per judgeship figure of 102.3 defendants prosecuted per judgeship. This number represents an increase of 0.4% over SY 1990; of 43% over SY 1985; of 78.3% over SY 1980. This compares to an increase nationally of 132% since SY 1980.

The number of drug defendants prosecuted per judgeship in SY 1991 was 28 in the District of Utah. This represents an increase of 14% from SY 1990, an increase of 270% from SY 1985, and of 2,675% from SY 1980. These figures compare to an increase nationally of 263% from SY 1980.

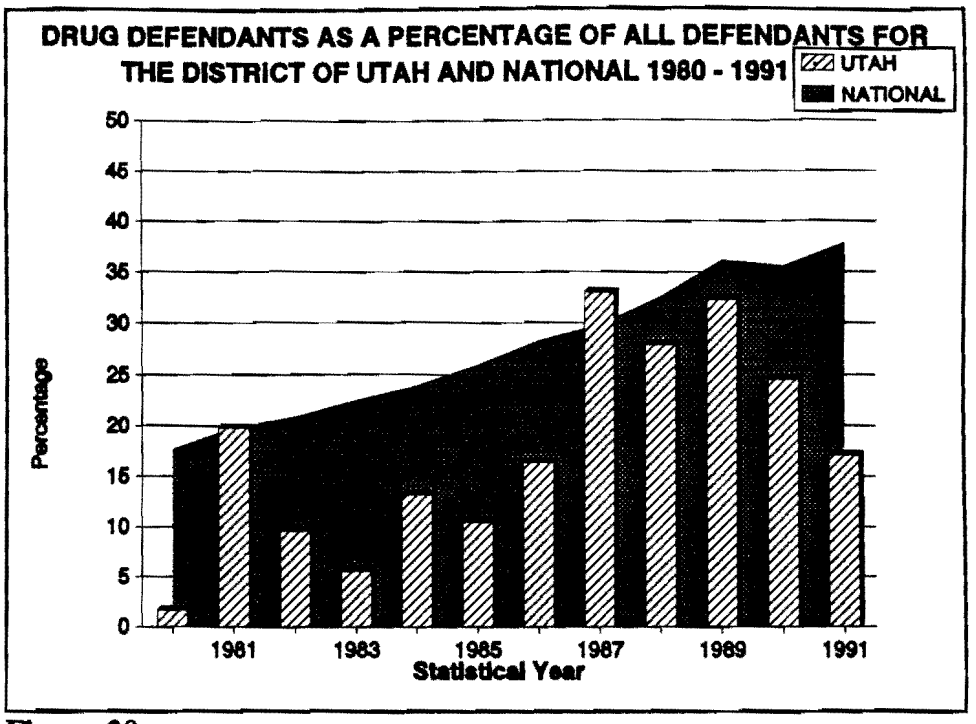

Figure 20

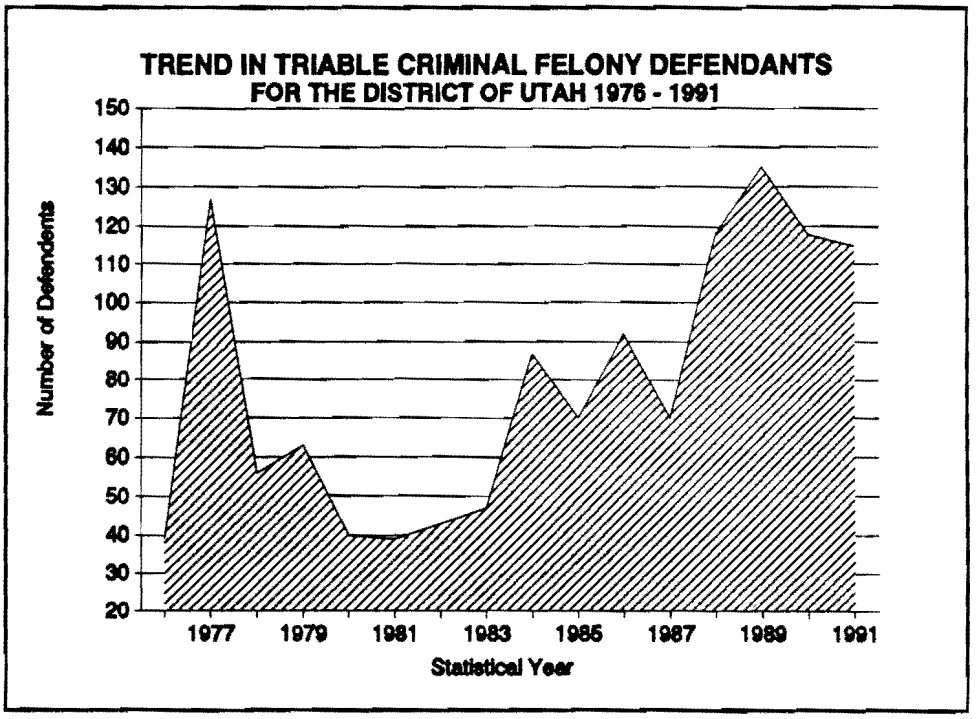

Figure 21

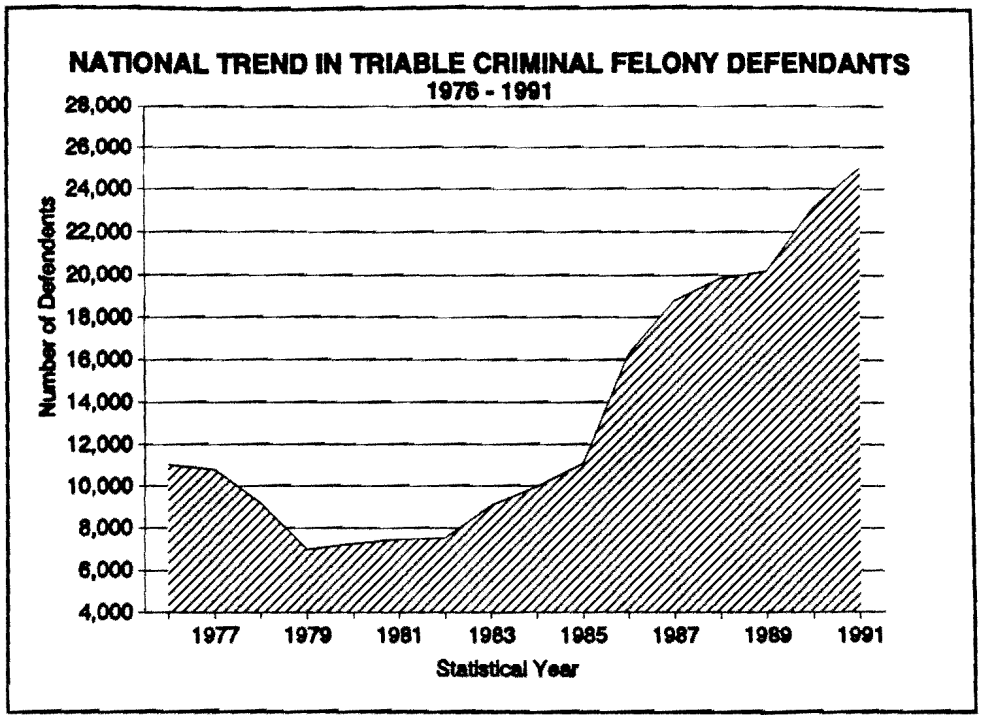

Figure 22

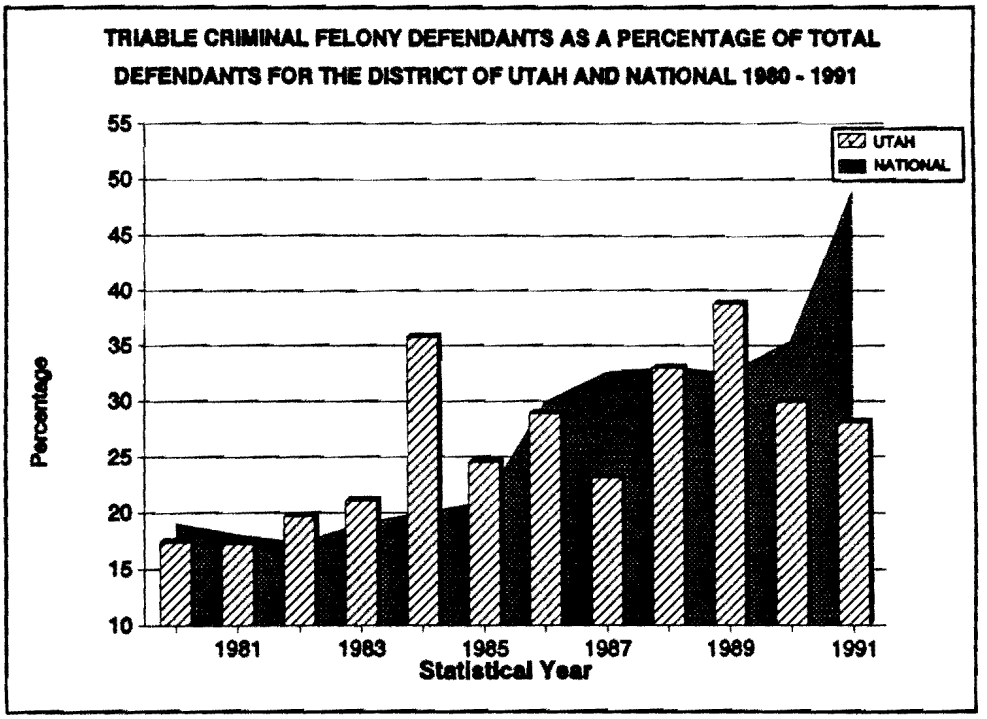

Figure 23

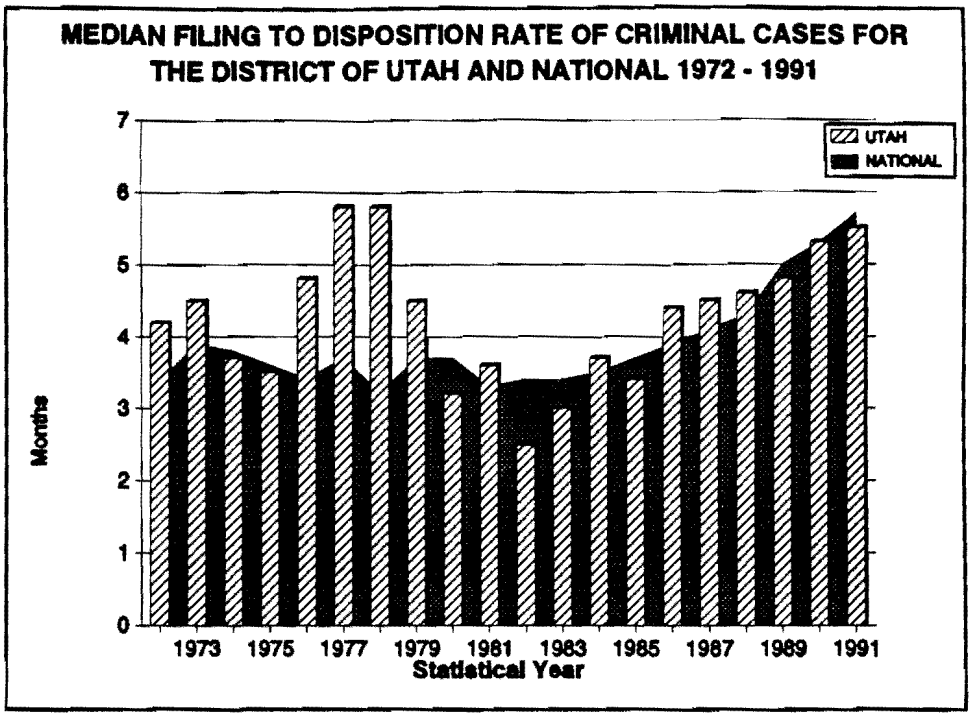

Figure 24

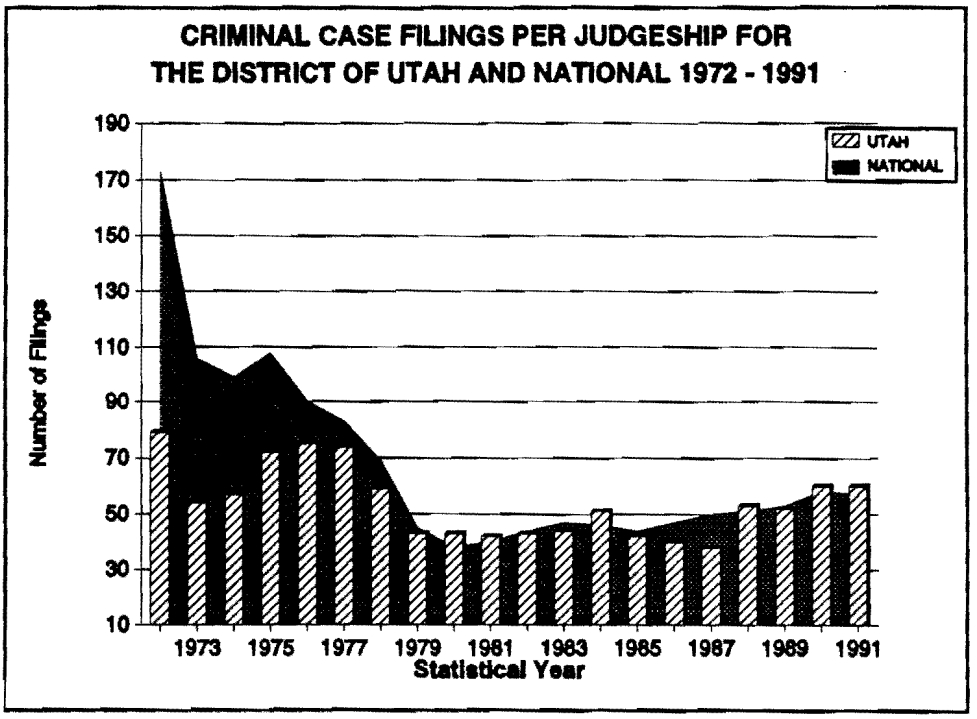

Figure 25

SECTION III

ANALYSIS OF THE CIVIL DOCKET

A. DESCRIPTION OF THE ANALYSIS:

The assessment of the District of Utah docket, which comprises Section II of this report, revealed no critical cost- or time-based problems in the manner in which civil cases are being processed. Nor is it obvious that there are serious deficiencies in the resources available to complete that processing other than in the Office of the Clerk, where additional staff are required to assist with the administrative functions gradually but consistently being delegated by the Administrative Office to the courts under the mantle of decentralization.

What did emerge from the assessment is evidence that the District of Utah takes longer to process the average civil case than a number of other trial courts; the national median time for processing civil cases in SY 1991 was nine months, but that median in the District of Utah for SY 1991 is 12 months, 33% higher than the national median. In the national standings, of 94 federal districts, Utah is 71st in this category of efficiency; in the Tenth Circuit, Utah is ranked sixth out of the eight districts. In the category of median time for civil cases moving from issue to trial in SY 1991, Utah's percentage vis-a-vis the national median is the same, but its ranking is slightly improved. Nationally, the median is 15 months; the District of Utah's median is 20 months, again 33% higher than the national median, ranking it 63rd nationally among 94 districts and eighth or last among its sister districts in the Tenth Circuit.

In light of these longer than average indicators of time required for civil case processing, staff of the Clerk's office conducted an analysis of some 100 cases[18] to determine whether there was any evidence of practices, either on the part of the Court or counsel, that result in avoidable case processing time. The cases, all of which were filed in or after July 1989, fall into five broad categories: contracts, personal injury, prisoner, civil rights, and other statutes. To ensure a broadly representative sample, the sample includes 20 cases from the docket, past and present,

[18] To ensure as recent a sampling as possible, the reviewers selected a group of 60 civil cases representing a mixture of open and closed cases filed after July 3, 1989, the date when the Clerk's office automated its civil docket. The manner of selecting the cases was not particularly scientific. It was based on the simple assumption that an examination of cases with longer dockets was more likely to reveal specific evidence of avoidable delay, if indeed such evidence existed.

of each of the four[19] active judges and the senior judge who currently draws cases. The only other criterion was that each case's docket contain a minimum of 30 entries indicating that a case-related document had been filed. Some of the cases selected contain many more than that minimum.

B. VARIABLES:

Although each district judge in the District of Utah has his own case management style, some rough generalizations can be made. First, case processing time is a function of a variety of elements. Trial judges can constrict, or at least control, segments of that time. One time-control element is the extent to which requests for extensions of deadlines and continuances of scheduled matters are handled. If practicing members of the Court's bar have the impression that such requests are routinely granted, almost regardless of the circumstances, then, human nature being what it is, they tend to rely upon such requests to eliminate prospective conflicts in their own schedules, thus protracting the life of the case.

Second, the investment of a trial judge's time in a case appears, at least to some extent, to be inversely proportional to the number and kind of matters that are referred to a magistrate judge for disposition. If a district judge prefers to handle most, if not all, case-related matters on his own, he may spend substantially more time in court than another judge who, for example, refers pretrial management of the case to a magistrate judge. Generally, other things being equal, the referring judge would seem to have more time in chambers to review pleadings, monitor case activity, conduct research, prepare opinions, and so on, although the twelve-month profile of district judge time in court in the District of Utah, illustrated later in this Section, does not clearly support this assertion. Two of the four[20] active judges refer relatively few civil matters to the magistrate judges. They also handle their own calendaring from the initial pretrial through final case disposition. The two other active judges regularly refer motions to the

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[19] It excludes cases assigned to the fifth district judge who assumed his duties on November 1, 1991.

[20] The fifth active district judge, who assumed office on November 1, has indicated that he expects to refer matters to the magistrate judges. However, the resulting volume of work he will generate for them will not become clear for at least six months.

magistrate judges, have the magistrates judges conduct much of the discovery and pretrial process, and rely on the magistrate judges for initial scheduling of events and deadlines.

C. CASE MANAGEMENT SUMMARY:

Currently, the Clerk's Office does not actively monitor civil case progress,[21] although Section V, Committee Proposals and Recommendations, makes some suggestions in that regard. The Clerk is tasked with ensuring procedural compliance with the Court's Rules of Practice as cases are filed and as subsequent pleadings are received. The Court has granted the Clerk authority to grant certain types of orders, such as initial requests for extensions of time for a limited number of pleadings. Essentially, the trial judges have retained primary responsibility for the pace and direction that a case takes once it is filed and for the level of oversight, management, and conformity to local rules to which it will be subject. Currently, there are no automatic or Clerk-monitored procedures if, for example, no service of summons is made within 120 days, if activity in a case falls dormant, if counsel for one or both parties fail to keep matters moving, or if the number of requests for extensions or continuances in a particular case exceeds a pre-established threshold. Intervention in such instances currently is left to each trial judge's discretion and is a reflection of his unique management style.

D. DIAGNOSIS:

Although this analysis is limited and the sample size relatively small, several trends emerged early on and were confirmed as successive cases were analyzed.

1. REQUESTS FOR EXTENSIONS:

The median civil case processing time in the District of Utah exceeds the national average. As one would expect, processing appears to be related to the number of

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[21] The Clerk's office does provide each judge with a variety of monthly reports, including copies of those sent to the Administrative Office of the U.S. Courts: (1) those produced by the ICMS CIVIL Docketing application which show pending caseload, pending motions, cases filed, cases terminated, magistrate referrals, etc., and (2) those that are not specifically case-management oriented but provide for the district judges a monitoring index such as the petit juror cost/utilization reports, grand and petit juror exit questionnaires, etc. Using data generated by CIVIL, the clerk's office also prepares weekly calendars that, in addition to case identification, list all matters within a calendared case that are to be heard and reviewed.

requests for extensions that are being filed and granted.[22] **Table I** plots the total number of cases covered by the analysis and breaks that total into cases in which (1) extensions were requested and granted and (2) no requests for extensions were made.

TABLE I

	CASES	LENGTH OF CASE[23]
Total	100	549.7
Extensions	77	601.2
No Extensions	23	397.5

It should be noted that on the average, cases in which extensions were granted exceed by 203.7 days or nearly seven months the length of cases in which no extensions were granted.

Table Ia reflects this same number of cases broken down by district judge; there are significant differences when one judge's record is compared with that of another. The figure in parentheses represents the number of cases the sample provided for that particular entry.

TABLE Ia

JUDGE	AVERAGE LENGTH OF ALL CASES	WITH EXTENSIONS	WITH NO EXTENSIONS
A	600.0 (20)	673.5 (14)	453.2 (6)
B	518.5 (20)	563.8 (15)	382.4 (5)
C	617.0 (20)	648.2 (16)	490.0 (4)
D	533.3 (20)	620.7 (15)	358.7 (5)
E	479.9 (20)	499.6 (18)	303.0 (2)

Taking this sample of cases, staff reviewed the number of requests to determine the approval/denial ratio. The results suggest that a request for an extension or

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[22] For purposes of the survey, all pleadings that fall into the categories of requests for extensions of time, continuances, and rescheduling at a later date were counted as requests for extensions.

[23] Figure reflects average number of days from filing of complaint to final disposition for closed cases or last docket entry for pending cases.

continuance is extremely likely to be granted. Discounting requests on which no action has been taken, the probability of denial is less than 4%. The probability of no action being taken is 17%. **Table II** shows what action was taken on such requests.

TABLE II

OVERALL COURT ACTION ON REQUEST FOR EXTENSIONS				
FILED	**GRANTED**	**DENIED**	**NO ACTION[24]**	**% GRANTED**
254	200	8	46	80.2%

Table IIa reflects these same numbers broken down by district judge. The figures in parentheses reflect the average number of extensions filed per case sampled.

TABLE IIa

DISTRICT JUDGE ACTION ON REQUESTS FOR EXTENSIONS					
JUDGE	**FILED**	**GRANTED**	**DENIED**	**NO ACTION**	**% GRANTED**
A	29 (1.35)	28	0	1	96.6
B	54 (2.70)	43	4	7	79.6
C	64 (3.20)	55	0	9	86.0
D	60 (3.00)	42	3	15	70.0
E	47 (2.35)	32	1	14	68.0

Thus, one source of avoidable delay is the relative ease with which counsel appear to be able to modify deadlines to conform to their schedules by routinely filing for extensions of time and assuming that they will be granted. There is considerable

[24] Judging from subsequent case activity, as noted on the docket, when no action is taken on a request for an extension, counsel, and for that matter the Court, appear to schedule and conduct further case proceedings *as if the request had been granted*. For example, in the absence of a denial of the request for extension of a filing deadline, counsel will assume that approval has been granted and file the document after the initial deadline has passed. None of the case dockets examined for this analysis gave any indication that counsel had been warned or sanctioned for making such assumptions. There are several explanations. One might be that all or most of such requests on which no action was taken were stipulated to by all affected parties. In such instances, none of the parties is likely to bring the matter to the Court's attention, and the absence of explicit judicial approval becomes less significant. It should be noted, however, that some of the requests reviewed in this group of sample cases provoked vigorous objections by the opposing party. Another somewhat less plausible but possible explanation may be that the requests were granted but, for whatever reason, the appropriate entry was not made on the case docket, something that may occur when no order is signed by the judge. His secretary or law clerk may convey oral approval over the telephone or in person to the requesting party but may neglect to pass notice of the approval to the judge's docket clerk. In any event, however, it is clear that virtually all requests for extensions are routinely approved or are assumed to have been approved because the case dockets reflect that the case schedule is adjusted accordingly.

disagreement among scholars, researchers, and judges as to who properly should control the pace of litigation.[25] Some argue persuasively that it should be the litigants; others argue just as persuasively that it should be the judge. It is not within the scope of this report to evaluate those competing arguments and to take a position on one side or the other, but the Court might wish to consider its procedures and criteria for reviewing and determining whether to grant such requests.[26] To the extent that requests for extensions can and should be more closely monitored, greater scrutiny and control by the Court may result in fewer of them being granted and hence speed up case processing.

2. USE OF MAGISTRATE JUDGES:

All of the district judges refer their prisoner civil rights complaints to the magistrate judges for processing and a recommendation for disposition. The district judge is the final arbiter of these matters, and if an objection to the magistrate judges' report and recommendation is filed, the district judge will review the matter and either render a decision or remand for further analysis. In other types of civil cases, however, the analysis revealed significant differences among the district judges in the extent to which they use magistrate judges for overseeing discovery, conducting pretrial conferences, and scheduling case events. **Table III** plots these differences for the 100 cases sampled. For each district judge and for all cases sampled, the table shows how many discovery and scheduling orders and hearings were issued and hearings held by the district judge and how many by the magistrate judge.

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[25] See, for example, the spirited exchange in the form of law school journal articles between United States District Judge Peckham, Northern District of California, Professor Judith Resnick of the University of Southern California, and others on this issue.

[26] The Court recently took some action to restrain the submission of second and successive requests for extensions to necessary situations. Under Rule 207 of the substantially revised District Court Rules of Practice that went into effect on June 1, 1991, the Court authorized the Clerk to grant initial extensions, primarily to streamline the process and to conserve judicial time. Second and subsequent requests, however, must be approved by a trial judge and must include a statement of the unusual or exceptional circumstances that warrant the request for an additional extension.

TABLE III

COMPARATIVE OVERVIEW OF REFERRALS TO MAGISTRATE JUDGES[27]				
	JUDGE RETAINS		JUDGE REFERS	
JUDGE	ORDERS ISSUED	HEARINGS HELD	ORDERS ISSUED	HEARINGS HELD
A	56	58	6	1
B	26	19	62	13
C	98	56	4	3
D	14	11	36	12
E	36	19	27	5
TOTAL	230	163	135	34

Table IIIa illustrates these data from a different perspective by showing what percentage of total orders issued and total hearings held in the sampled cases were issued or held by each judge rather than being referred to a magistrate judge.

TABLE IIIa

PERCENTAGE OF ORDERS AND HEARINGS THAT WERE RETAINED RATHER THAN REFERRED TO MAGISTRATE JUDGE		
JUDGE	ORDERS ISSUED	HEARINGS HELD
A	90%	99%
B	29%	59%
C	96%	94%
D	28%	48%
E	57%	79%

Based on this sample, an average of 32.1% of the civil case discovery and pretrial scheduling work is referred to the magistrate judges.

[27] Note that these data do not differentiate between dispositive and non-dispositive motions.

The analysis included research into the amount of time each of the Court's district judges spent in court over the twelve-month period from November 1990 to October 1991. Those data have been converted into chart form and are displayed in **Figure 1.**

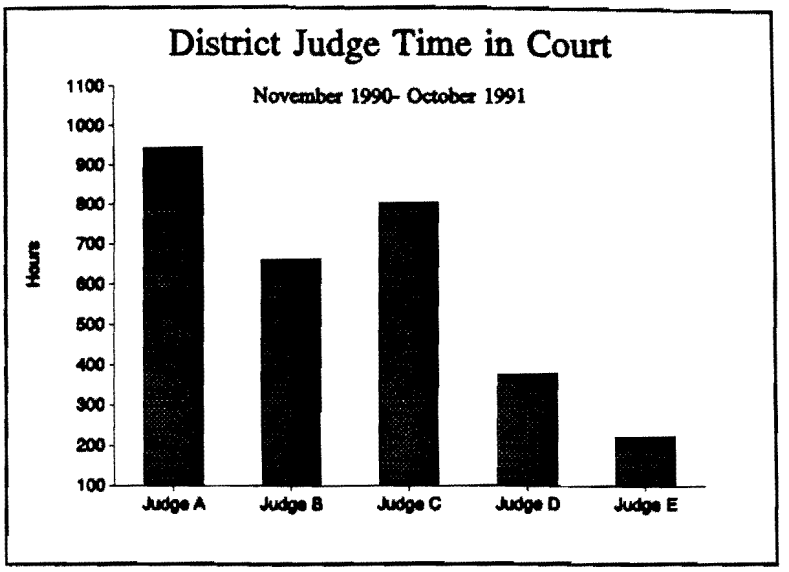

Figure 1

When each district judge's relative time spent in court is compared with the extent to which that judge relies on the magistrate judges to provide assistance, the result suggests that the judges who spend the **most** time on the bench in court proceedings rely the **least** on the magistrate judges. When the time judges spend in court is broken down further into trial and non-trial time, the analysis reveals that the judges who regularly rely on the magistrate judges for all or most of their pretrial scheduling spend significantly less time in court on non-trial matters than do the other active judges who handle their own pretrial scheduling. Those data have been converted into chart form and are displayed in **Figure 2.**

It may appear at first blush that the two trial judges who regularly refer matters to the magistrate judges are more efficient case managers than their non-referring colleagues. However, if the time the magistrate judges spend in court on matters referred by the district judges is analyzed and factored into the equation, the results very well may demonstrate that overall, the case management practice of the non-referring judges yields greater efficiencies, even though they spend more time in court than their colleagues and spend time handling matters that current wisdom suggests be handled by junior-level judicial officers. It seems intuitive that where the work entailed by a single case is divided between two judicial officers, one senior and one junior, there will be

some overlap in time expended because both have to become familiar with certain fundamental facts and arguments in the case, even if (1) no magistrate judge recommendations on dispositive motions are challenged, and (2) the district judge and the magistrate judge handle different portions of the work.

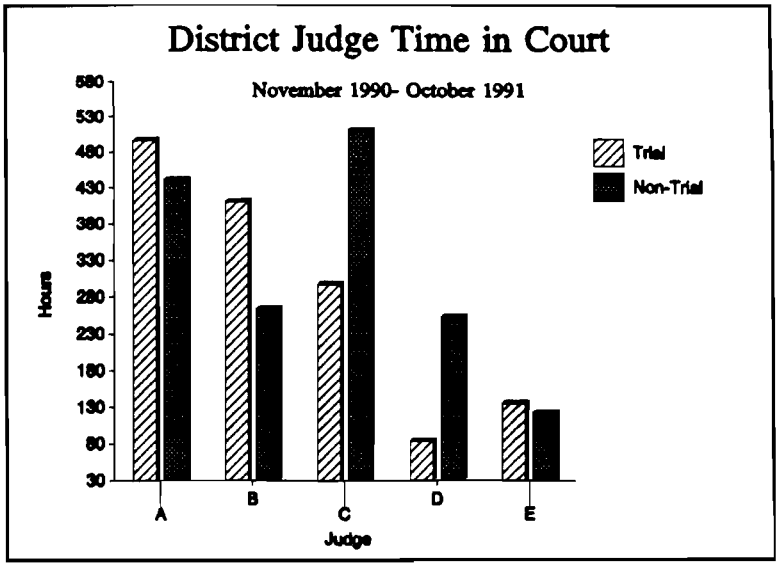

Figure 2

For purposes of a preliminary analysis, staff of the Clerk's Office collected data for the time period November 1990 - October 1991 regarding the number of court proceedings conducted by the magistrate judges on matters referred to them by the district judges. The results come as no great surprise given the data presented earlier about the variations in district judge reliance on the magistrate judges. Multiplying the number of magistrate judge hearings for each district judge by the average time per hearing yields a magistrate judge time investment

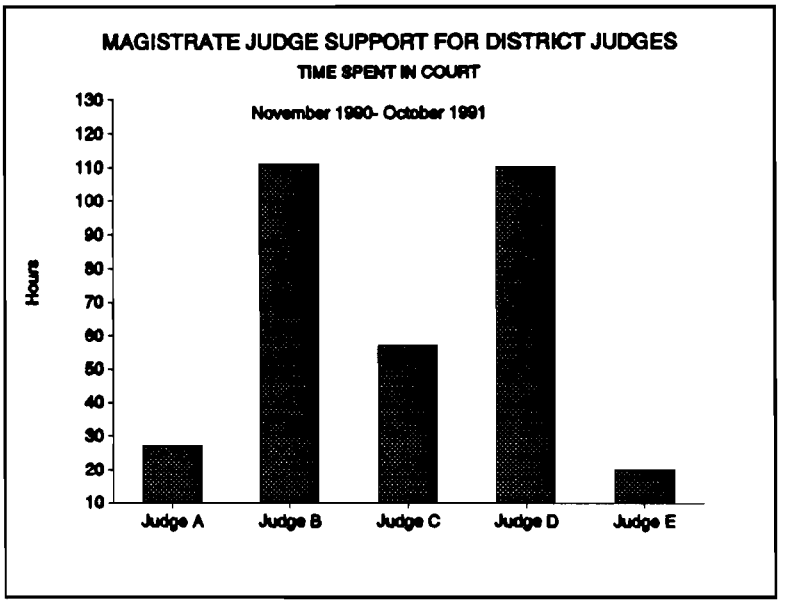

Figure 3

figure for each judge.[28] **Figure 3** displays the results of these calculations.

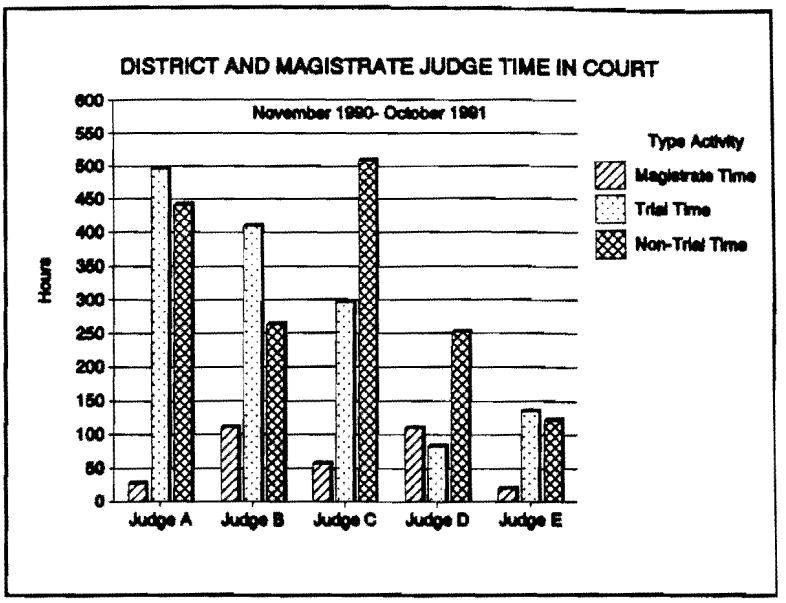

Figure 4

If the data for **Figure 3** are plotted with the data from **Figure 1** and plotted together by district judge, the results tentatively reflect the total time invested by judicial officers in each district judge's caseload. These results are illustrated in **Figure 4.**

Further analysis of the docket might reveal that division of case disposition responsibilities increases the time counsel are required to devote to the case because they have to deal with two judicial officers, and, where dispositive motions are ruled on preliminarily by the magistrate judge, counsel may have to rebrief those motions for reconsideration by the district judge. This additional effort on the part of counsel increases the costs to the litigants. However, the quality of the results of the litigation may be higher where a trial judge concentrates his judicial expertise and energies on the primary substantive issues of the case. In such instances, the additional costs entailed by use of a magistrate judge may be insignificant. Although such analyses are beyond the scope of this report, if such hypotheses could undermine the Congress's assumptions that the creation of a subordinate tier of judicial officers (magistrate judges) would be more efficient than creating additional Article III judgeships.

Another important question, also beyond the scope of this report, is to what extent

[28] For purposes of this calculation, staff assumed that the average amount of time a magistrate judge spends in court on a referred matter to be 45 minutes, an estimate confirmed by both magistrate judges as a reliable average.

district judge case assignment ratios should be weighted to take into account the quantity of work a trial judge regularly refers to a magistrate judge. If Trial Judge A refers 30% of his workload to a magistrate judge and Trial Judge B refers 5% of his workload to the magistrate judge, both may be **credited** with the same amount of work, but are they **accomplishing** the same amount of work? If not, should the number of new cases assigned to Trial Judge A be increased to a point where his workload more nearly approximates that of Trial Judge B, thus offsetting the advantage he gains by relying substantially more on the magistrate judge? These are questions the Committee suggests the professional research staff at the Federal Judicial Center and the Rand Corporation consider.

3. SCHEDULING DEADLINES:

The analysis of these sample cases also suggests a surprising lack of adherence by counsel to scheduling deadlines. Irrespective of how and by whom the scheduling deadlines are set, they simply do not appear to be respected. This failure to adhere applies not only to the more significant time frames such as discovery cutoff and readiness for trial, but also to garden-variety responsive memoranda. It was not unusual to find cases in which a memorandum was filed only **after** a deadline had passed and the motion requesting an extension of time was filed **after** the late pleading was filed. Of themselves, such isolated instances signify little, but to the extent that failure to respect such deadlines is endemic in this District, it has significant implications for the Committee's analysis of avoidable cost and time in civil litigation.

Another symptom that suggests that judicial controls may not be sufficient is the disparity between discovery deadlines set by the magistrate judges and the actual time to complete discovery. In the sampled cases referred to the magistrate judges, the average deadline for the completion of pretrial discovery set at the initial pretrial conference was 204.3 days or six to seven months. By contrast, the average time for completion of discovery for all cases analyzed in the sample is 525 days or more than seventeen

months, more than double the time initially specified.[29] The extent to which relevant deadlines are observed is beyond the scope of this report. However, a different approach to pretrial case management may make pretrial schedules more meaningful. Initial scheduling by the district and magistrate judges tends to be for fixed intervals: six months for discovery, an additional month for motions, an additional month for final pretrial. Expending more time reviewing and analyzing the case at the initial pretrial conference and setting schedules based on that analysis, may result in greater adherence to those schedules.

4. DISCOVERY REQUESTS:

The analysis included a review of the number of discovery requests and responses that have been filed with the Court -- deposition notices, depositions, discovery-related certificates of service, discovery-related motions, discovery-related stipulations, and responses to discovery. **Table IV** shows discovery documents filed in the cases sampled:

TABLE IV

DISCOVERY DOCUMENTS FILED PER JUDGE						
JUDGE	**DEPO NOTICE**	**DEPO**	**RESP TO DISCOVERY**	**CERT OF SERVICE**	**MOTION**	**STIPULATION**
A	319	44	180	127	61	28
B	295	94	199	175	74	42
C	290	58	138	97	53	35
D	278	36	120	137	99	21
E	203	33	80	194	66	33
TOTAL	1,385	265	717	730	353	159

Of themselves, these data do not suggest a problem. However, when the totals are converted to percentages and ranked in descending order of document quantity received, as shown in **Table IVa**, the data are more revealing.

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[29] The average number of discovery days was calculated from the first date a discovery-related entry was posted on the case docket. Docket entries regarding any of the following served to terminate the discovery period: discovery stay, final pretrial conference, or trial. Periods for cases that still are active have been calculated up through mid-November; the period for those cases continues to grow.

TABLE IVa

DISCOVERY DOCUMENTS FILED WITH THE COURT	
NOTICE OF DEPOSITION	38.30%
CERTIFICATE OF SERVICE	20.20%
RESPONSE TO DISCOVERY	19.80%
MOTION	9.70%
DEPOSITION	7.30%
STIPULATION	4.40%

Some interesting if only tentative conclusions can be drawn from these data. Of the discovery-related documents that are filed with the Court, 78.3% are notices to opposing counsel or to the Court.[30] Although such notices and certificates cannot be shown to substantially affect judicial workloads, the high ratio of procedural to substantive documents these numbers reflect suggests two areas of avoidable costs. First, producing such documents entails time and effort, adding what appears to be unnecessary cost to the process. Second, although the impact of such documents on chambers' workloads is minimal, the cost to the Clerk's Office of entering them onto civil case dockets and placing them into case files is no less significant and, perhaps, equally avoidable. Here, too, a more sophisticated analysis of discovery filings and the cost and time they require is beyond the scope of this report.

[30] Of those, 19.8% are responses to the requests for discovery represented by the certificates of service.

SECTION IV

ATTORNEY AND CLIENT ASSESSMENTS OF THE COURT

A. INTRODUCTION:

Statistical analyses serve to illuminate organizational studies by providing information regarding productivity and efficiency that has been converted into quantified hard data. Such data can be organized and presented in a number of ways for a variety of comparative and evaluative purposes. To that extent, such analyses are important because, at least ideally, they provide the critical dimension of objectivity. Another important dimension of organizational studies, although less objective, is that provided by information on how the organization is perceived by those who interact with it and by those whom it exists to serve. Where the results of statistical analyses, assuming they are based on verifiable data, provide a glowing diagnosis of organization efficiency and productivity, but surveys, assuming they are competently designed, elicit perceptions from patrons that report unsatisfactory experiences or that denigrate and lament the state of the organization, something clearly is amiss.

To determine (1) how the District of Utah is perceived by attorneys and litigants who participate in the civil litigation process[31], and (2) whether the state of reasonably good health portrayed by the statistical data is confirmed by those consumers of Court services, the Committee tasked the Consumer Subcommittee with conducting a survey. Working with the Survey Research Center of the University of Utah, the Consumer Subcommittee developed a questionnaire and, in the interests of time and maximizing the number of respondents, determined that it should be conducted by telephone rather than mail. The Court subsequently entered into a contract with the Survey Research Center to conduct the survey and to collate, organize, and analyze the results. The questionnaire and the results of the survey are reproduced in this report as Appendix D. A summary of the responses follows.

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[31] Section 472 of the CJRA specifically directs the advisory groups, in developing their recommendations, to "take into account the particular needs and circumstances of the district court, litigants in such court, and the litigants' attorneys." See Section 472(c)(2).

B. ATTORNEYS' RESPONSES:

A total of 279[32] attorneys were interviewed by staff of the Survey Research Center. Of those, 140 represented plaintiffs in a federal court civil case that was resolved after July 3, 1989[33]; 139 represented defendants in the same category of cases. Based on the data collected, the great majority of these lawyers can be described as active federal court practitioners; more than 90% had been involved in other federal court litigation since July, 1989, and many had been involved in a number of other cases. The median number of cases was six cases for defendants' attorneys and five for plaintiffs' lawyers. However, the means were much higher for the former group (13.4) and somewhat higher for the latter (7.7), indicating that a number of these attorneys had been involved in substantially more than six federal court matters during this two-year period.

1. PREFERENCE FOR FEDERAL COURT:

One set of questions concerned attorney and client decisions to litigate in federal court. Of the 279 cases in the attorney sample, 99 or 35% originally were filed in state court and 175 (63%) in federal court.[34] Attorneys who removed cases from state to federal court were asked about the frequency with which they chose to have cases heard in federal rather than state court; the median response for all lawyers (plaintiff and defense counsel) was 75% of the time the option was available, indicating a strong

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[32] The number of attorneys sampled represents around 9% of the approximately 3,000 attorneys who recently registered for membership in the Bar of the United States District Court for the District of Utah. Membership in the Court's Bar is a requirement for litigating in the Court; becoming a member entails being a member of the Utah State Bar and paying a nominal annual registration fee. Indeed, because virtually all admittees to the Utah State Bar also opt to join the District of Utah Bar, and because retention of membership in the Court's bar is a simple matter of paying the annual fee and completing a form, it is likely that a significant portion of the total membership at any given time has no cases pending in the Court. Some never will. To that extent, the attorneys sampled may be said to be representative of the more active federal practice members of the Court's Bar, and the Committee is comfortable with the generalizations the survey data support about the members of that bar and their perceptions, attitudes, and experiences regarding practice in the Court.

[33] This date, although arbitrary by any other standard, is significant purely for the purpose of extracting the cases and attorney names from the Court's automated civil case information management system. The system was implemented in the Court early in calendar 1989 and staff used July 3, 1989 as the date on which to begin the docketing of all civil cases in automated mode. Thus, the docket of all new and pending civil cases as of that date were entered into that system. Using data from cases closed prior to that date would have been a manual effort and would have rendered substantially more difficult the task of extracting case and attorney information.

[34] The remaining 2% could not recall the original jurisdiction court.

preference for federal over state court. Among plaintiff attorneys, the expressed preferences reflected a belief that judges and juries simply were better in federal court. Defendants' attorneys offered the same reason; in addition, a number of them also indicated that they generally felt more comfortable litigating in federal court. The survey did not follow up with questions as to why they felt more comfortable.

2. RELATIONSHIP BETWEEN CASE LENGTH AND COSTS:

A substantial concern expressed repeatedly in the Civil Justice Reform Act is the cost of litigating a civil matter in federal trial courts and how that cost can be minimized. Numerous court-reform studies include recommendations that seek to reduce what they term litigation "delay" on the assumption that there is a direct relationship between reducing litigation delay and reducing litigation costs. However, the validity of that assumption depends, among other factors, on the kinds of fee arrangements that have been struck between attorneys and their clients. Time savings can be expected to produce cost savings when a simple hourly rate is the sole basis for the fee. By contrast, contingent fee agreements or hourly fee arrangements that are enhanced by "sweeteners" in the event of a successful outcome are not necessarily sensitive to time savings, and reducing the length of time required to litigate a case may include a cost reduction factor but one that applies only or primarily to the Court and, by extension, to the taxpayer in terms of diminished use of Court resources.

3. FEE ARRANGEMENTS:

The Committee examined fee arrangements in the sampled cases to determine the extent to which time savings could be expected to translate into cost reductions. The survey results indicate that Utah attorneys almost uniformly adopt the classical fee arrangements.

a. Defendant Attorneys: Of 139 defense attorneys queried, 132 reported utilizing hourly fee agreements. Moreover, 98% of those indicated that their fee arrangements included no agreement that a successful result would be reflected in a higher bill; neither did those arrangements include clauses that would reduce the fee, in the event of a judgment for the opposing party. More than 90%

indicated that there was no maximum dollar amount to qualify the fee.

The survey queried attorneys as to whether the fee arrangement struck in the sample case was representative of their usual fee arrangement in cases filed in federal court. Almost 90% of the defense attorneys indicated that they relied on the same arrangement in 75% - 100% of their federal cases; those percentages support the findings above as reliable indicators of customary fee practice in the District of Utah.

The survey also queried attorneys as to the amount of the fees they charged. Hourly rates for defendants' attorneys fell heavily into the $100-$124 (30%) and $125-$149 (24%) ranges. About 22% of the lawyers reported rates of less than $100 per hour; curiously, some 11% claimed to not know what their hourly rate had been for the sample case. Overall, the range in per-hour fees extended from $50 to $210, with an average rate of $128 and a median of $115.

In the portion of the survey that queried attorneys' clients in the sample cases, those clients who the research staff were able to reach were asked about the fee arrangements in their cases. Although the survey was not designed to match the responses of the attorney and the clients in the cases sampled, overall the fee-related responses of defendants did not differ significantly from those of defense attorneys. Understandably, a larger proportion of clients than attorneys responded that they did not know with respect to questions on fee arrangements.

b. Plaintiff Attorneys: As might be expected, plaintiff attorneys' fee arrangements differed from those of defendant attorneys; a substantial number of the former, some 26%, reported a contingent fee arrangement. However, more than one-half of the plaintiff attorneys relied on an hourly rate. Plaintiff attorneys' fee arrangement practices were more variable than those of defendants attorneys; whereas almost all of the defendant lawyers used the same fee arrangement in their practice, only slightly more than one-half plaintiffs counsel reported using the fee arrangement adopted in the sample case in 76% - 100% of their federal court cases.

As with their defense counterparts, plaintiff lawyers reported simple fee arrangements in the sample cases. Ninety-four percent indicated that they expected no fee enhancement in the event of a highly favorable result, and about the same percentage would not reduce their fee if the outcome were unfavorable.

Dollar amounts also were simple and predictable. One-half of the attorneys using contingent fee arrangements set their compensation percent at 33%; 11% put it at 25%; only three reported contingent fees exceeding 35% of the judgment. Plaintiff attorneys relying on an hourly fee arrangement generally charged less than their defendant counterparts. Almost one-third set fees at less than $100 per hour; another one-third reported their fees in the $100-$124 range. The average hourly fee for plaintiffs' attorneys was $116, and the median was $100.

c. Fee Negotiation: The sampled attorneys also were asked about how the fee arrangement was negotiated. Although more than 60% of defendant and plaintiff attorneys described the decision as one made jointly with the client, those responses do not reveal a great deal. The consistency of fee practices among the members of the bar that were queried suggests little range of choice. Moreover, only circa 10% of the attorneys indicated that the client determined the fee arrangement or that the client chose from a set of options.

A comparison of attorney and client responses serves to cloud the attempt to determine how fee agreements are negotiated; differences surfaced in attorney and client responses. Slightly more than 60% of the clients queried indicated that the choice of fee arrangements was something they, rather than their attorneys, had made, whether or not they selected from a series of fee arrangement options.

4. OTHER NON-FEE LITIGATION-RELATED COSTS:

In addition to fees, litigation cost is a function of other expenses associated with the discovery process and the use of witnesses. The survey results revealed no significant differences in the amount of costs reported by plaintiff and defendant

attorneys. The average amount of non-attorney fee expenditures was approximately $6,500; the median amount was $550. This remarkable difference between average and median cost appears to reflect a relatively small number of cases with very large discovery and other costs. In reviewing the results, the Committee noted the existence of four cases, comprising one percent of the sample, in which costs of $50,000 or more were incurred. These, together with the 29 cases -- 10% of the case sample -- whose non-fee costs were in the $10,000 - $49,999 range, may account for the relatively high average. In this instance, the median may be the more useful measure for analyzing non-fee costs and the extent to which they are excessive. To the extent that the number of cases whose non-fee costs exceeded $500 is the same as the number of cases whose non-fee costs did not exceed that threshold, the data suggest that apart from attorneys fees, the costs of litigation in the District of Utah tend to be relatively modest.

As were the attorney fee arrangements, these cost arrangements were based on the same classic and simple model. Ninety-five percent of the sampled defendant attorneys and 87% of plaintiff attorneys reported directly passing on those fees on to their clients. More than 95% of attorneys for each side reported that allocation of costs to clients did not depend on the outcome of the case.

5. COST IMPLICATIONS FOR ALLEGED DISCOVERY ABUSE:

The relatively low non-fee cost levels noted above in Subsection 4 indicate that with the exception of a relatively small proportion of cases, the traditionally expensive discovery technique of taking depositions is not extensively used. That inference is confirmed by the attorney responses to the survey's query about reliance on depositions. Almost one-half of the attorneys on each side reported taking no depositions in the sample case. Three or fewer depositions were taken in the vast majority of the sample cases; less than 20% of the attorneys reported taking more than three. The average number of depositions reported was fewer than two (1.81). In only 3.7% of the cases sampled did the attorneys report taking more than nine depositions.[35]

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[35] An interesting question, one beyond the scope of this report, is the extent to which there is a substantial difference between how many depositions attorneys genuinely *intend* to take versus how many they *actually* take as the case unfolds and the extent to which the prospect of going to trial motivates that intent. In a sampling of 100 cases by staff of the Office of the

Although depositions were not taken in many of the cases sampled, in those where they were, the time involved in taking them could be substantial and, by inference, significantly drive up the cost of the litigation. For 143 attorney responses about evenly divided between plaintiff and defendant attorneys, the median number of hours devoted to depositions in the cases sampled was 50. The responses ranged broadly, from less than one hour to as many as 960 hours, yielding a broad standard deviation of 195. It's not surprising, then, that in a number of the sample cases, deposition taking consumed considerably more than the 50-hour median. The mean time of the 143 responses yields an average of 133 hours.

C. CLIENT RESPONSES:

One of the primary assumptions motivating creation of the Civil Justice Reform Act appears to have been that consumers of the federal civil litigation process on balance are dissatisfied with that process from a variety of perspectives such as high cost and excessive time, perspectives that might be grouped under a general notion of inefficiency. Unfortunately, because the survey research staff were able to reach only 99 members of the client population,[36] the conclusions the Committee has drawn from their responses must be regarded as tentative and subject to further study, which is beyond the scope of this report. With that caveat, several points are worth making.

1. PERCEPTIONS AS VICTORS:

The clients sampled tended to think of themselves as winners in their cases. More than one-half of both the plaintiff client group and the defendant client group expressed that perception.

Clerk, cases selected on the basis of having at least 30 separate pleadings docketed, the disparity between the number of Notices of Taking Deposition that were filed and the number of depositions actually filed with the Court is substantial: 1,385 notices versus 265 depositions. A more interesting question, again beyond the scope of this report, is why such disparity exists.

[36] The disparity in the number of attorneys (279) versus the number of clients (99) with whom contact was established reflects the difficulty of locating clients using attorney-supplied information that had grown stale in the months and sometimes years that have transpired since the sample cases were terminated. Most of the attorneys contacted willingly supplied client telephone numbers and cities of residence, but many of the individual clients had moved and many of the corporate clients no longer employed individuals who were sufficiently familiar with the case to respond to the survey.

2. INFREQUENCY OF PARTICIPATION IN FEDERAL CIVIL LITIGATION:

On reviewing the results, the Committee concluded that it may be a mistake to view the survey's sample of participants -- and for that matter, participants in general -- in the civil litigation process as *clients*, *customers*, or *consumers* in any general sense, particularly the plaintiff group. The survey results revealed that plaintiffs are much more likely than not to be one-time participants in federal court litigation; only 19% indicated that they have been involved in federal district court cases other than the sample since July 1989. By contrast, however, 42% of the defendants indicated that they had. The difference between the two groups is statistically significant, although a finding that defendants are more likely to have successive experiences may be a function of sample size. Determining the disparate relationship is likely to yield an interesting result but is beyond the scope of this report and the Committee's mandate.

3. RELATIVE TIME SATISFACTION INDEX:

Plaintiffs expressed significantly greater dissatisfaction with the amount of time involved in federal civil litigation than did defendants. Only 14% of the defendants as compared to 47% of the plaintiffs reported having been "totally" or "somewhat" *dissatisfied* with the time required to resolve their cases. This is not a surprising result, particularly for the personal injury, contract, and property cases that comprised the sample. Interestingly, however, 40% of the plaintiff group and 48% of the defendant group were "somewhat" or "totally" *satisfied* with the time consumed. Eleven percent of the plaintiffs and 27% of the defendants indicated a *neutral* response. More than 50% of all clients interviewed were not dissatisfied with the amount of time, suggesting that the assumptions in the CJRA about the civil litigation process consuming excessive avoidable time may be more tenuous than the legislation suggests. In that regard, it also is worth noting that the CJRA devotes scant attention to the statistic that the great majority of all civil cases that are filed in the federal trial courts settle prior to going to trial. To that extent, these relatively high satisfaction indices may suggest that many clients were pleased that the disputes in which they were involved did not proceed to trial. With its higher satisfaction index, the defendant group, having been a party in

more than one federal court case, may have had more realistic expectations about the scope of the litigation process and the time required for its completion. Determining whether such a relationship exists, although beyond the scope of this report, would seem to comport with the goals of the CJRA, and to that extent may warrant an inquiry by the Federal Judicial Center and the Rand Corporation.

4. RELATIVE COST SATISFACTION INDEX:

a. Attorneys' Fees: Although some members of the Committee may have expected, based perhaps on media-generated impressions, that the survey results would reveal significantly high levels of dissatisfaction with attorneys' fees, what those results do reveal is that there was neither substantial dissatisfaction nor a significant difference in expressed satisfaction levels between plaintiff and defendant client groups. More than 50% of each group reported being *somewhat* or *totally* satisfied with what their attorneys charged them.

b. Other Litigation-Related Costs: No significant differences emerged with respect to satisfaction with other litigation-related costs. Approximately one-quarter of the plaintiffs and only 12% of the defendants expressed dissatisfaction with the non-fee expenses associated with their cases. Although the difference between plaintiff and defendant clients in the sample surveyed is not a statistically significant one, it may warrant further exploration in a larger, more rigorous study. It also should be noted that the median non-fee costs -- see Subsection 4 under Section C, above -- seemed quite low, with a median slightly exceeding $500. Again, given these relatively high indices of satisfaction with litigation costs, albeit from a small sampling of clients, the validity of one of the CJRA's primary assumptions should be re-examined to determine the reliability of the evidence on whose basis it was made.

Notwithstanding the relatively high levels of satisfaction expressed by the clients with regard to the primary sources of cost in federal civil litigation, what the survey was not designed to address is the extent to which the fundamental categories of cost entailed by filing and prosecuting civil claims in federal court constitute a threshold that excludes

certain classes of injured and deserving parties from access to the system, from the promise of relief. There is little doubt that the question of whether to pursue relief through litigation in court is for most prospective litigants primarily an economic decision and that limited means preclude that pursuit for many who may have just and good cause. To the extent that there are such classes, and to the extent that contingency fee arrangements and other alternative avenues of access are available to them only on a limited basis, other areas of research and analysis suggest themselves in conjunction with the broad themes set forth in the Civil Justice Reform Act. It would be interesting to determine, for example, what portion of the average cost of federal civil cases consists of attorneys' fees and what portion consist of other non-fee costs such as discovery. To the extent that such an analysis revealed that the non-fee costs comprise only a small proportion of the overall costs of litigating the most common civil disputes, the objective of identifying and reducing avoidable non-fee costs, such as discovery expenses, in federal civil litigation for the purpose of providing greater access becomes insignificant and the matter of improving access is shifted from a judicial system issue to a bar issue. If indeed those non-fee costs, particularly in the area of discovery, can be shown to be an increasingly significant element in barring middle and lower economic class access to federal court, then the issue of courts imposing strict controls on the elements that drive those costs, with appropriate exemptions, becomes an important one. Given the time constraints for Utah as a pilot district, that analysis is beyond the scope of this report but may be taken up by the Federal Judicial Center and/or the Rand Corporation.

5. NON-COST SATISFACTION INDEX:

Both of the client groups attach certain non-monetary values to their participation in the civil litigation process. The survey posed several questions in which the clients were asked to assess various aspects of the litigation process. For both plaintiffs and defendants, a favorable outcome was important as one might expect. Both groups expressed that the opportunity to present their respective account of what occurred in the case was important; three quarters of the plaintiffs and 59% of the defendants rated that opportunity as *critically* or *very* important. Plaintiffs also viewed compelling the other

side to appear in court as very important; the question was not put to defendants.

D. SUMMARY:

Overall, the results of the attorney/client survey reflect attitudes and perceptions about civil litigation in the District of Utah that, on balance, are positive and speak well of the Court. Overall, the Court should be pleased with these results to the extent that they call into question perceptions about court systems in general that are reported in the media.

On another level, however, the generally positive attitudes of the attorneys who were queried may be interpreted to reflect satisfaction as a by-product of complacency. To the extent that the Court does not pursue aggressive case management policies and practices, counsel may find it to their advantage to exercise control over the pace of civil litigation which, as was noted earlier, lags somewhat behind the national average. The results of the survey do not convey any sense of urgency on the part of most of the attorneys surveyed to modify or improve the process, notwithstanding the longer case processing time in this District. To the extent that such an interpretation may have merit, the Court might wish to examine further the sources of attorney satisfaction and to determine how the bar might respond to more aggressive case management and control initiatives on the part of the Court.

Overall expressions of satisfaction by attorneys and clients are confirmed by another group of individuals who have a different albeit significant role in the civil litigation process. Approximately three years ago the Court began to issue an exit questionnaire to all persons who were selected to serve as jurors in civil and criminal trials. These questionnaires and a franked, addressed return envelope are mailed to jurors sometime after completion of the trial. The questionnaire poses a number of questions, urges candid responses, and elicits neither juror names or addresses. The vast majority of the responses -- upwards of 90% -- evaluate the trial juror experience in very positive and personally significant terms. Although there are occasional minor complaints about the time required for the voir dire and juror instruction processes, the overwhelming majority express appreciation for the educational, social, and civic value of the experience. Many indicate that their service has significantly altered for the better their perceptions of and attitudes toward courts and their functions.

SECTION V

COMMITTEE PROPOSALS AND RECOMMENDATIONS

A. INTRODUCTION:

The Committee's proposals and recommendations fall into six categories: discovery and pretrial procedure; judicial controls; magistrate judge jurisdiction, motion practice; and alternative dispute resolution.

B. DIFFERENTIATED CASE MANAGEMENT:

The Committee determined that no need currently exists for recommending modifications to the Court's existing mechanisms for differential case management of certain categories of cases. Those mechanisms, although simple, appear to respond to the need, set forth in the legislation, to ensure that less complex cases are not subjected to the more costly and time-consuming processing tracks that are suitable primarily for complex and protracted civil litigation. The Committee reserves the right, should the need for more aggressive case tracking emerge during its tenure, to make further appropriate recommendations to the Court. For purposes of information, the mechanisms currently in place and the cases for which they are employed are as follows:

1. CLASS A:

1. Prisoner Civil Rights Petitions
2. Select Pro Se Civil Rights Petitions
3. Department of Health and Human Services Cases (Primarily Social Security Appeals) Cases
4. Internal Revenue Service Challenges

Class A cases are uniformly referred to the magistrate judges at the time of filing. The magistrate judges handle all case-related matters and submit a report and recommendation to the assigned district judge for disposition of the action. Non-prisoner pro se civil rights complaints are screened by the assigned district court judge at the time the complaint is filed, then generally are referred to the magistrate judge.

2. CLASS B:

1. Bankruptcy Appeals
2. Condemnation Cases
3. Cases for Injunctive Relief

Certain Class B cases receive differential treatment based upon the nature of the cause of action. A bankruptcy appeal case, for example, receives its first scheduling notice from the clerk's office at the time of filing. Condemnation and forfeiture cases have unique requirements and consequently receive different schedules at the time of filing or when answers are received. Cases that involve requests for temporary restraining orders or preliminary injunctions are placed on a fast track by chambers and hearings are scheduled as quickly as possible.

3. MAGISTRATE REFERRALS:

With the addition of a fifth judgeship to the bench, a majority of the Court's district judges are making extensive use of the magistrate judges in pretrial matters. Case referrals typically are made after all answers have been filed and prior to the initial pretrial conference. In some instances, referral are made earlier in the tenure of a case if a motion is filed prior to receipt of all the answers. Another district judge routinely refers discovery motions to the magistrate judge, but generally does not generally refer the entire case.

4. OFFICE OF THE CLERK:

Certain types of filings, generally termed *miscellaneous cases*, are opened by staff of the clerk's office but never assigned either to a district judge or a magistrate judge because they generally do not require specific judicial action. Such cases typically involve registration of foreign judgments and notices to take depositions in this district for cases pending in other districts. Such cases are assigned to a district judge only if related motions that require disposition by the Court are filed.

C. DISCOVERY AND PRETRIAL PROCEDURE:

RECOMMENDATION: That Rule 204 of the District of Utah's Rules of Practice should

be amended to include provisions that:

a. Require counsel for all parties to meet prior to the initial status and scheduling conference for the purposes of developing a discovery and scheduling plan;

b. Require counsel to submit for review by the Court at least three business days prior to the initial conference a discovery and scheduling plan that includes:

1. A brief statement of the case;

2. A proposed pretrial schedule -- including specific dates for discovery cut-off, motion submission, and final pretrial;

3. A description or designation of documents each party is prepared to produce and a schedule for the time, place, and method of production early in the pretrial process;

4. A designation by each party of prospective witnesses;

5. An agreement among all parties for the prompt production of any subsequent discovery information or documents as any party becomes aware of and gains possession of them.

c. Specify that the Court may prohibit at its discretion the introduction of evidence that have not been disclosed previously to all other parties in the case;

d. Limit to 15 with no subparts the number of interrogatories to which each party in the case is entitled.[37] Absent a stipulation by all parties to additional interrogatories, in which case no court approval is required, there will be a presumption against approving additional interrogatories unless accompanied by a showing of good cause and unusual circumstances that, in the Court's judgment, justify making the exception; the Court will endeavor to act on such requests within ten business days;

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[37] The Committee discussed the possibility of phasing discovery in lengthy and complex litigation such as class action cases. In such instances, under the direction of the trial judge, discovery would be phased and the limitations on interrogatories, requests for admissions and documents, etc., would be limited by phase, e.g. 15 interrogatories in phase 1, 15 in phase 2, and so forth. The Committee makes no recommendation on the phasing of discovery at this time but reserves the right to explore the topic in more depth in future meetings.

e. Limit requests for admissions and for documents to 25. The same provisions regarding stipulations and requests for extensions apply as with interrogatories; and

f. Absent a stipulation by all affected parties to additional time, limit the time for the taking of any deposition to one day, subject to equitable allocation of the time between the parties. For purposes of the rule, the deposition day shall be defined as beginning at 9:00 a.m. and ending at 5:00 p.m. with one hour for lunch.

g. Require the participation in each pretrial conference of an attorney[38] for each party who has the authority to bind his party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

h. Require[39] that the scheduling order set forth a trial date and that the trial be scheduled to occur within eighteen months of the filing of the complaint unless the assigned trial judge or magistrate judge certifies that the case is sufficiently complex or that the Court's criminal calendar will not permit such scheduling.

D. MOTION PRACTICE:

1. REFERRAL OF DISPOSITIVE MOTIONS TO MAGISTRATE JUDGES:

The prevailing wisdom in case-management literature urges federal trial judges to delegate pretrial motion disposition in all but the most complex civil cases to magistrate judges. The Committee recognizes that mounting criminal case filings increasingly compel district judges to delegate civil matters to magistrate judges, but it takes exception to the referral of substantive dispositive motions because doing so is likely to increase rather than diminish cost and delay in civil litigation. Where, for example, such motions are ruled on by the magistrate judge and a party wishes to appeal the ruling to an Article

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[38] Alternatively, require the presence of litigants who are proceeding pro se.

[39] D.Ut. 204(a)(1) contains no such requirement; it notes that "The scheduling order also ***may include*** the date or dates for conferences before trial, the final pretrial conference, the trial..."

III judge, counsel for that party typically (1) rebrief the matter in its entirety for the appeal, and (2) wait a second time for a decision. Where two or three separate motions are subject to this dual processing structure that is inherent in the appeal procedure, the additional work entailed in rebriefing and the additional time that is consumed while the appealed matter awaits a second round of judicial review, the costs to the parties and the delay in resolving the case are significantly enhanced.[40] The inefficiency of the process is exacerbated by the commitment of judicial resources on two levels to matters that should require only one level of attention. The time factor for the magistrate judges is substantial and, to the extent that appeal is almost automatic, sometimes frustrating. Unlike the district judge who can rule from the bench on such matters, the magistrate judge must prepare a written legal opinion. The Committee notes that this analysis and the recommendation that flows from it was made independently by two of the three subcommittees. The Process Subcommittee made the recommendation following and as a result of its review of the civil litigation process. The Consumer Subcommittee made the recommendation as a result of responses by attorneys in its client survey.

RECOMMENDATION: That procedural safeguards be developed to ensure that increased reliance by the district judges on the magistrate judges promotes rather than confounds efforts to reduce undue cost and delay in civil litigation. These include the following:

(a). That dispositive motions not be referred to the magistrate judges.

(b). That the Court consider designating the magistrate judges to exercise the jurisdiction necessary to conduct any or all proceedings in a jury or non-jury civil matter and to order the entry of judgment in the case.

2. SUMMARY JUDGMENT MEMORANDA:

The experience of the Committee's practitioners is that the Court routinely grants almost all motions to exceed the specified page limitation for summary judgment memoranda. To that extent, eliminating that limitation from the Rules of Practice will

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[40] This issue was raised first in meetings of the Process Subcommittee and was subsequently confirmed in a brief interview by the Reporter with the full-time magistrate judge who noted that rulings on dispositive motions by the magistrate judges "almost always" are appealed to the district judges.

obviate the need for counsel to draft, serve, and file -- and for the Court to review, sign, docket, and serve -- motions and orders to exceed. Requiring that summary judgment motion memoranda be prefaced by a summary not to exceed five pages will provide the trial judge with a succinct overview of the legal basis for the proposed motion and put the parties on notice that the judge may limit his review to the summary.

RECOMMENDATION: That D.Ut. 202(b)(3) be amended to:

a. Delete the provision that memoranda in support of or in opposition to a motion for summary judgment not exceed twenty-five pages; and,

b. Require that such memoranda be prefaced by a summary of the memorandum that does not exceed five pages, discounting face sheet and footnotes, if any.

3. TIME FRAMES FOR THE DISPOSITION OF MOTIONS:

RECOMMENDATION: That the Court adopt a general internal policy of:

a. Setting deadlines as early as possible for the filing of motions;

b. Scheduling hearings on motions within two weeks of the completion of briefing; and,

c. Ruling on dispositive motions prior to the final pretrial conference; when dates for such conferences are scheduled at the initial scheduling conference, counsel should be given dates for the submission of such motions sufficiently in advance to ensure time for judicial review, hearing, and disposition prior to the final pretrial conference.

c. Having the Clerk of Court prepare and provide periodic internal deadline compliance reports to each judicial officer.

E. ALTERNATIVE DISPUTE RESOLUTION:

1. INTRODUCTION:

The Committee's ADR proposals are intended to satisfy two obligations recently undertaken by the District of Utah. They are to serve as a (1) test site for voluntary

arbitration, as provided in sections 651-658 of Title 28[41], and (2) pilot district for experimentation with any of a variety of alternative dispute resolution mechanisms such as arbitration, mediation, minitrial, and summary jury trial, as provided in section 473(a)(6) of the Civil Justice Reform Act.[42]

Although the Committee's ADR recommendations were formulated, among other reasons, to satisfy these statutory requirements, the Committee feels that the recommendations stand on their own merits and should be considered for adoption by the Court, at least on an experimental basis, even in the absence of statutory encouragement or mandate.

The Committee's analysis has not identified specific cause-effect relationships between the longer civil case processing time of the District of Utah or the costs of civil litigation and restricted access to the Court by parties in need. Doing so, given the time constraints and other factors, is beyond the scope of this report. However, it makes these ADR recommendations not as stop-gap measures, "next-best" alternatives, or experimentation simply for the purpose of experimentation but on their inherent merits. The Committee believes that ADR programs such as those it here recommends offer litigants in particular kinds of cases some important advantages that ordinarily are not associated with the trial process. In formulating these recommendations, the Committee has been challenged by the tight time frame imposed by the CJRA on the pilot districts. It would have preferred the benefit of an additional six months to evaluate more thoroughly the experiences of state and federal trial courts throughout the country who have experimented with and, in a number of instances, permanently implemented various ADR programs. Doing so would permit not only greater opportunity to profit from their success and errors, but, more importantly, to more thoroughly review and discuss with

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[41] The District of Utah's status as a pilot court authorized to experiment with non-mandatory court-annexed arbitration has no statutory or other formal connection with its status as one of the ten CJRA pilot districts. However, because the respective pilot efforts are rough contemporaries and because the goals and objectives of the former dovetail rather nicely with those of the CJRA, the Court has opted to link the two efforts.

[42] The CJRA specifies that court plans should include "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." See § 473(a)(6), Civil Justice Reform Act of 1990.

national experts some of the conflicting claims and results that have been reported in the growing body of ADR literature.[43]

On the other hand, the Committee confidently recommends to the Court a model that reflects successful efforts in other courts, yet is sufficiently open-ended and flexible to accommodate successive modifications and adjustments in light of further experience and research.

2. **BASIC PROPOSAL:**

   a. **Ad Hoc Development Subcommittee:** The Committee proposes creation of an Ad Hoc Development Subcommittee to draft the actual local rules and provisions that will constitute the recommended ADR programs. This Ad Hoc Subcommittee will report to the ADR Subcommittee and will include at least one member of the Court's Standing Advisory Committee on the Rules of Practice, a judge or magistrate judge, and the Clerk of Court.

   b. **Arbitration Program:** The Committee proposes implementation of a voluntary arbitration program.[44]

   c. **Mediation Program:** The Committee proposes implementation of an experimental mediation program after the proposed arbitration program has been fully operational for a period of at least one year.

3. **PROPOSAL TIMETABLE:**

   a. **November 1991:** Appointment of Ad Hoc Development Subcommittee

   b. **February 1992:** Local Rule Completed re. Arbitration

   c. **June 1992:** Pilot testing of Arbitration Program

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[43] The Committee acknowledges, with appreciation, special funding made available through the Congress to the federal trial courts for CJRA-related projects. A portion of the funding allocated to the District of Utah permitted Mr. Paul Cooper, an attorney who is employed by the Court on a temporary one-year appointment and currently is detailed full-time to the ADR Subcommittee, to travel to the Eastern District of Pennsylvania and the Northern District of California to participate as an observer in various ADR hearings and to discuss those districts' ADR experiences with resident district judges, magistrate judges, and court administrators.

[44] The ADR Subcommittee discussed at some length whether the arbitration program should be purely voluntary or, alternatively, the proposal should include a small number of cases that would be subject to mandatory arbitration. Subsequently, pursuant to an July 5, 1991 opinion issued by the General Counsel of the Administrative Office of the United States Courts and mindful that Title 28 §§ 651-658 only authorizes non-mandatory arbitration, the Subcommittee recommended to the Committee a strictly voluntary program.

d. **October 1992:** Implementation of Arbitration Program

e. **February 1993:** Local Rule Completed re. Mediation

f. **June 1993:** Pilot Testing of Mediation Program

g. **October 1993:** Implementation of Mediation Program

4. **PROPOSAL OBJECTIVES:**

a. **Lower Discovery Costs:** Reduce discovery costs in applicable cases by limiting the amount of discovery.[45]

b. **Lower Attorneys' Fees:** Reduce attorneys' fees in applicable cases by reducing the amount of time required for disposition.

c. **Create Alternative Outcomes:** Create more flexible outcomes, particularly through the mediation process wherein parties can agree to "business-like solutions" and are not limited to remedies available through the formal adversarial process.

d. **Provide for Use of Experts:** Provide opportunity for the use of third-party neutrals with scientific or technical expertise as arbitrators or mediators in cases that turn on complex facts.

e. **Foster Positive Relations:** Foster better, more positive relations between the parties, especially when the matters involved have implications for existing, long-term relationships

f. **Enhance Communications:** Improve dispute-related communication between parties, counsel, and the court.

g. **Stimulate Pragmatic Dispute Resolution:** Improve the practicality of the thinking that informs each side's decisions about how to proceed and on what terms to resolve the matter; a legally sound decision is not always the most pragmatic solution.

h. **Minimize Litigant Alienation:** Reduce litigant alienation from the process of dispute resolution by minimizing the adversarial element.

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[45] For example, in a recent study, a majority of lawyers and arbitrators reported that Court-Annexed Arbitration discovery was reduced. See Barkai and Kassebaum, "Pushing the Limits on Court-Annexed Arbitration: The Hawaii Experience", 14 *Justice System Journal* 136-139 (1991).

5. ARBITRATION/MEDIATION PROGRAM PROPOSAL:

The Committee proposes implementation on an experimental basis of a two-phased voluntary arbitration program. Phase One would consist of experimentation with a two-track arbitration program. The two tracks, as detailed below, would consist of a voluntary arbitration track and an "extra judicial attention track. Phase Two would build upon Phase One by adding to it a third track for voluntary mediation. Although the program's guidelines and operating procedures are being refined, is basic design and function are as follows.

a. Phase I Extra Judicial Attention and Voluntary Arbitration: As is shown in Figure 1 on page 63, most cases filed with the Court will continue to be processed through the traditional litigation process. All new civil cases, however, will be reviewed as they are filed for possible ADR referral. When a complaint and an answer are filed, counsel for both parties will be required to submit a short questionnaire provided by the Clerk concerning the case type. As new cases are filed, an arbitration coordinator will review the cases and the accompanying questionnaire, then determine (1) which ones are appropriate candidates for arbitration, and (2) which of the two tracks is most likely to each candidate. Guidelines for making such determinations will be approved by the Court. After this determination, a notice will be sent to both parties.

1. Alternative I: Extra Judicial Attention[46]

The Committee recommends implementation of an Early Judicial Attention (EJA) track in the District of Utah based on the following structure and process:

(a). A district judge should be designated to oversee administration of the program.

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[46] The proposed Extra Judicial Attention Track (EJA) is a unique concept that originated with U.S. District Judge Richard A. Enslen from the Western District of Michigan. An advocate of early judicial involvement into individual cases, he himself conducts an initial conference with the attorneys and clients within 30 days of the filing an answer. The conference's purpose is to inform the clients of processes, choices, settlement ratios, litigation costs and delays. Although these conferences are not structured to promote early settlement, approximately 17% of the cases settle within 30 days of such conferences. Judge Enslen has utilized this approach for seven years.

(b). Certain cases will be selected by the Clerk, under guidelines approved by the Court, for referral to the EJA track.

(c). Within 30 days of the answer, the parties (plaintiffs, defendants, and attorneys) will meet with the district judge at the Courthouse.

(d). At the meeting, the judge will review for the parties the ADR alternatives available to them, including non-binding arbitration, mediation, summary jury trial, mini-trial or other ADR options as may be appropriate, and noting that nearly all cases settle prior to trial. The judge also will ask the attorneys to estimate the duration and cost of discovery for the case.

(f). Following the meeting, the parties may elect the traditional litigation track or one of the other options described by the judge.

2. Alternative II: Voluntary Arbitration

(a). Under guidelines approved by the Court, certain cases will be selected by the Clerk as candidates for this alternative. In some instances, parties to a case may elect this alternative following their meeting with the district judge under the EJA alternative. Once a case has been designated for this alternative, it will be placed on one of two tracks.

(1). Cases considered "most ripe"[47] for arbitration will be placed in the refer-in program. These cases will remain on the arbitration track unless the parties opt-out, which they may do only after attending a short but mandatory ADR education session.

(2). Cases considered "next ripest" for arbitration will be noticed into the arbitration program. Such cases are not

[47] The ADR Development Subcommittee will propose for the Court's review and approval specific guidelines and standards according to which cases will be reviewed as to relative level of "ripeness."

in the arbitration track until both parties consent. However, the parties to such cases also will be required to participate in the Court's ADR education program.

(b). All attorneys and clients involved in a case so designated will be required to attend an education session within 30 days after receipt of notice of their inclusion in the arbitration track. During that session, to be conducted at the Courthouse, a district judge will briefly describe the voluntary arbitration program. Those remarks will be followed by a video tape explaining arbitration and its inherent benefits, after which the judge will return and invite all those interested in pursuing non-binding arbitration to register for arbitration and encourage others to seriously consider the program.

(c). The Committee feels that a voluntary arbitration program, in order to promote the interest and confidence of the bar and the public, should reflect the highest professional standards, both of the legal profession and of federal practice. To that extent, it urges the Court to adopt what might be referred to as a "Cadillac" arbitration model which would feature the following:

(1). For its arbitration panel, that group of practitioners from whom individual case arbitrators will be selected, the Court should appoint a "blue-ribbon" group, a small cadre of highly respected and experienced attorneys and others with dispute resolution experience. Ideally, the Court should have a panel of arbitrators in whom attorneys and clients have the utmost confidence that their disputes will be arbitrated efficiently and justly.

(2). Because this will be the Court's first experimentation with arbitration, and because the Utah

State Bar has no equivalent program with which practitioners are familiar, the Court's program initially might provide mock arbitration training sessions for interested members of the bar. Additional assistance to inexperienced attorneys might be provided by an arbitration coordinator who would be available to respond to queries about how the program operates. The Committee also recommends that the Court consider designating a panel of experienced attorney arbitrators who might serve as consultants who would be available to answer questions such as how one prepares for an arbitration hearing, what evidence should be used, how one's case should be presented in a short time frame, etc.

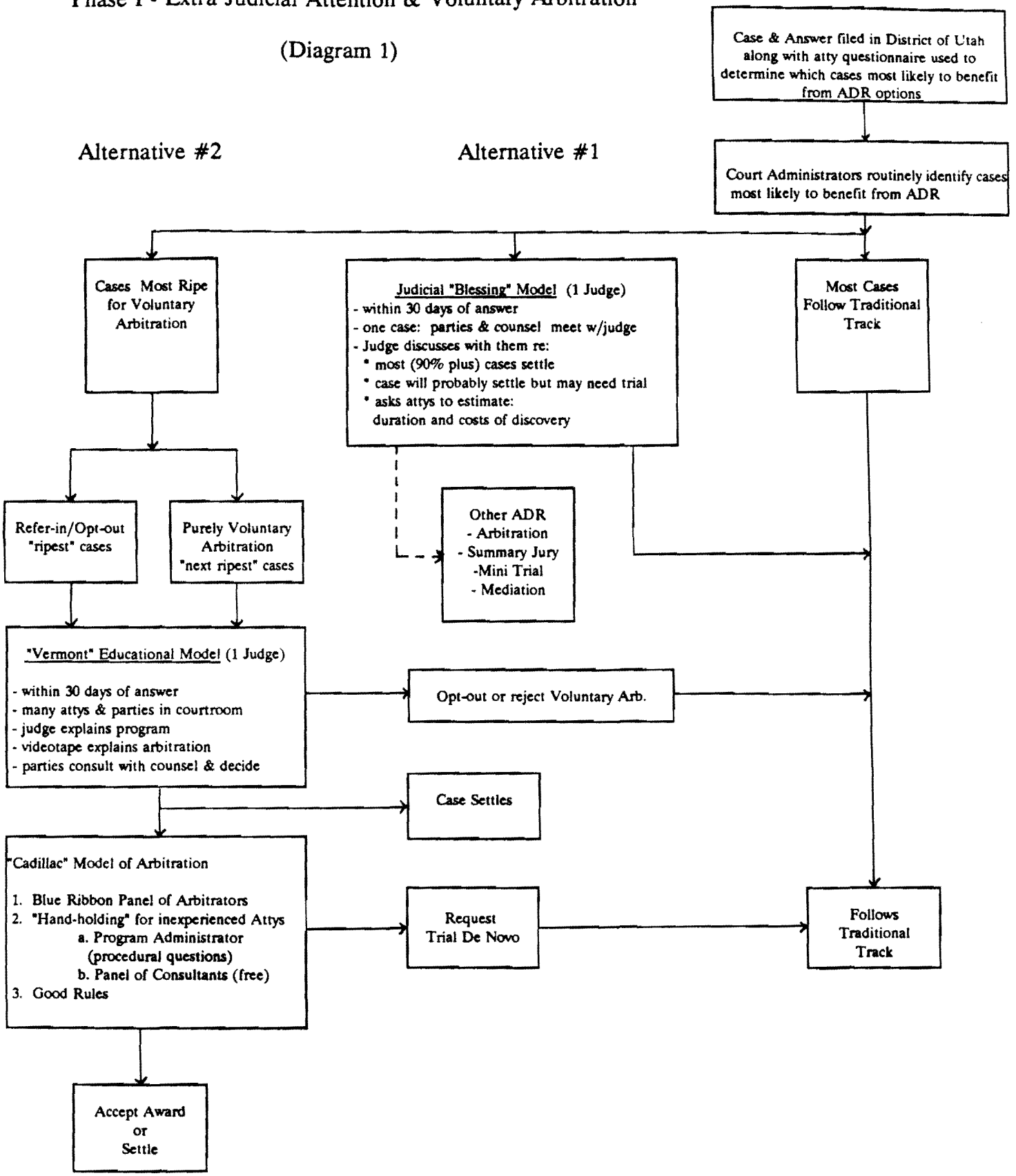
The Committee notes that the ADR Subcommittee is developing a proposed amendments to the District Court Rules of Practice that will govern operation of the arbitration program. These amendments should be forwarded to the Court for its review early in January 1992.

The following page contains a schematic of the arbitration program.

EXPERIMENTAL VOLUNTARY ADR PROGRAM *(District of Utah)*

Phase I - Extra Judicial Attention & Voluntary Arbitration

(Diagram 1)



b. Phase II - Voluntary Mediation: Phase II of the Committee's arbitration proposal recommends that the Court experiment with mediation. The reasoning underlying the proposal for a second phase is similar to that underlying the first, namely to offer to the bar and to litigants less costly and less time-consuming alternatives to the formal process of court adjudication. To that extent, the mediation proposal is an extension of the Phase I arbitration program, not a competing program. The Committee anticipates that if both experimental phases are successful, the Court will have in place an effective and systematic program for those parties who seek to resolve disputes through alternative means. Because the Committee's timetable for experimentation with mediation is calendar 1993, its effort to date to define and establish standards for the mediation process has been more modest but is proceeding.

1. Mediation Program Procedures: As was noted above, the proposed mediation program will function as an extension of the arbitration program. When it is implemented in its experimental phase, parties will continue to follow the procedure described in Phase I by submitting a short questionnaire provided by the Court when they file a complaint or answer. An arbitration/mediation coordinator will review all cases and, using guidelines approved by the Court, determine the appropriate case "ripeness", and make a preliminary determination as to which track is most likely to benefit each case. During Phase II, mediation will be available as a third track or alternative. Use of the mediation alternative, as the arbitration tracks, will be voluntary. As required by the provisions for the arbitration program, parties considering mediation also will participate in a court-sponsored mediation education program. As is shown in Figure 2, the mechanics of the mediation track are the same as those for Alternative 2 of the arbitration program.

2. Quality of the Mediation Program: As with its arbitration proposal, the Committee is of the opinion that a successful mediation

program, to promote the interest and confidence of the bar and the public, should reflect the highest professional standards. Parties with cases that are excellent candidates for the mediation process should feel that opting for mediation does not entail accepting a standard of dispute resolution that is substantially inferior to having the matter adjudicated before a trial judge. To that extent, the Committee urges the Court to extend the "Cadillac" approach explained above to the mediation alternative.

(a). For its mediation panel, that group of practitioners from whom individual case mediators will be selected, the Court should appoint a "blue-ribbon" group, a small cadre of highly respected and experienced attorneys and others with mediation experience. Ideally, the Court should have a panel of mediators in whom attorneys and clients have the utmost confidence that their disputes will be mediated efficiently and justly.

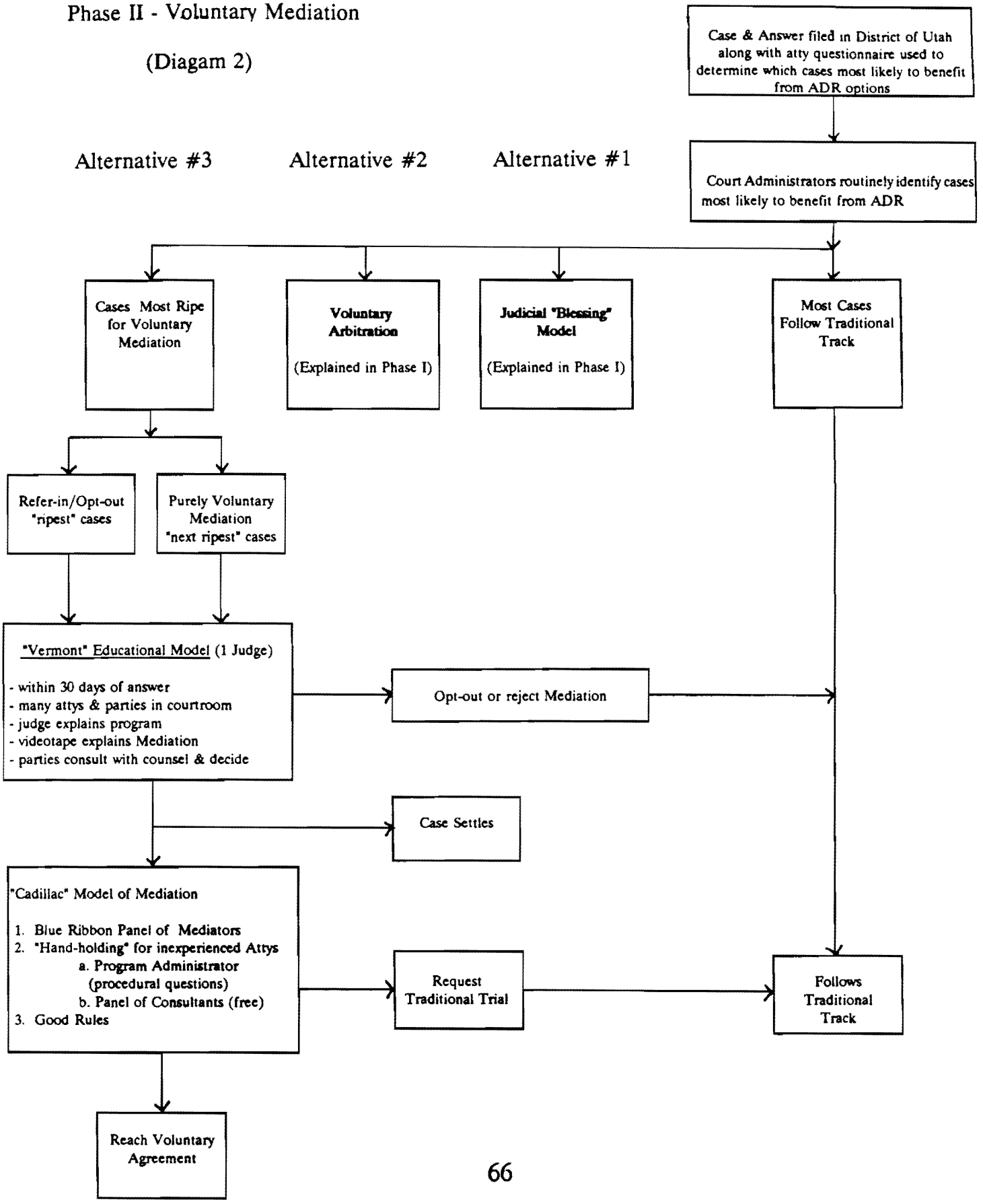
(b). Because this will be the Court's first experimentation with mediation, the Court's program initially might provide mediation training sessions for interested members of the bar. Additional assistance to inexperienced attorneys might be provided by an mediation coordinator who would be available to respond to queries about how the program operates. The Committee also recommends that the Court consider designating a panel of experienced attorney mediators who might serve as consultants and be available to answer questions such as what the mediation process involves, what role the mediator plays, how one prepares for a mediation session, and how one's case should be pres[illegible]. In essence, the Committee proposes that the same "Cadillac" features proposed for the arbitration program also be implemented within the mediation program.

The following page contains a schematic of Phase II of the arbitration program.

EXPERIMENTAL VOLUNTARY ADR PROGRAM *(District of Utah)*

Phase II - Voluntary Mediation

(Diagam 2)



6. AD HOC DEVELOPMENT SUBCOMMITTEE:

The Committee suggests that the Ad Hoc Development Subcommittee be comprised of a cross-section of legal and lay professionals and shall include at least one member of the Court's Standing Advisory Committee on the Local Rules of Practice, a judge or magistrate judge, and the Clerk of Court. The ad hoc subcommittee's primary function is to draft the local rules that will govern the operations of the proposed arbitration and mediation experiments for review and approval by the ADR Subcommittee and, in turn, the Committee.

In addition, Ad Hoc Development Subcommittee should devise proposed incentives, policies, and promotional materials whose purpose will be to prompt participation in these ADR experiments. Virtually all of the most successful court-based ADR programs have had significant input from a variety of community sectors during the development stages.

7. SUMMARY JURY TRIAL:

A majority[48] of the Committee members also favor limited experimentation by the Court with the summary jury trial (SJT).

RECOMMENDATION: That the Court experiment with the summary jury trial mechanism under the following guidelines:

a. **Judicial Discretion:** Determining when to use the SJT is left to the discretion of the trial judge to whom the case is assigned.

b. **Case Qualification Requirement:** Subject to the discretion of the assigned trial judge, any case headed for a jury trial estimated to exceed five days shall be a candidate for SJT. A general rule of thumb is that the more complex

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[48] Mr. Benson dissented from the Process Subcommittee's recommendation regarding the summary jury trial, indicating that at this time he was not persuaded that conducting such mini trials and producing non-binding verdicts was either an effective or an efficient use of a judicial officer's time. His initial reaction was that an Article III judge should not preside over such efforts and that jurors should be informed before rather than after the fact that their verdict would be non-binding. He did note that he would give the matter more thought. At the Subcommittee's September 5 meeting, Ms. Clawson and Mr. Roth, who was representing Mr. Benson, both expressed initial reservations about the SJT, but they subsequently agreed that experimentation with it in a non-mandatory environment would be desirable.

and protracted a case promises to be, the greater the potential of the SJT device to reduce cost and delay.

c. Role of Magistrate Judge: Subject to the discretion of the assigned trial judge and the written consent of all parties to the case, SJTs may be conducted by magistrate judges.

d. Duration: Barring a good cause showing of exceptional complexity, SJTs routinely will start and conclude on the same day.

e. Jury and Verdict: Juries for SJTs shall be selected and impaneled subject to voir dire and other requirements in effect for standard civil jury trials. Verdicts in SJTs shall be non-binding unless all counsel and parties stipulate prior to the SJT their agreement to a binding and non-appealable verdict. The Committee recommends against use of the summary trial device in a bench- or court-trial primarily on the ground that use of a jury adds credibility to the process.

F. JUDICIAL CONTROLS:

1. REQUESTS FOR EXTENSIONS AND CONTINUANCES: To a significant extent, practices by members of the bar affect the efficiency of the Court. The analysis of the docket provides evidence that requests for extensions of time and continuances of trials are submitted with some frequency, often on the day of the scheduled deadline or proceeding, and rarely denied. Moreover, members of the bar, when requests are not ruled on prior to the originally scheduled date, automatically assume that approval has been granted or, that because no action has been taken, the Court has forfeited the option of denying the request. The Committee believes that the court should consider implementing internal policies to restrict the granting of extensions of time and continuances by stricter enforcement of the applicable Rules of Practice and the Federal Rules of Civil Procedure.

RECOMMENDATION: That the district judges exercise greater oversight and control

over the granting of requests for extensions, continuances, and rescheduling by:

a. Adopting a general policy against the granting of such requests;

b. Granting such requests only upon an explicit showing of good cause and unusual or exceptional circumstances that warrant postponement;

c. Absent a showing of urgent, last-minute circumstances or an emergency, requiring the filing of requests a minimum of ten (10) business days prior to the scheduled deadline or scheduled proceeding date;

d. Ensuring that requests are ruled on a minimum of three business days prior to the scheduled deadline or proceeding date;

e. Amending D.Ut. 207(7) to specify that the originally scheduled deadline or proceeding date and time are in effect and must be observed until such time as the Court rules on the request. If no ruling is issued in advance of the originally scheduled date, that date shall remain in effect; and,

f. Requiring that all requests for extensions of deadlines for the completion of discovery or for postponement of the trial be signed by the attorney and the party making the request.

2. DELEGATION OF CASE MANAGEMENT FUNCTIONS TO THE CLERK:

Currently, the staff of the Clerk's Office do not perform significant case management functions for the district judges. The Committee believes that both the efficiency and the effectiveness of the civil litigation process would be enhanced if the Clerk's Office were authorized by the district judges to perform select monitoring and tracking functions that currently are not being performed on a regular basis. These monitoring functions would include time frames for service of process, answers, motion practice, and Court-imposed deadlines. The automated docketing application in use in the Clerk's Office and its ability to provide off-site access to users has significantly enhanced the Court's capacity to provide case-related information in an efficient manner. However, it was designed to provide significant case management support tools for chambers, support tools that currently are not being fully utilized. ***RECOMMENDATION:*** That the Court authorize the Clerk of Court to develop a

system of monitoring and reporting compliance with all scheduled due dates and of promptly following up on overdue pleadings.

SECTION VI

FACTORS THAT INFLUENCE CIVIL CASE PROCESSING

A. INTRODUCTION:

A variety of factors influence federal civil litigation over which neither the courts nor the Judicial Conference of the United States exert any direct control. One that has not been subject to a great deal of scrutiny is the impact of legislation which (1) creates new markets for the legal profession; (2) transfers matters from state to federal jurisdiction or vice versa; (3) establishes new federal agencies that, in turn, generate regulations whose violations are litigated in federal court; or (4) enacts into law measures that criminalize or otherwise prohibit activities detrimental to the public interest. The impact of new laws crafted to inhibit damage -- or to restore damage already done -- to the environment may provoke litigation that experience shows is typically protracted and complex, affecting the courts' ability to process other categories of litigation with efficiencies similar to those achieved in the past.

Another factor is the sometimes cumbersome process of designating, investigating, and obtaining Senate confirmation for nominees to the federal bench. Frequently, that process appears to turn as much on political considerations as on traditional qualifications; arguing political merits serves to delay the confirmation process and extend the waiting period during which courts must make do with insufficient numbers of judges in the face of increasing criminal caseloads. Other factors include initiatives by various departments of the Executive Branch of Government such as shifts in prosecutorial policies as in, for example, the need that emerged in the latter 1980s to devote significant resources to the investigation and prosecution of individuals involved in the savings and loan scandal. Some research into the impact of such factors on federal civil litigation has been undertaken, although the quality has varied, the objectivity on occasion has been compromised by politics, and the forecasts have not always been taken seriously. Significant resistance by federal judges, whose workloads stood to be most adversely affected by it, did little to dissuade the Congress from creating the United States Sentencing Commission which developed the federal sentencing guidelines. Serious concerns registered by the Judicial Conference of the United States to earlier versions of the Civil Justice

Reform Act were accommodated only in part by the Congress. Although there have been occasions where the responsible governmental body has granted only passing deference to Judicial Branch cautions and concerns about pending initiatives, there frequently are measurable outcomes linked to new legislation that can be identified and, to some extent, quantified in terms of their potentially impact -- positive or negative -- on the efficiency with which federal trial courts process civil cases. The Committee submits that such impact assessments should be given due and serious consideration, and that where prospective legislation has the potential to undermine or diminish the productivity of the Judicial Branch, Congress (1) provide the necessary resources to minimize that impact, or (2) reconsider the legislation's provisions and objectives.

B. CRIMINAL LEGISLATION AND DEPARTMENT OF JUSTICE INITIATIVES:

In the recent past, Congress has passed and the President has signed into law several pieces of criminal legislation that have had a direct and in some instances deleterious effect on the federal civil litigation process. Several examples bear mention:

1. SPEEDY TRIAL ACT OF 1974:

The Speedy Trial Act of 1974 (as amended), 18 U.S.C. §§ 3161-62 & 3164, in a well-intended effort to eliminate the protracted pretrial confinement of individuals charged with crimes prior to trial, created a presumption of privileged access to judicial review for criminal matters by requiring that federal criminal cases be tried within 70 days of filing of the indictment, unless a delay is expressly authorized by the statute and court order. Because no equivalent statutes compel the disposition of civil matters within constrained time frames, criminal cases must take scheduling priority over civil cases. If the criminal caseload in a district is large and many defendants proceed to trial, it can impair the court's ability to attend to its civil docket and schedule civil trials on a timely basis. The Act also has more subtle debilitating effects by compelling the rescheduling and continuing of civil hearings, conferences, trials, etc. when criminal case deadlines pop up on the Court's calendar. This disruptive tendency is exacerbated through the process in which criminal indictments are received. Typically, indictments are filed in

batches -- sometimes large batches -- when a grand jury has finished one or more marathon sessions. The Clerk's Office then opens a corresponding number of criminal cases on the same day, and as this block of cases begins its journey through the Court's criminal case processing operation, all subject to the same 70-day deadline. When civil proceedings are placed on hold in deference to criminal case deadlines, case processing time is increased and, in many cases, additional costs are likely to be incurred if for no other reason than the need of counsel to refresh their memory concerning the particulars of the case before rescheduled proceedings.

2. EXPANDING FEDERAL CRIMINAL JURISDICTION:

During the 1980s, when political attention was focused on the Executive Branch's highly publicized War on Drugs, a flurry of legislative initiatives expanded federal jurisdiction over drug-related criminal activity and led to an increase in the number and complexity of criminal cases being filed in the federal trial courts. Although the focus recently changed from drug-related activities to criminal violence, that trend continues in the 1990s with efforts to create federal jurisdiction over a variety of violent crimes that heretofore have been under state and local jurisdiction. Separate versions of the Violent Crime Control Act passed in the Senate and the House, and although the anti-crime legislation appears to have been stalled in view of its expense and the need to attend to the ailing domestic economy, it is likely that similar legislation will be introduced in the next session of Congress. If it is, and if it passes and is signed into law, barring extensive substantive modifications, it may result in thousands of homicide cases being brought into the federal courts.[49]

3. GUIDELINE SENTENCING:

Another major legislative initiative affecting criminal and, indirectly, civil adjudication in the federal trial courts was creation of the United States Sentencing Commission and its promulgation of the sentencing guidelines. Guideline sentencing, which became effective on November 1, 1987, and survived a subsequent constitutional

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[49] Indeed, David Sellars, Legislative Affairs Officer for the Administrative Office of the United States Courts, estimates that the legislation has the potential to bring under federal jurisdiction as many as 12,000 homicide cases, a massive increase when compared with the fewer than 200 such cases that were heard in federal courts in 1990.

challenge, has had the unanticipated effect of discouraging guilty pleas.[50] Although Administrative Office data show that criminal trials now make up a slightly higher percentage of total trials in the United States Courts than they did in 1985, the percentage of criminal trials during that same time period in the District of Utah increased substantially vis-a-vis the total number of trials.[51] The sentencing guidelines also have increased the level of work and time required for sentencing hearings.[52]

4. OPERATION TRIGGERLOCK:

The incidence of plea bargaining is likely to be diminished further under the provisions of a new Department of Justice program known as "Operation Triggerlock" which directs United States attorneys in all districts to create teams of federal and state law-enforcement officials to focus on criminal activity involving individuals and drug gangs that violate federal weapons laws. Plea bargaining is not an option in cases brought under this program. Although "Operation Triggerlock" is an Executive rather than Legislative Branch initiative, a review of the impact of any major initiatives on the workload of the Judicial Branch applies as much to such Executive Branch initiatives as it does to Congressional lawmaking.

C. CIVIL LEGISLATION AND PRESIDENTIAL INITIATIVES:

1. CIVIL JUSTICE REFORM ACT:

The Civil Justice Reform Act was enacted to apply uniformly to all United States

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[50] The 1990 *Report of the Federal Courts Study Committee* notes at page 137 that "more than 70 percent of the [federal trial] judges surveyed stated that the [sentencing] guidelines had reduced the incentives to induce a defendant to plead guilty, and half stated that the guidelines had decreased the percentage of guilty pleas in their caseload."

[51] In 1985, 31.3% of all trials conducted nationally were criminal trials. The figure as of June 1990 is 36.6%. In the District of Utah, 24% of all 1985 trials were criminal. By 1990, that percentage had increased to 47%, almost doubling the 1985 statistic.

[52] The 1990 *Report of the Federal Courts Study Committee* indicates that some 90% of the federal trial judges interviewed reported that the sentencing guidelines had increased the amount of time required to prepare for and conduct the sentencing hearing. Half of those surveyed indicated an increase of 25% in time spent; another third reported a 50% increase in time required. (See page 137.)

District Courts on the basis of a number of assumptions[53] about the existence of excessive cost and time in federal civil litigation. It is not evident that those assumptions are justified, that excessive cost and delay have been shown to exist in all or even most of the federal districts. Indeed, conspicuous by their absence in the legislation and the preparatory Brookings report are (1) clear and specific definitions of avoidable cost and delay in civil litigation; (2) an appreciation of the complex and sometimes competing values that drive federal civil litigation, the ends that such litigation is to serve, and how issues related to cost and time expended are intertwined with those values and ends; and, (3) an acknowledgment that the vast majority of federal civil cases are settled prior to reaching trial. Adjudicating civil disputes is not the kind of process to which quantifiers can be applied in the same way that they are applied to assembly line work.

Cost is an embracive term; without context, it is meaningless. A society without functioning courts would suffer costs in lives and blood. A readily accessible court system in which people have confidence saves lives and blood; ultimately, it saves dollars. These and other social costs should in no sense be omitted from the cost equation by which court activity is evaluated. To look only at the bottom line is to look too low.

Delay, too, should be defined with appropriate reference points. For whom? For what? When? Under what circumstances? Has the passage of time improved the result or made a result achievable? On occasion, as every experienced litigator well knows, the passage of time in a particular case is a virtue.

One aspect of civil litigation that receives prominent and negative attention in the legislation and its antecedents is the assumption that there is widespread abuse of the discovery process and that such abuse substantially and unnecessarily increases the costs of that litigation. One of the costliest discovery tools is the deposition; to the extent that widespread discovery abuse exists, the taking of depositions would figure prominently. Yet the results of the survey conducted for the Committee by the Survey Research Center

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[53] See, for example, Section 102(1)-(4) of the CRJA. Entitled *Findings*, it asserts that problems of cost and delay exist in the federal district courts and must be addressed without distinguishing between courts that have few, if any, such problems and those that have many.

indicated that in 48% of the civil cases included in the District of Utah sample, no parties were deposed; furthermore, in 62% of those cases, no nonparties were deposed. Allegations of substantial discovery abuse, one of the fundamental claims on which the legislation's provisions are based, simply were not confirmed in the District of Utah with regard to the taking of depositions.

The fashionable suggestion of engrafting a supermarket of services upon the court structure -- mediation, arbitration, conciliation -- as if they were something new ignores the reality that such services all have been available and all have been within reach of parties and counsel if they were interested in pursuing them. To that extent the emphasis on court-annexed ADR and the attendant tendency to limit the flexibility of the court system by insisting that such enhancers are additions to rather than inherent aspects of the adjudication process is misplaced. Some attribute that emphasis to a reluctance on the part of the Congress to provide adequate funding for sufficient numbers of judicial personnel to meet the growing needs of an expanding population. Recognizing the Judicial Branch as the Third Branch of the Federal Government and equipping it with sufficient numbers of judges and dollars may well be the most efficient way of dealing with these cost and delay issues. Absent that, the social costs may well be astronomical.

To that extent, the assumptions on which the legislation are based may be suspect, at least in their implicit claim to have system-wide legitimacy, and the legislation has had the effect of mandating meetings, reviews, surveys, and analyses in districts whose record of processing civil litigation are exemplary or simply good.

2. CIVIL LEGISLATION IN GENERAL:

The Civil Justice Reform Act does not acknowledge that excessive cost and delay may be exacerbated by legislation that created complex and costly new markets for federal civil litigation and increased the jurisdiction of the federal trial courts. Examples include a variety of civil rights and employment discrimination laws, some of which do not apply to the Legislative Branch; a variety of complex environmental control and clean-up statutes; the intrusion into civil litigation of the Racketeer Influenced and Corrupt Organizations provisions of the Organized Crime Control Act of 1970; the

Americans with Disabilities Act of 1990; the Fair Debt Collection Practices Act; the Immigration Reform and Control Act of 1990; and patent laws in the areas of intellectual property and biological engineering. Although there is no clear evidence that any single piece of legislation cited above has had a singularly detrimental effect on either the cost or the time entailed in civil litigation in the District of Utah, the collective effect on the civil docket has been to increase not only the number of cases but also their complexity. More complex cases take longer and cost more to adjudicate.

3. PRESIDENTIAL INITIATIVES:

The Executive Department recently demonstrated its concern with the need for reform in the civil process, and the Committee commends the President for taking what it considers to be appropriate action. In an Executive Order dated October 23, 1991, and entitled Civil Justice Reform,[54] President George Bush set forth a number of significant provisions applicable to all civil claims involving the United States Government. Included among them are guidelines that require counsel:

a. To notify, prior to filing a civil complaint, all disputants about the nature of the dispute for the purpose of discussing settlement options.

b. To pursue and evaluate settlement options throughout the litigation, including offering to participate in settlement conferences.

c. To make all reasonable attempts to resolve disputes through alternatives to litigation and to train litigation counsel in ADR techniques.

d. To attempt to resolve discovery-related disputes with other counsel prior to filing a discovery motion or petitioning the court for the imposition of sanctions.

A significant portion of the order[55] addresses the need to pursue legislation and to implement regulations that do not create an unnecessary burden for the Judicial

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[54] Executive Order 12776 of October 23, 1991, was published on Friday, October 25, 1991, in the *Federal Register*, volume 56, number 207, pp. 55195-55201. For the President's remarks on civil justice reform, see issue no. 43 of the *Weekly Compilation of Presidential Documents*.

[55] See Section 2, "Principles to Enact Legislation and Promulgate Regulations Which Do Not Unduly Burden the Federal Court System."

Branch. It sets forth detailed guidelines for Executive Branch agencies to adhere to when drafting proposed legislation or agency rules and regulations.

The Committee acknowledges the importance of this initiative but expresses its concern that its provisions notwithstanding, settlement negotiations involving the United States frequently are delayed, sometimes for interminable periods, because the participating government attorneys do not have the authority to speak or act for the United States. Once a matter has been tentatively negotiated, the attorneys are required to seek approval from Washington. All to often the proposals must be channeled through a series of levels of approval, creating undue delay. To hasten the process of settlement in cases involving the United States, the Department of Justice should delegate to the United States Attorney increased authority to negotiate settlements. It also should empower attorneys who travel from Washington to the districts with the necessary authority to settle matters in which they are engaged.

SECTION VII

THE WORK OF THE COMMITTEE

A. INTRODUCTION:

As was noted in the Introduction to this report, the District of Utah CJRA Advisory Committee was formed pursuant to § 478 of the Civil Justice Reform Act of 1990, Title I of the Judicial Improvements Act of 1990. Chief Judge Jenkins elected not to appoint an official chair for the Committee. He assumed the role of coordinating and setting the agenda for the full Committee meetings. The Committee's objectives included the following:

1. To analyze the civil docket of the District of Utah in order to determine whether and to what extent excessive and avoidable cost and time are characteristic of the civil litigation process and how the process may be improved.

2. To determine the extent to which attorneys who practice in the District of Utah and litigants whose cases are heard in the District of Utah perceive that the civil litigation process meets their needs or that the costs in time and money are excessive.

3. To determine whether court-annexed alternatives to the formal dispute resolution process might provide a less costly and less time-consuming forum for litigants to resolve disputes.

In pursuit of those objectives, the Committee was divided into three subcommittees designated as the Process Subcommittee, chaired by Mr. Baucom, the Alternative Dispute Resolution Committee, chaired by Professor Williams, and the Consumer Subcommittee, chaired by Dean Teitelbaum. Each subcommittee was assigned with one of the Committee's primary objectives and asked to conduct research and make appropriate recommendations to the full Committee. Those subcommittees, their tasks, and their recommendations are the topic of this section of the Report.

B. PROCESS SUBCOMMITTEE:

The Process Subcommittee is comprised primarily of experienced practicing attorneys Sidney G. Baucom, who served as chair, Carol Clawson, and Carman Kipp. The membership

also included the United States Attorney for the District of Utah, who since has been appointed as United States District Judge for the District of Utah. The Committee Reporter attended all meetings of the Process Subcommittee and worked with it in formulating the recommendations. The subcommittee developed and presented to the Committee initial and, following Committee comment and discussion, final drafts of its recommendations which, with one exception as is noted in the Recommendations Section, were unanimously approved.

The Process Subcommittee viewed as its primary function the task of assessing the process of civil litigation and how modifications to the manner in which civil process is conducted in the District of Utah might serve the general objectives of reducing unnecessary cost and time in such litigation. The framework for proposing modifications is defined in the Civil Justice Reform Act, in particular the six principles of litigation management. The Subcommittee spent significant time discussing discovery and the excessive cost and time requirements that abuse of the discovery process can entail, particularly in complex and protracted cases. It also gave careful consideration to the need to stimulate the discovery process early in the history of a case. It also reviewed the interplay between the district judges and the magistrate judges and concluded that a more efficient use of both judicial officers' time would be to eliminate the practice of referring dispositive motions and, instead, to authorize the magistrate judges pursuant to 28 U.S.C. § 636 to conduct civil jury trials on consent of the parties.

The Subcommittee determined that its recommendations should not rely solely on proposals for new rules or amendments to the existing rules that govern civil litigation. Unleashed rule-making has the potential to diminish the legal profession and to sidetrack judicial officers with bureaucratic minutia. Moreover, the Federal Rules of Civil Procedure and the new District Court Rules of Practice, effective June 1, 1991, already provide a variety of judicial tools for minimizing the consumption of unnecessary cost and time. To that extent, the recommendations include, in addition to a proposal for amendments to the Rules of Practice, suggestions regarding internal operating procedures and, mindful of the distribution of tasks among the three subcommittees, a proposal for experimentation with an alternative dispute resolution technique that mimics in abbreviated fashion the civil jury trial process.

Finally, mindful that the "costs" of pursuing and dispensing justice cannot be quantified

the way one quantifies the "costs" of raising cattle or developing software, Committee sought to formulate recommendations that balance cost- and time-reduction measures against the less-quantifiable but more fundamental objectives of achieving justice, preserving rights, and giving litigants their day in court. It bears mention that the objective of defining empirically based standards for determining excessive costs and time in civil litigation has eluded professional researchers in court and case management for decades. To that extent, the Committee has found being tasked with that function by CJRA neither particularly reasonable nor farsighted.

C. ADR SUBCOMMITTEE:

The members of the ADR subcommittee are Professor Gerald Williams of the J. Reuben Clark Law School of Brigham Young University as Chair, D. Frank Wilkins of the law firm of Berman and O'Rourke and formerly a justice of the Utah State Supreme Court, and Burton Cassity, a non-lawyer who is an insurance executive. To assist the subcommittee in its research and development work, the Court acquired and filled a full-time, one-year temporary staff attorney position and assigned the incumbent, Mr. Paul Cooper, to work with the subcommittee chair at the BYU Law School.

The ADR Subcommittee was tasked with two functions within the scope of the Committee's primary objective regarding alternative dispute resolution. First, under CJRA, it was asked to determine whether the Court's processing of its civil caseload might be rendered more efficient with the adoption of select ADR techniques or devices and, if so, which ones. The narrow time constraints imposed by the CJRA on the pilot districts, unfortunately, did not permit the kind of analysis that such an effort deserves, so the Subcommittee, in making its proposals, has done so on the assumption that experimentation with arbitration and mediation programs will provide useful data on the basis of which to respond to that task.

Second, as an analog to the first function, the Subcommittee was asked to assist the Court in developing a plan for the implementation of a court-annexed arbitration effort in conjunction with the District of Utah's designation as one of ten pilot courts tasked with experimentation in non-mandatory arbitration. These efforts were to proceed simultaneously. In tasking the ADR Subcommittee, the Court recognized that the effort entailed by its mandate would be more

protracted and more intense, particularly to the extent that the District of Utah has no prior experience in developing or operating a systematic alternative dispute resolution program and that the state court system has no formal ADR programs on which the District might build.

D. CONSUMER SUBCOMMITTEE:

The Consumer Subcommittee was chaired by University of Utah College of Law Dean and Professor Lee Teitelbaum. Serving with the Dean on the committee were R. Paul Van Dam, Attorney General for the State of Utah, James Z. Davis, attorney and President of the Utah State Bar, and Ann Milne, Director of Utah Legal Services, Inc. The Consumer Subcommittee was tasked, in conjunction with the Committee's objective of assessing attorney and client court-related experiences, with conducting an analysis of the perceptions and needs of those whom the Court's process of civil litigation is structured to serve. Is the current length and cost of the civil litigation process such that it is in need of tinkering, of modifications to achieve greater efficiencies? Are clients relatively satisfied with the manner in which the Court disposes of disputes? Are the attorneys who represent them relatively satisfied? If they have the option, do they prefer taking such matters to federal or to state court? Was extensive discovery an element in protracting the age of the case? In an effort to obtain useful data to these and related questions, the Consumer Subcommittee, with funding from the Court, contracted with the University of Utah's Center for Survey Research to conduct a telephone survey of approximately 400 attorneys and clients. The Court identified a sample of closed civil cases involving contracts and personal injury claims. Removal cases also were heavily sampled. Having identified these cases, the Court provided the names, addresses, and telephone numbers of the plaintiff's and defendant's attorneys to the Center. Prior to being called and surveyed, each attorney received a letter from Chief Judge Jenkins identifying the particular case, explaining the survey and the use to which it results would be put, and requesting cooperation. The survey was designed to elicit, apart from reactions to court-related procedures, information regarding clients so they, too, could be contacted for their perspectives. The success of that effort was mixed. A brief summary of the survey findings is contained in Section IV, Attorney and Client Assessments of the Court. Appendix E to this report contains (1) a complete

description of the survey methodology; (2) the attorney and client questionnaires, and (3) a compilation of the results of the survey, including a verbatim listing of all the open-ended responses.

APPENDIX A

COMPOSITION OF THE ADVISORY COMMITTEE

COMMITTEE MEMBERS

SIDNEY G. BAUCOM - Former Vice President and General Counsel, Utah Power & Light. Address: Jones, Waldo, Holbrook & McDonough, 170 South Main Street, Suite 1500, Salt Lake City, Utah 84101. Telephone: 521-3200

DEE V. BENSON, United States District Judge for the District of Utah; formerly United States Attorney for the District of Utah.[56] Address: U.S. Attorney's Office, 350 South Main Street, Suite 476, Salt Lake City, Utah 84101. Telephone: 524-3409

BURTON F. CASSITY - Associate General Agency Manager, Equitable Life Assurance Society. Address: 175 East 400 South, Salt Lake City, Utah 84111. Telephone: 521-3667

CAROL CLAWSON - Litigator at Giauque, Crockett & Bendinger. Address: 136 South Main Street, Suite 500, Salt Lake City, Utah 84101. Telephone: 533-8383

JAMES Z. DAVIS - President, Utah State Bar. Shareholder, Ray, Quinney & Nebeker. Address: Ray, Quinney & Nebeker, 2404 Washington Blvd., Suite 102, Ogden, Utah 84401. Telephone: 621-0713

BRUCE S. JENKINS - Chief Judge, United States District Court, District of Utah. Address: 350 South Main Street, Suite 251, Salt Lake City, Utah 84101. Telephone: 524-5167

CARMAN E. KIPP - President, Utah Chapter, American College of Trial Lawyers; Bar representative to American Bar Association Committee. Address: Kipp & Christian, 175 East 400 South, Suite 330, Salt Lake City, Utah 84111. Telephone: 521-3773

ANN MILNE - Director of Utah Legal Services, Inc. Address: 124 South 400 East, Salt Lake City, Utah 84111. Telephone: 328-8891

LEE TEITELBAUM - Dean and Professor of Law, College of Law, University of Utah. Address: University of Utah, College of Law, Salt Lake City, Utah 84112. Telephone: 581-8711

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[56] At the time the CJRA Advisory Committee was formed in March 1991, Judge Benson was the United States Attorney. He was confirmed as U.S. District Judge in September and took the oath of office in November 1991.

R. PAUL VAN DAM - Attorney General, State of Utah. Address: Utah Attorney General's Office, Suite 236, State Capitol Building, Salt Lake City, Utah 84114. Telephone: 538-1326

D. FRANK WILKINS - Former Justice, Utah Supreme Court. Currently specializing in mediation and arbitration. Address: Berman & O'Rourke, 50 South Main Street, Suite 1250, Salt Lake City, Utah 84144. Telephone: 328-2200

GERALD WILLIAMS - Professor, J. Reuben Clark Law School, Brigham Young University. Specialist in negotiation and alternative dispute resolution. Former Board President, Utah Legal Services. Address: J. Reuben Clark Law School, Brigham Young University, Provo, Utah 84602. Telephone: 378-2032

EX OFFICIO MEMBERS

DAVID K. WINDER - United States District Judge, District of Utah. Address: 350 South Main Street, Suite 235, Salt Lake City, Utah 84101. Telephone: 524-4501

J. THOMAS GREENE, JR. - United States District Judge, District of Utah. Address: 350 South Main Street, Suite 222, Salt Lake City, Utah 84101. Telephone: 524-5646

DAVID SAM - United States District Judge, District of Utah. Address: 350 South Main Street, Suite 148, Salt Lake City, Utah 84101. Telephone: 524-6947

A. SHERMAN CHRISTENSEN - Senior United States District Judge, District of Utah. Address: 125 So. State Street, Suite 6404, Salt Lake City, Utah 84111. Telephone: 524-5164

ALDON J. ANDERSON - Senior United States District Judge, District of Utah. Address 350 South Main Street, Suite 110, Salt Lake City, Utah 84101. Telephone: 524-5625

COMMITTEE REPORTER

MARKUS B. ZIMMER, Clerk of Court, District of Utah. Address: 350 South Main Street, Suite 120, Salt Lake City, Utah 84101. Telephone: 524-5160

APPENDIX B

COMMITTEE MEETING AND OPERATING PROCEDURES

The Committee first met on April 4, 1991. Chief Judge Jenkins conducted the initial and all subsequent meetings. At that first meeting, each member was presented with a binder that included the text of the Civil Justice Reform Act and a variety of materials related to case management, alternative dispute resolution, and the CJRA. Chief Judge Jenkins also announced the formation of the Consumer, Alternative Dispute Resolution, and Process Subcommittees, the chairs and members of each, and the mandate of each and of the Committee as a whole. As an alternative to appointing a Committee chair, he indicated that he would coordinate the work of the Committee in conjunction with the heads of the three subcommittees and the Clerk of Court, who had been designated as the Committee Reporter. The Reporter was tasked with keeping minutes of all Committee meetings and, as appropriate, subcommittee meetings. Consistent with the Chief Judge's preference that the work of the Committee be conducted in a serious but informal manner, no formal operating rules or procedural guidelines were adopted. All meetings of the full Committee would be held at the Frank E. Moss United States Courthouse; the subcommittees were free to meet where and as frequently as the Chair deemed appropriate.

The next meeting of the full Committee was held on July 10. The three subcommittee chairs reported on the progress of their respective groups, all of which had met in the interim. The Chair of the Process Subcommittee distributed his group's draft of recommendations.

The Committee met monthly from July through December with plans for calendar 1992 meetings to be scheduled as needed. The three subcommittees met separately with similar frequency. The August meeting of the Committee featured as a guest speaker and civil rules expert Professor Richard Marcus of the Hastings Law School. By the November meeting, all subcommittees had reported on their work and had submitted reports and, where appropriate, recommendations for the Committee's review and comment. The Committee's report was prepared by the Reporter on the basis of the subcommittee reports, statistical information obtained from the Administrative Office of the United States Courts, and other sources. The Reporter submitted the draft report to the Committee members for review in mid-November;

following review and editing, the report was submitted to the Court for its review and analysis.

Copies of the minutes of all meetings are available from the Reporter.

APPENDIX C

GLOSSARY OF ADR TERMINOLOGY[57]

Alternative Dispute Resolution, or "ADR." Means "alternatives" to a court trial; covers a broad spectrum of procedures, ranging from evaluation and issue-defining techniques, through mediation and other "assisted negotiation" conferences, to various forms of arbitration, to the so-called "hybrid" procedures such as summary jury trial and mini-trial.[58]

Arbitration. A form of adjudication in which an expert (or a panel of three experts), selected by the parties, hears the case and renders a decision. The proceeding is less formal and time-consuming than a trial because it does not require adherence to court rules of procedure, rules of evidence, etc. When ordered by the court, it is **non-binding** on the parties (see definition of **non-binding**).

Mediation. A form of "assisted negotiation" in which a neutral third person (the mediator) meets jointly, and sometimes separately, with the parties to facilitate communication and help them move toward a mutually agreeable outcome. Parties are under no obligation to agree; they retain full control over the process and outcome; the mediator has no authority to impose a solution on them. Judges and lawyers frequently confuse it with **arbitration** (see definition above).

Moderated Settlement Conference. Similar to neutral evaluation, but used when the case is closer to a trial date, intended to help the two sides toward a negotiated solution. Counsel, with the parties present, give their best summary of the case to a panel of neutral third parties (usually lawyers), who render a non-binding decision.

Negotiation. The most frequently used method of dispute resolution, in which counsel for the parties communicate by letter, telephone, and sometimes face-to-face to work out a mutually acceptable agreement. Clients are sometimes present during negotiations. The resulting agreement is typically entered by stipulation into the court record.

Neutral Fact-Finding. A form of "assisted negotiation" in which a neutral expert is appointed to investigate disputed facts or technical issues in a case and report the findings to the parties. The results are typically not binding on the parties; depending on prior agreement, they may be admissible in the event of trial.

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[57] This glossary was prepared by Professor Williams, Chair of the ADR Subcommittee, as an aid to assist the Committee to better understand the broad scope of programs and mechanisms that are encompassed by the concept of alternative dispute resolution.

[58] Paraphrase of William W Schwarzer, U.S. District Judge and currently Director of the Federal Judicial Center, in his remarks on "Implementation of the Civil Justice Reform Act," at the Chief District Judges Conference in Naples, Florida, May 13, 1991.

Neutral Evaluation. A form of "assisted negotiation" and "reality testing" typically used early in the litigation process. Lawyers with expertise in the subject area provide litigants and their counsel with an early, non-binding expert assessment of liability and dollar values of claims.

Nonbinding. Means that parties do not surrender their right of access to the courts when they agree to participate in ADR procedures; if they are not satisfied with the ADR result, they are entitled to a de novo trial of their case in District Court.[59]

Mini-Trial. Another private, consensual, non-binding process designed to assist the parties toward a negotiated outcome; originally used in disputes between corporations or other large entities. The lawyers present their best summary of the case to a panel that consists of a neutral expert, plus an officer and inside counsel of the disputing organizations. After hearing presentation of the case and asking questions, the officers and inside counsel retire to a conference room to see if they can work out a practical or "business solution" to the case. If they wish, they may call in the neutral expert and ask for an advisory opinion or otherwise benefit from his or her impressions of the case.

Summary Jury Trial or Summary Bench Trial. An abbreviated form of adjudication intended to assist the parties toward a negotiated outcome. The lawyers, with the parties present in the courtroom, present their best summary of the case to a jury or judge. The jury or judge then renders a **non-binding** decision, and the parties and their counsel are encouraged to talk with the jurors and with the judge to learn their perception of the merits of the case.

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[59] As a general rule, court-related ADR procedures are non-binding on the parties unless the parties themselves decide otherwise, and assuming they otherwise meet the procedural requirements. In my opinion, this is good policy, and it is directly responsive to the Act's mandate that the plan should, among other things, "facilitate deliberate adjudication of civil cases on the merits."

APPENDIX D

RESULTS OF THE ATTORNEY CLIENT SURVEY

Federal District Court Survey: Forum Selection, Costs and Consumer Satisfaction

October, 1991

Administered by:

University of Utah
Survey Research Center

Sponsorship of the Federal District Court Survey

The Federal District Court Survey is sponsored by the Civil Justice Reform Act of 1990 Advisory Committee of the District of Utah, Consumer Subcommittee

The University of Utah Survey Research Center

is part of the
Center for Public Policy and Administration in the
College of Social and Behavioral Science
at the University of Utah

Center for Public Policy and Administration
F. Ted Hebert, Ph.D., Director

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Table of Contents

Background

The recent passage of legislation in congress (the Biden bill) led to the need for information on delays in the Federal District Court system. A committee was established to oversee the gathering of data, and the Utah Federal District Court system was selected as a study area for the project. The survey was commissioned by the Civil Justice Reform Act of 1990 Advisory Committee to examine the effects of court delays on clients, and the potential effects of proposed system changes on the clients.

I. Methodology

Federal District Court Survey Methods

Questionnaire Design

The survey was designed by the Civil Justice Reform Act of 1990 Advisory Committee to collect data on three aspects of clients' experiences in civil cases in federal court:

1) Client choice/control in selection of federal court

2) Court costs

3) Client satisfaction

Sampling Pool

The pool of potential respondents was identified from the population of civil cases filed in U.S. Federal District Court, Utah District, that terminated after July 1, 1989. Cases were primarily of four types: "Removal" cases (cases in which a plaintiff brings a case to state court, and the defendant removes the case to federal court), contracts cases, personal injury, and property cases. Each attorney was represented in the sampling pool only once, with preference given to removal cases, and cases that were most recently terminated. An introductory letter was sent to each attorney in the sampling pool urging them to participate in the telephone survey.

The Sample

The Federal District Court Survey is based on telephone interviews conducted from August 27, 1991 to October 7, 1991, with 279 attorneys and 99 defendants and plaintiffs. The questionnaire was administered in full to every respondent. Attorneys were interviewed first, and each attorney's primary client then became a member of the sampling pool. Regardless of the number of attorneys and clients in a case, a maximum of two attorneys and two clients were contacted. Whenever possible, the lead attroney of record completed the survey.

Every reasonable attempt was made to contact all four survey respondents (plaintff, plaintiff's attorney, defendant, and defendant's attorney) in each court case. The disparity in the number of attorneys versus clients reflects difficulties in locating clients using attorney-supplied information some months or years after a case was terminated. In most cases attorneys were willing to supply client phone numbers and cities of residence. However, many individual clients had moved, and many corporate clients no longer employed individuals familiar with the court case.

The number of calls placed to reach a given attorney ranged from 1 to 26, with an average of 12.5 calls required to complete a survey. The number of calls placed in an effort to reach clients ranged from 1 to 26, with an average of 20 calls required to complete a survey.

The breakdown of responding attorneys and clients into defense and plaintiff is presented below.

Attorneys	
Defendant Attorneys	139
Plaintiff Attorneys	140
Clients	
Defendant	52
Plaintiff	47

Sampling Error

The percentages reported for the attorney sample are no greater than plus or minus 6.0% of the percentages that would be found if all attorneys involved in civil cases in Utah were interviewed. For example, if our survey showed that 56% of the sample felt that the case was removed to a federal court because litigation is less expensive, then the comparable figure for the population lies somewhere between 50.0% and 62.0% (at least we can be 95% confident that it does). This sampling error is larger for analyses based on subsets of the sample. The sampling error for the client sample is no greater than plus or minus 10.2%.

Outcome of Calls

Attorneys

Phone calls were made to 315 attorneys in order to complete the survey with 279 respondents for a cooperation rate of 89%. The outcome of all calls to attorneys is as follows:

156	phone numbers were called that did not result in contact with a target respondent for the duration of data collection (target out of town, busy signal, no answer, answering machine, etc.)
0	target respondents were ineligible (did not have adequate English language skills, infirm, etc.)
9	target respondents refused to be surveyed
23	target respondents were not interviewed for other reasons
4	target respondents began the interview but were not able to complete it
279	completed interviews
315	target respondents were contacted
471	phone numbers were called a maximum of 26 times

Clients

Phone calls were made to 160 clients in order to complete the survey with 99 respondents for a cooperation rate of 62%. The outcome of all calls to clients is as follows:

83	phone numbers were called that did not result in contact with a target respondent for the duration of data collection (target out of town, busy signal, no answer, answering machine, etc.)
0	target respondents were ineligible (did not have adequate English language skills, infirm, etc.)
14	target respondents refused to be surveyed
41	target respondents were not interviewed for other reasons (unpublished phone number, no phone number found, other)
6	target respondents began the interview but were not able to complete it
99	completed interviews
160	target respondents were contacted
243	phone numbers were called a maximum of 26 times

Reducing Survey Biases

Conducting a survey of public attitudes involves many procedures that may inadvertently introduce bias into the results. Every effort was made to reduce such bias; unfortunately, it is difficult to accurately measure the extent of these biases. Good surveying techniques, interviewing training, and close interviewer supervision reduce the extent of these biases but they can never be entirely eliminated. It is possible that the results would have changed had the questions been reworded or reordered or different interviewing techniques (e.g., face-to-face interviewing) implemented.

The University of Utah Survey Research Center

Background

The Survey Research Center was established in September 1984 as the survey research arm of the College of Social and Behavioral Science. The SRC serves four major functions: 1) The SRC advises state and local government agencies, nonprofit organizations and private organizations engaged in public service activities on research design issues for proposed and ongoing survey research efforts related to public policy decision making; the SRC also conducts all phases of data collection related to such endeavors; 2) The SRC assists faculty and other University researchers requiring survey research and primary data collection; 3) The SRC conducts its own research on survey methodology; and 4) The SRC conducts classes on survey methodology for students and interested parties in the community. The SRC is a research organization that provides services required for the successful design, organization, and implementation of all phases of a study requiring survey data.

The University of Utah Survey Research Center, Directed by Dr. Lois Haggard, is affiliated with the Center for Public Policy and Administration in the College of Social and Behavioral Science at the University of Utah. The Survey Research Center employs six regular staff members, and maintains a temporary staff comprised of three supervisors and approximately 30 interviewers.

Computer-Assisted Telephone Interviewing

Telephone surveys are programmed and the survey design is implemented on the SRC's computer-assisted survey execution system (CASES). CASES provides the opportunity to have microcomputers impose many quality control measures onto the data collection process (e.g., how the interviewer interacts with the respondents and the cleanliness of the data). CASES was developed by the University of California-Berkeley and the U.S. Census Bureau. The SRC leases the software from UC Berkeley. Other survey organizations who use the CASES software include the U.S. Bureau of Labor Statistics, U.S. Department of Agriculture, and the CBS News Election and Survey Unit, among others.

Interviewing Training and Supervision

The SRC maintains a corps of professionally trained interviewers for all surveys. All telephone interviews are conducted in a centralized interviewing facility under direct and constant supervision. Each SRC interviewer successfully completes a four stage training process that spans approximately twenty-four hours of actual training. First, they receive written material from the SRC which describes the fundamentals of standardized interviewing. After reading this material, interviewers attend a training session that focuses on the fundamentals of telephone interviewing without CASES. Third, they learn special skills necessary for conducting telephone interviews using computers and CASES. Finally, they receive training on the specifics of a given survey (i.e., sampling issues, definition problems, questionnaire design). The length of this portion of the training is variable depending on the nature of the survey.

Professional Affiliation and Standards

The University of Utah Survey Research Center is a member of the American Association for Public Opinion Research (AAPOR). As such, it is subject to high standards of scientific competence and integrity in conducting, analyzing, and reporting survey work and in relations with survey respondents, with our clients, with those who eventually use the research for decision-making purposes, and with the general public. In addition, all research at the SRC is reviewed by the University of Utah Institutional Review Board for Research with Human Subjects, and all SRC interviews are confidential (personal identifiers are not stored with the data file) and respondents are informed that their interviews are confidential and that their participation is voluntary.

II. Results

The results presented in this report are not intended to reflect a cross section of all federal civil cases. Instead, cases that represent a high degree of choice of forum have been intentionally over-sampled. The number of each type of case and the number of removal cases is presented in Table 1.

Table 1. Summary of Types of Cases by Plaintiff and Defendant

	Attorneys		Clients	
	Plaintiff	Defendant	Plaintiff	Defendant
Contract	81	76	28	33
Real Property	6	6	2	3
Personal Injury	25	29	6	6
Personal Property	11	7	6	3
Civil Rights	3	5	1	2
Labor	8	9	3	3
Antitrust	1	1	1	-
Other	5	6	-	2
Total	140	139	47	52
Removal Cases:	64	72	22	25
Other Cases:	76	67	25	27
Total	140	139	47	52

Analysis

Results are presented in table format. A Chi-square statistic has been calculated for each table to aid in interpretation of the results. Chi-square is a statistic that indicates whether, for a given table, the pattern of responses differs from one group to another. For instance, a significant Chi-square would indicate that the pattern of responses was different for plaintiffs' attorneys than for defendants' attorneys. Tables that produce statistically significant ($p \leq .05$) Chi-square statistics have been indicated with a ★. Statistical significance indicates that something other than chance was likely to have been responsible for the difference in the way groups responded to the question.

A. Attorneys

Was this case originally filed in State or Federal Court?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA11						
STATE	54	39%	45	32%	99	35%
FEDERAL	81	58%	94	67%	175	63%
DON'T KNOW	4	3%	1	1%	5	2%
TOTAL	139	100%	140	100%	279	100%

The first few questions ask about the decision to litigate the case in federal as opposed to state court.
Did you have a choice whether to have this case heard in federal or state court?

★

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA12						
YES	49	80%	86	62%	135	68%
NO	12	20%	48	35%	60	30%
DON'T KNOW	0	0%	4	3%	4	2%
TOTAL	61	100%	138	100%	199	100%

(Answered by all plaintiffs' attorneys and by defendants' attorneys in removal cases.)

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

Did actions of the opposing party cause this case to go to federal court?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA13						
YES	9	75%	24	46%	33	52%
NO	2	17%	24	46%	26	41%
DON'T KNOW	1	8%	4	8%	5	8%
TOTAL	12	100%	52	100%	64	100%

(Answered by attorneys who responded they did not have a choice, or "don't know" to PA12.)

Did you make the choice, or did your client?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA14						
R MADE CHOICE	14	29%	46	49%	60	42%
CLIENT MADE CHOICE	7	14%	13	14%	20	14%
BOTH	25	51%	29	31%	54	38%
DON'T KNOW	3	6%	5	5%	8	6%
REFUSED	0	0%	1	1%	1	1%
TOTAL	49	100%	94	100%	143	100%

(Answered by attorneys who responded "yes" or "don't know" to the choice question (PA12) or "don't know" to PA13.)

Of all the federal civil cases in which you have the option, what percentage of these cases do you choose to have heard in federal court?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA14A						
0	0	0%	3	5%	3	4%
1	0	0%	1	2%	1	1%
5	0	0%	2	3%	2	3%
10	0	0%	4	6%	4	5%
20	0	0%	1	2%	1	1%
25	1	6%	1	2%	2	3%
30	0	0%	1	2%	1	1%
40	0	0%	1	2%	1	1%
50	3	19%	12	19%	15	19%
70	0	0%	2	3%	2	3%
75	2	13%	4	6%	6	8%
80	1	6%	3	5%	4	5%
85	0	0%	1	2%	1	1%
90	2	13%	9	15%	11	14%
95	1	6%	2	3%	3	4%
100	4	25%	9	15%	13	17%
DON'T KNOW	1	6%	6	10%	7	9%
REFUSED	1	6%	0	0%	1	1%
TOTAL	16	100%	62	100%	78	100%

MEAN 64.44 MEDIAN 75.00 STANDARD DEVIATION 32.74

(Answered by attorneys who responded they did have a choice whether the case was heard in federal or state court and that action of the opposing parties did not cause the case to go to federal court.)

What was the reason you/your client decided to try the case in federal/state court?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA15						
BETTER CHANCE WINNING	0	0%	8	9%	8	9%
GET HIGHER AWARD	0	0%	1	1%	1	1%
PROC TAKE LESS TIME	0	0%	11	13%	11	12%
JUDGES BETTER	0	0%	20	23%	20	22%
JURIES BETTER	0	0%	2	2%	2	2%
LITIGATION LESS EXPENSIVE	0	0%	3	3%	3	3%
MORE COMFORTABLE LIT IN FED COURT	0	0%	6	7%	6	7%
OTHER *	1	50%	34	39%	35	39%
DON'T KNOW	1	50%	2	2%	3	3%
REFUSED	0	0%	1	1%	1	1%
TOTAL	2	100%	88	100%	90	100%

(Answered by plaintiff attorneys who respondend that they had a choice whether the case was heard in federal or state court.)

* Open-ended responses to PA15 may be found in Appendix A.

What was the reason you/your client decided to remove the case to federal rather than state court?

	PLDE		TOTAL	
	DEFENDANT	I		
PA16				
BETTER CHANCE WINNING.....	6	13%	6	13%
PLAINTIFF LOWER AWARD.....	1	2%	1	2%
JUDGES BETTER.....	11	23%	11	23%
JURIES BETTER.....	1	2%	1	2%
LITIGATION LESS EXPENSIVE.....	1	2%	1	2%
MORE COMFORTABLE LIT IN FED COURT.....	8	17%	8	17%
OTHER *	18	38%	18	38%
DON'T KNOW.....	1	2%	1	2%
TOTAL.....	47	100%	47	100%

(Answered by defendants' attorneys who respondend that they had a choice whether the case was heard in federal or state court.)

A court delay may or may not result in a higher cost to the client. The next few questions ask about costs and fee arrangements you had with your client in [CASE NAME].

Which of the following best describes the fee arrangement you had? ★

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA17						
HOURLY.....	132	95%	79	56%	211	76%
FLAT.....	0	0%	1	1%	1	0%
CONTIGENT FEE.....	1	1%	37	26%	38	14%
OTHER.....	6	4%	7	5%	13	5%
CON. FEE VARIES W/ STAGE OF CASE..	0	0%	6	4%	6	2%
HRLY + CON. FEE IF GOOD RESULT....	0	0%	7	5%	7	3%
SOME OTHER COMINATION **..	0	0%	1	1%	1	0%
DON'T KNOW.....	0	0%	1	1%	1	0%
REFUSED.....	0	0%	1	1%	1	0%
TOTAL.....	139	100%	140	100%	279	100%

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

* Open-ended responses to PA16 may be found in Appendix A.

** Open-ended responses to PA17 may be found in Appendix A.

In what percentage of federal civil cases would you say you use this type of fee arangement?

★

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA17A						
0-25%.....	4	3%	25	18%	29	10%
26-50%.....	7	5%	20	14%	27	10%
51-75%.....	5	4%	14	10%	19	7%
76-100%.....	120	86%	75	54%	195	70%
DON'T KNOW.....	2	1%	4	3%	6	2%
REFUSED.....	1	1%	2	1%	3	1%
TOTAL.....	139	100%	140	100%	279	100%

MEAN 79.55 MEDIAN 95.00 STANDARD DEVIATION 29.72

What was the hourly rate?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA18						
< $100.....	29	22%	27	31%	56	26%
$100-124.....	40	30%	28	32%	68	31%
$125-149.....	32	24%	15	17%	47	21%
$150-199.....	11	8%	6	7%	17	8%
> $200.....	1	1%	0	0%	1	0%
DON'T KNOW.....	14	11%	7	8%	21	10%
REFUSED.....	5	4%	4	5%	9	4%
TOTAL.....	132	100%	87	100%	219	100%

MEAN 123.15 MEDIAN 110.00 STANDARD DEVIATION 99.90

(Answered by attorneys who responded they had an hourly rate fee arrangement.)

Was there a maximum total dollar amount for the case?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA18A						
YES.....	4	3%	5	6%	9	4%
NO.....	123	93%	79	91%	202	92%
DON'T KNOW.....	5	4%	2	2%	7	3%
REFUSED.....	0	0%	1	1%	1	0%
TOTAL.....	132	100%	87	100%	219	100%

(Answered by attorneys who responded they had an hourly rate fee arrangement.)

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

What was the maximum dollar amount?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA18B						
5000	0	0%	2	40%	2	22%
25000	0	0%	1	20%	1	11%
40000	1	25%	0	0%	1	11%
50000	0	0%	1	20%	1	11%
110000	1	25%	0	0%	1	11%
DON'T KNOW	2	50%	1	20%	3	33%
TOTAL	4	100%	5	100%	9	100%

(Answered by attorneys who responded there was a maximum dollar amount for the case.)

What percentage of the award were you to recieve as a contingent fee

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA19						
1	0	0%	1	2%	1	2%
2	0	0%	1	2%	1	2%
15	0	0%	1	2%	1	2%
20	0	0%	2	4%	2	4%
22	0	0%	1	2%	1	2%
25	0	0%	5	11%	5	11%
30	0	0%	2	4%	2	4%
33	1	100%	23	51%	24	52%
35	0	0%	3	7%	3	7%
40	0	0%	2	4%	2	4%
50	0	0%	1	2%	1	2%
DEPENDED ON OTHER FACTORS	0	0%	1	2%	1	2%
DON'T KNOW	0	0%	2	4%	2	4%
TOTAL	1	100%	45	100%	46	100%

MEAN 30.00 MEDIAN 33 STANDARD DEVIATION 8.64

(Answered by attorneys who responded they recieved a contigent fee)

What percentage of the award were you to receive as a contingent fee if the case DID NOT go to trial?

	PLDE		TOTAL	
	PLAINTIFF			
PA19A				
15	1	14%	1	14%
25	2	29%	2	29%
33	2	29%	2	29%
40	1	14%	1	14%
DEPENDED ON OTHER FACTORS	1	14%	1	14%
TOTAL	7	100%	7	100%

MEAN 28.5 MEDIAN 29.0 STANDARD DEVIATION 8.71

(Answered by plaintiffs' attorneys who responded they recieved a contigent fee.)

Did you have an agreement with the client in [CASE NAME] that a very successful result in the case would be reflected in your bill, in addition to an hourly or other rate?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA20						
YES	2	1%	5	4%	7	3%
NO	136	98%	132	94%	268	96%
DON'T KNOW	1	1%	1	1%	2	1%
REFUSED	0	0%	2	1%	2	1%
TOTAL	139	100%	140	100%	279	100%

Did you reduce the fee because of an unsuccessful result?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA20A						
YES	2	1%	7	5%	9	3%
NO	135	97%	129	92%	264	95%
DON'T KNOW	2	1%	2	1%	4	1%
REFUSED	0	0%	2	1%	2	1%
TOTAL	139	100%	140	100%	279	100%

Which of the following best describes the degree of choice your client had over the fee arrangement?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA21						
ATTORNEY DECIDED..	28	20%	35	25%	63	23%
CLIENT CHOSE AMONG OPTIONS.....	7	5%	10	7%	17	6%
CLIENT DECIDED....	7	5%	7	5%	14	5%
BOTH DECIDED.....	89	64%	86	61%	175	63%
DON'T KNOW.....	8	6%	2	1%	10	4%
TOTAL.....	139	100%	140	100%	279	100%

Generally speaking, if a client had limited ability to pay, would you most likely....

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA21A						
RESTRICT FEE SIZE.	39	28%	31	22%	70	25%
RESTRICT EXTENT OF REP ACTIVITIES.	8	6%	12	9%	20	7%
BOTH OF THESE.....	42	30%	38	27%	80	29%
NEITHER OF THESE..	36	26%	42	30%	78	28%
DON'T KNOW.....	12	9%	14	10%	26	9%
REFUSED.....	2	1%	3	2%	5	2%
TOTAL.....	139	100%	140	100%	279	100%

Again, generally speaking, if a client had considerable ability to pay, would you most likely....

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA21B						
INCREASE FEE.....	5	4%	8	6%	13	5%
INC EXTENT OF REP ACTIVITIES.....	18	13%	18	13%	36	13%
BOTH OF THESE.....	4	3%	7	5%	11	4%
NEITHER OF THESE..	107	77%	102	73%	209	75%
DON'T KNOW.....	3	2%	4	3%	7	3%
REFUSED.....	2	1%	1	1%	3	1%
TOTAL.....	139	100%	140	100%	279	100%

During the course of litigation, costs other than lawyers fees arise such as depositions, witness fees and so forth. What was the approximate total of these nonattorney fees in [CASE NAME]?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA22						
$0-499.....	49	35%	53	38%	102	37%
$500-999.....	13	9%	16	11%	29	10%
$1000-1999.....	10	7%	14	10%	24	9%
$2000-4999.....	22	16%	12	9%	34	11%
$5000-9999.....	11	8%	9	6%	20	7%
$10000-49999.....	12	9%	17	12%	29	10%
$50000 + ...	2	1%	2	1%	4	1%
DON'T KNOW.....	20	14%	16	11%	36	13%
REFUSED.....	0	0%	1	1%	1	0%
TOTAL.....	139	100%	140	100%	279	100%

MEAN 6466.6 MEDIAN 550.0 STANDARD DEVIATION 39256.7

Did you pass these costs on to your client directly, or are these costs built into your regular fee structure as overhead?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA23						
PASS TO CLIENT....	96	95%	95	87%	191	91%
SOME COSTS BUILT IN AS OVERHEAD.	1	1%	5	5%	6	3%
COMINATION OF ABOVE.....	3	3%	3	3%	6	3%
OTHER ARRANGEMENT.	1	1%	6	6%	7	3%
TOTAL.....	101	100%	109	100%	210	100%

(Answered by attorneys who indicated that nonattorney fees were incurred.)

Did allocation of these costs to the client depend on the outcome of the case?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA24						
YES	1	1%	3	3%	4	2%
NO	99	98%	105	96%	204	97%
DON'T KNOW	0	0%	1	1%	1	0%
REFUSED	1	1%	0	0%	1	0%
TOTAL	101	100%	109	100%	210	100%

(Answered by attorneys who indicated that nonattorney fees were incurred.)

The next few questions ask about the number of parties and nonparties deposed. First, how many parties were deposed?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA25						
0	65	47%	69	49%	134	48%
1	21	15%	17	12%	38	14%
2	10	7%	16	11%	26	9%
3	19	14%	10	7%	29	10%
4	3	2%	8	6%	11	4%
5	5	4%	3	2%	8	3%
6	5	4%	5	4%	10	4%
7	1	1%	2	1%	3	1%
8	1	1%	1	1%	2	1%
10 OR MORE	9	6%	9	7%	18	6%
DON'T KNOW	4	3%	4	3%	8	3%
TOTAL	139	100%	140	100%	279	100%

MEAN 1.81 MEDIAN 1.00 STANDARD DEVIATION 3.03

And how many nonparties were deposed?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA26						
0	81	58%	91	65%	172	62%
1	7	5%	4	3%	11	4%
2	13	9%	8	6%	21	8%
3	7	5%	10	7%	17	6%
4	3	2%	5	4%	8	3%
5	5	4%	5	4%	10	4%
6	1	1%	1	1%	2	1%
7	1	1%	2	1%	3	1%
8	2	1%	1	1%	3	1%
9	0	0%	1	1%	1	0%
10 OR MORE	13	9%	9	7%	22	8%
DON'T KNOW	6	4%	3	2%	9	3%
TOTAL	139	100%	140	100%	279	100%

MEAN 2.08 MEDIAN 0.00 STANDARD DEVIATION 4.23

How much time (in hours) was spent gathering these depositions?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA27						
0	1	1%	1	1%	2	1%
3	3	4%	1	1%	4	3%
4	0	0%	1	1%	1	1%
5	1	1%	0	0%	1	1%
6	1	1%	2	3%	3	2%
8	3	4%	1	1%	4	3%
9	0	0%	1	1%	1	1%
10	3	4%	1	1%	4	3%
12	1	1%	2	3%	3	2%
15	4	5%	3	4%	7	5%
20	1	1%	2	3%	3	2%
24	3	4%	7	10%	10	7%
25	1	1%	1	1%	2	1%
30	0	0%	1	1%	1	1%
40	2	3%	0	0%	2	1%
48	4	5%	4	6%	8	6%
50	3	4%	1	1%	4	3%
60	1	1%	0	0%	1	1%
70	0	0%	1	1%	1	1%
72	3	4%	3	4%	6	4%
96	4	5%	2	3%	6	4%
100	2	3%	0	0%	2	1%
120	4	5%	4	6%	8	6%
144	2	3%	1	1%	3	2%
150	1	1%	0	0%	1	1%
168	1	1%	1	1%	2	1%
192	1	1%	1	1%	2	1%
216	0	0%	1	1%	1	1%
240	3	4%	3	4%	6	4%
250	0	0%	1	1%	1	1%
288	1	1%	0	0%	1	1%
300	0	0%	1	1%	1	1%
336	0	0%	3	4%	3	2%
360	0	0%	1	1%	1	1%
480	2	3%	0	0%	2	1%
500	1	1%	0	0%	1	1%
504	1	1%	0	0%	1	1%
552	1	1%	0	0%	1	1%
720	1	1%	1	1%	2	1%
840	1	1%	0	0%	1	1%
960	1	1%	1	1%	2	1%
DON'T KNOW	11	15%	16	23%	27	19%
TOTAL	73	100%	70	100%	143	100%

MEAN 133.47 MEDIAN 50.00 STANDARD DEVIATION 195.01

(Answered by attorneys with one or more parties or nonparties deposed.)

Did this case go to trial?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA29						
YES	12	9%	13	9%	25	9%
NO	126	91%	126	90%	252	90%
DON'T KNOW	1	1%	1	1%	2	1%
TOTAL	139	100%	140	100%	279	100%

Was it a jury or a bench trial?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA30						
JURY	4	33%	3	23%	7	28%
BENCH	8	67%	10	77%	18	72%
TOTAL	12	100%	13	100%	25	100%

(Answered by attorneys who responded that the case went to trial.)

Have you been involved in other civil cases in federal court since July, 1989?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA31						
YES	130	94%	126	90%	256	92%
NO	9	6%	14	10%	23	8%
TOTAL	139	100%	140	100%	279	100%

How many civil cases in federal court have you been involved in since July, 1989?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA32						
1	13	9%	18	13%	31	11%
2	11	8%	13	9%	24	9%
3	11	8%	17	12%	28	10%
4	9	6%	9	6%	18	6%
5	16	12%	17	12%	33	12%
6	21	15%	17	12%	38	14%
7	5	4%	9	6%	14	5%
8	4	3%	3	2%	7	3%
9	3	2%	0	0%	3	1%
10	13	9%	10	7%	23	8%
11	0	0%	1	1%	1	0%
12	4	3%	7	5%	11	4%
15	3	2%	3	2%	6	2%
18	0	0%	1	1%	1	0%
20	5	4%	5	4%	10	4%
25	5	4%	2	1%	7	3%
27	0	0%	1	1%	1	0%
30	5	4%	0	0%	5	2%
35	1	1%	0	0%	1	0%
36	1	1%	0	0%	1	0%
40	0	0%	1	1%	1	0%
50	3	2%	2	1%	5	2%
75	0	0%	1	1%	1	0%
100	1	1%	0	0%	1	0%
200	1	1%	0	0%	1	0%
300	1	1%	0	0%	1	0%
DON'T KNOW	3	2%	3	2%	6	2%
TOTAL	139	100%	140	100%	279	100%

MEAN 10.54 MEDIAN 6.00 STANDARD DEVIATION 28.90

(Answered by attorneys who responded they have been involved in other civil cases since July, 1989.)

In order to ascertain the effects of court transit time on clients, it is necessary that we call your client in [CASE NAME].

Was your primary client in this case an individual, or an organization ★

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA34						
INDIVIDUAL	28	20%	70	50%	98	35%
ORGANIZATION	100	72%	66	47%	166	59%
BOTH	6	4%	2	1%	8	3%
DON'T KNOW	3	2%	1	1%	4	1%
REFUSED	2	1%	1	1%	3	1%
TOTAL	139	100%	140	100%	279	100%

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

Who paid your fee, the individual or organization?

	ATTORNEY FOR				TOTAL	
	DEFENDANT		PLAINTIFF			
PA34A						
INDIVIDUAL.....	3	33%	0	0%	3	25%
ORGANIZATION.....	2	22%	3	100%	5	42%
DON'T KNOW.....	4	44%	0	0%	4	33%
TOTAL.....	9	100%	3	100%	12	100%

(Answered by attorneys who responded there primary client was both an individual and organization and attorneys who responded they didn't know whether their primary client was an individual or organization.)

B. Clients

According to our records, you/your organization were/was a participant in [CASE NAME] in Federal District Court in Utah.

Is this information correct?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC03						
YES	47	100%	52	100%	99	100%
TOTAL	47	100%	52	100%	99	100%

Were you represented by a lawyer in this case?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC05						
YES	47	100%	52	100%	99	100%
TOTAL	47	100%	52	100%	99	100%

Was this case originally filed in State or Federal Court?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC06						
STATE	19	40%	21	40%	40	40%
FEDERAL	21	45%	24	46%	45	45%
DON'T KNOW	7	15%	7	13%	14	14%
TOTAL	47	100%	52	100%	99	100%

Did you have a choice whether to have this case tried in federal or state court?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC07						
YES	13	29%	11	37%	24	32%
NO	24	53%	15	50%	39	52%
DON'T KNOW	8	18%	4	13%	12	16%
TOTAL	45	100%	30	100%	75	100%

(Answered by all plaintiffs, and by defendants in cases that were originally filed in state court.)

Did you make the choice, or did your attorney?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC08						
R MADE CHOICE	3	23%	1	9%	4	17%
ATTORNEY MADE CHOICE	7	54%	8	73%	15	63%
BOTH	2	15%	2	18%	4	17%
DON'T KNOW	1	8%	0	0%	1	4%
TOTAL	13	100%	11	100%	24	100%

(Answered by clients who responded they had a choice whether the case was tried in federal or state court - PC07.)

What was the reason you/your attorney decided to try the case in federal/state court?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC09						
BETTER CHANCE WINNING	2	15%	0	0%	2	14%
GET HIGHER AWARD	1	8%	0	0%	1	7%
PROC TAKE LESS TIME	1	8%	0	0%	1	7%
JUDGES BETTER	1	8%	0	0%	1	7%
LITIGATION LESS EXPENSIVE	2	15%	0	0%	2	14%
OTHER *	4	31%	1	100%	5	36%
DON'T KNOW	2	15%	0	0%	2	14%
TOTAL	13	100%	1	100%	14	100%

(Answered by plaintiffs who responded they had a choice whether the case was tried in federal or state court - PC07.)

* Open-ended responses to PC09 may be found in Appendix B.

What was the reason you/your attorney decided to remove the case to federal rather than state court?

	CLIENT DEFENDANT I		TOTAL	
PC10 BETTER CHANCE WINNING.....	2	20%	2	20%
OTHER.....	4	40%	4	40%
JUDGES BETTER.....	1	10%	1	10%
JURIES BETTER.....	1	10%	1	10%
OTHER *	4	40%	4	40%
DON'T KNOW.....	2	20%	2	20%
TOTAL.....	10	100%	10	100%

(Answered by defendants who responded they had a choice whether the case was tried in federal or state court.)

A court delay may or may not result in a higher cost to the client. The next few questions ask about costs and fee arrangements you had with your attorney in [CASE NAME].

Which of the following best describes the fee arrangement you had? ★

	TYPE OF CLIENT PLAINTIFF		DEFENDANT		TOTAL	
PC11 HOURLY.....	24	51%	43	83%	67	68%
FLAT.....	0	0%	1	2%	1	1%
CONTIGENT FEE.....	10	21%	0	0%	10	10%
CON. FEE VARIES W/ STAGE OF CASE..	0	0%	1	2%	1	1%
HRLY + CON. FEE IF GOOD RESULT....	2	4%	0	0%	2	2%
SOME OTHER COMINATION.....	3	6%	1	2%	4	4%
OTHER **	7	15%	4	8%	11	11%
DON'T KNOW.....	1	2%	2	4%	3	3%
TOTAL.....	47	100%	52	100%	99	100%

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

* Open-ended responses to PC10 may be found in Appendix B.

** Open-ended responses to PC11 may be found in Appendix B.

What was the hourly rate?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC12						
< $100	5	17%	7	16%	12	16%
$100-124	5	17%	7	16%	12	16%
$125-149	4	14%	6	14%	10	14%
$150-199	3	10%	5	11%	8	11%
> $200	2	7%	2	5%	4	6%
DON'T KNOW	8	28%	16	36%	24	33%
REFUSED	2	7%	1	2%	3	4%
TOTAL	29	100%	44	100%	73	100%

MEAN 159.59 MEDIAN 120.00 STANDARD DEVIATION 184.05

(Answered by clients who responded they had an hourly rate fee arrangement.)

Was there a maximum total amount?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC12A						
YES	4	14%	4	9%	8	11%
NO	22	76%	39	89%	61	84%
DON'T KNOW	3	10%	1	2%	4	5%
TOTAL	29	100%	44	100%	73	100%

(Answered by clients who responded they had an hourly rate fee arrangement.)

What was the maximum total amount?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC12B						
33	1	25%	0	0%	1	13%
40	1	25%	0	0%	1	13%
20000	1	25%	0	0%	1	13%
26000	0	0%	1	25%	1	13%
DON'T KNOW	1	25%	3	75%	4	50%
TOTAL	4	100%	4	100%	8	100%

(Answered by clients who responded there was a maximum dollar amount.)

What percentage of the award was your attorney to receive as a contigent fee?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC13						
20	1	7%	0	0%	1	6%
25	1	7%	0	0%	1	6%
30	3	20%	0	0%	3	19%
33	8	53%	0	0%	8	50%
40	1	7%	0	0%	1	6%
DEPENDS ON OTHER FACTORS	1	7%	1	100%	2	13%
TOTAL	15	100%	1	100%	16	100%

MEAN 31.36 MEDIAN 33.00 STANDARD DEVIATION 4.57

(Answered by clients who responded they paid a contigent fee.)

What percentage of the award was your attorney to receive as a contingent fee if the case DID NOT go to trial?

	PLDE		TOTAL	
	DEFENDANT I			
PC13A				
DON'T KNOW	1	100%	1	100%
TOTAL	1	100%	1	100%

(Answered by clients who responded the contigent fee depended on the stage of the proceedings.)

Did you have an agreement with your attorney in that a very successful result in the case would be reflected in his or her bill, in addition to an hourly or other rate?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC14						
YES	2	4%	0	0%	2	2%
NO	43	91%	50	96%	93	94%
DON'T KNOW	2	4%	2	4%	4	4%
TOTAL	47	100%	52	100%	99	100%

Which of the following best describes the degree of choice you had over the fee arrangement?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC15						
ATTORNEY DECIDED FEE ARRANGEMENT	15	32%	11	21%	26	26%
I MADE CHOICE AMONG OPTIONS..	9	19%	7	13%	16	16%
I MADE CHOICE.....	7	15%	13	25%	20	20%
BOTH.....	12	26%	13	25%	25	25%
DON'T KNOW.....	3	6%	6	12%	9	9%
REFUSED.....	1	2%	2	4%	3	3%
TOTAL.....	47	100%	52	100%	99	100%

During the course of litigation, costs other than lawyers fees arise such as depositions, witness fees, and so forth. Did your attorney pass these costs on to you directly, or did he or she pay them?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC16						
R PAID COSTS.....	22	47%	36	69%	58	59%
ATTORNEY PAID COSTS.....	9	19%	3	6%	12	12%
SOME COMBINATION..	7	15%	3	6%	10	10%
DON'T KNOW.....	7	15%	6	12%	13	13%
REFUSED.....	2	4%	4	8%	6	6%
TOTAL.....	47	100%	52	100%	99	100%

How many hours would you say that you personally devoted to this case after contact with the lawyer?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC17						
0	2	4%	3	6%	5	5%
1-19	4	9%	13	25%	17	17%
20-39	6	13%	5	10%	11	11%
40-79	10	21%	9	17%	19	19%
80-119	8	17%	3	6%	11	11%
120-159	1	2%	5	10%	6	6%
160-999	6	13%	1	2%	7	7%
1000 +	1	2%	3	6%	4	4%
DON'T KNOW	8	17%	10	19%	18	18%
REFUSED	1	2%	0	0%	1	1%
TOTAL	47	100%	52	100%	99	100%

MEAN 279.00 MEDIAN 40.00 STANDARD DEVIATION 1193.24

The next few questions ask about how satisfied you were with various aspects of the court process surrounding [CASE NAME].

About the progress of your case in federal court, how satisfied were you with the amount of time your case took to be resolved, ★

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC19						
TOTALLY DISSATISFIED	7	15%	5	10%	12	12%
SOMEWHAT DISSATISFIED	15	32%	2	4%	17	17%
NUETRAL	5	11%	14	27%	19	19%
SOMEWHAT SATISFIED	11	23%	12	23%	23	23%
TOTALLY SATISFIED	8	17%	13	25%	21	21%
DON'T KNOW	1	2%	4	8%	5	5%
REFUSED	0	0%	2	4%	2	2%
TOTAL	47	100%	52	100%	99	100%

★ Statistically significant Chi-square statistic ($p \leq .05$), indicating that the differences in the pattern of responses between groups is sytematic, and not merely due to chance.

How satisfied were you with lawyers fees?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC20						
TOTALLY DISSATISFIED...	6	13%	4	8%	10	10%
SOMEWHAT DISSATISFIED...	6	13%	5	10%	11	11%
NUETRAL.....	7	15%	9	17%	16	16%
SOMEWHAT SATISFIED	12	26%	12	23%	24	24%
TOTALLY SATISFIED.	14	30%	16	31%	30	30%
DON'T KNOW.....	2	4%	5	10%	7	7%
REFUSED.....	0	0%	1	2%	1	1%
TOTAL.....	47	100%	52	100%	99	100%

How satisfied were you with costs other than lawyers fees?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC21						
TOTALLY DISSATISFIED...	4	9%	4	8%	8	8%
SOMEWHAT DISSATISFIED...	7	15%	2	4%	9	9%
NUETRAL.....	13	28%	9	17%	22	22%
SOMEWHAT SATISFIED	7	15%	15	29%	22	22%
TOTALLY SATISFIED.	11	23%	15	29%	26	26%
DON'T KNOW.....	4	9%	4	8%	8	8%
REFUSED.....	1	2%	3	6%	4	4%
TOTAL.....	47	100%	52	100%	99	100%

Did you win the case?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC24						
YES.....	28	60%	28	54%	56	57%
NO.....	13	28%	18	35%	31	31%
DON'T KNOW.....	6	13%	6	12%	12	12%
TOTAL.....	47	100%	52	100%	99	100%

All things considered, how important was a favorable verdict, or winning your case, to your overall satisfaction with the case? Was it...

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC25 CRITICALLY IMPORTANT.....	18	38%	15	29%	33	33%
VERY IMPORTANT....	14	30%	15	29%	29	29%
IMPORTANT.....	7	15%	6	12%	13	13%
SOMEWHAT IMPORTANT	5	11%	4	8%	9	9%
NOT IMPORTANT.....	2	4%	6	12%	8	8%
DON'T KNOW.....	1	2%	2	4%	3	3%
REFUSED.....	0	0%	4	8%	4	4%
TOTAL.....	47	100%	52	100%	99	100%

All things considered, how important is the size of the award to you overall satisfaction with the case? Was it ...

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC26 CRITICALLY IMPORTANT.....	9	20%	0	0%	9	20%
VERY IMPORTANT....	10	23%	0	0%	10	22%
IMPORTANT.....	6	14%	0	0%	6	13%
SOMEWHAT IMPORTANT	6	14%	1	50%	7	15%
NOT IMPORTANT.....	9	20%	0	0%	9	20%
DON'T KNOW.....	4	9%	1	50%	5	11%
TOTAL.....	44	100%	2	100%	46	100%

(Answered by plaintiffs.)

How about the opportunity to present your side of the story?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC27 CRITICALLY IMPORTANT.....	20	43%	22	42%	42	42%
VERY IMPORTANT....	15	32%	9	17%	24	24%
IMPORTANT.....	4	9%	4	8%	8	8%
SOMEWHAT IMPORTANT	2	4%	3	6%	5	5%
NOT IMPORTANT.....	3	6%	8	15%	11	11%
DON'T KNOW.....	3	6%	5	10%	8	8%
REFUSED.....	0	0%	1	2%	1	1%
TOTAL.....	47	100%	52	100%	99	100%

How about the opportunity to force the other side to go to court?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC28 CRITICALLY IMPORTANT	11	25%	0	0%	11	24%
VERY IMPORTANT	17	39%	1	50%	18	39%
IMPORTANT	4	9%	0	0%	4	9%
SOMEWHAT IMPORTANT	4	9%	0	0%	4	9%
NOT IMPORTANT	5	11%	1	50%	6	13%
DON'T KNOW	3	7%	0	0%	3	7%
TOTAL	44	100%	2	100%	46	100%

(Answered by plaintiffs.)

Did this go to trial?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC29 YES	6	13%	8	15%	14	14%
NO	41	87%	43	83%	84	85%
DON'T KNOW	0	0%	1	2%	1	1%
TOTAL	47	100%	52	100%	99	100%

Was it a jury or a bench trial?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC30 BENCH	5	83%	8	100%	13	93%
DON'T KNOW	1	17%	0	0%	1	7%
TOTAL	6	100%	8	100%	14	100%

(Answered by clients who indicated that the case went to trial.)

Have you been involved in other civil cases in federal court since July, 1989?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC31						
YES	9	19%	22	42%	31	31%
NO	38	81%	30	58%	68	69%
TOTAL	47	100%	52	100%	99	100%

How many civil cases in federal court have you been involved in since July, 1989?

	TYPE OF CLIENT				TOTAL	
	PLAINTIFF		DEFENDANT			
PC32						
1	1	11%	3	14%	4	13%
2	3	33%	2	9%	5	16%
3	1	11%	2	9%	3	10%
4	0	0%	3	14%	3	10%
5	0	0%	2	9%	2	6%
6	1	11%	1	5%	2	6%
10	1	11%	0	0%	1	3%
12	1	11%	1	5%	2	6%
25	0	0%	1	5%	1	3%
30	0	0%	2	9%	2	6%
40	0	0%	1	5%	1	3%
50	0	0%	1	5%	1	3%
75	0	0%	1	5%	1	3%
DON'T KNOW	1	11%	2	9%	3	10%
TOTAL	9	100%	22	100%	31	100%

MEAN 12.18 MEDIAN 4.00 STANDARD DEVIATION 17.85

(Answered by clients who responded they have been involved in other civil cases since July, 1989.)

Appendices

Table of Contents

Appendix A. Verbatim Responses by Attorneys to Open-ended Questions

>PA15< What was the reason you/your attorney decided to try the case in federal/state court?

<6> OTHER (SPECIFY)

Plaintiffs' Attorneys

2009 It was a bankruptcy case which is limited to federal
2012 Based on impartiality - federal case more impartial since his client was out of state.
2013 A Miller Act case suing for work done on a fed job we had to file in fed court
2014 It would have been sent to fed eventually anyway
2023 Client had a policy of handling these cases in Federal court
2031 We stood a chance of hanging on to the Arizona defendants in federal court
2033 Previous law firm had made decision to proceed in federal court
2035 I don not have federal question
2045 We can transfer the judgment faster from the federal court in Utah to Texas federal court
2058 We had many of the above reasons
2059 Nature of ;plaintiff
2066 We had no choice it was a diversity case
2069 Federal plaintiff
2072 Because we had a small Utah plaintiff so state court would be more sympathetic and we figured it would go quicker
2077 A complicated analysis - a Davis county jury might do better than a federal jury, be more sympathetic
2078 Plaintiff is a federal agency
2079 Out of state corporation, with federal jurisdiction
2082 File the case here be
2083 Had no choice
2085 Plaintiffs out of jurisdiction
2102 Federal govt usually wants to be in Fed. Court
2116 Mandatory jurisdiction required by the Miller Act that this case go to federal court
2117 Like state better
2153 Brought in on case of federal securities laws must be litigated in federal court also r.i.c.o laws
2159 Takes less time and when you have an out of state client it is more fair
1171 Better opportunity for good decision because of better organization and better funding
2186 Judges are better, juries are better, I feel more comfortable
2200 Most logical court to file in
2207 Jurisdiction was clearest in Federal court
2213 General policy
2221 The case was more appropriate for fed court.
2226 The client's preference
2241 Defendant was out of state and jurisdiction was better
2252 Judges are better and is more comfortable
2253 It was less expensive because it was close to the plaintiffs home; the defendant was a nevada corporation

>PA16< What was the reason you/your attorney decided to remove the case to federal rather than state court?

<6> OTHER (SPECIFY)[specify]

Defendants' Attorneys

1012 The federal sports act demanded it
1033 Change of venue
1073 Client was more comfortable litigating in federal court
1081 I needed the federal subpoena; I needed information and depositions from across the nation, and needed federal subpoenas.
1102 Felt it really a federal matter.
1110 Federal law applied
1123 Out of state client
1131 Federal court judges are better, more uniform, defendants have more chance of winning, I feel more at home there
1144 Attorney did not make decision with out of state client have better chance in federal better/fairer gearing
1178 Dealing with Federal Claims
1179 More convenient and better judges
1207 The case involved a federal statute that the state courts do not deal with.
1212 The law was clearer in federal court than in state court
1217 On the basis of the f.i.r.r.e.a. act. The other party moved it to federal and we had it remanded to state on the basis of lack of any federal jurisdiction
1219 Involved an issue of federal law and was more appropriate there

>PA17< A court delay may or may not result in a higher cost to the client.

The next few questions ask about costs and fee arrangements you had with your client in [CASE NAME].

Which of the following best describes the fee arrangement you had?

<6> OTHER (SPECIFY) [specify]

Defendants' Attorneys

1047 Salary
1093 Straight salary, in-house
1125 Probono
1142 Hourly rate subject to court approval
1145 Government attorney, fees appropriated by legislature
1172 Government lawyer

Plaintiffs' Attorneys

2032 Lawyers was the client
2034 No fee
2079 Contingent fee plus expenses
2127 Free council
2164 Respondent says it was an hourly rate that varied from $30 for each paralegal working on the case to $120/hr for each attorney.
2186 Hourly rate with a maximum lid
2209 No fee just actual court costs
2223 Federal agencies have to be sued in fed. court.

>PA21c< In what ways would you increase the extent of your representational activities?

Defendants' Attorneys

1000	Do more research
1001	Necessary time it took
1004	Gathering records
1005	More discovery, more motions and more research and more travel
1043	Consider hiring additional or better expert witnesses
1049	Probably just the scope of discovery.
1066	More background work turn over a lot of stones more through
1081	Can afford to do more depositions, hire more experts,etc.
1082	Do addition work like deposition out of state
1101	Tendency to engage in more discovery more experts more motion practice
1103	More discovery would be done, more experts consulted.
1108	At the request of the client I would do more research, do more factual investigation and retain more experts and consultants
1115	More discovery and more expert witnesses
1123	Expand background
1128	Their is always more you can do. May depend on clients
1142	Yes I gouged him
1191	Increase discovery
1192	More discovery
1193	Additional depositions, hiring experts
1197	The wealthier the defendant, the greater the exposure, there is more to protect, more attorney hours will be spent
1197	Plaintiff
1227	We would probably be able to make a broader and more structured discovery investigation and take more time for planning with the client for the litigation.
1247	How the client wished to proceed

>PA21c< In what ways would you increase the extent of your representational activities?

Plaintiffs' Attorneys

2002 Investigate some aspects of case which are marginal or research aspects of case which are marginal
2005 Make sure that all details are covered. I would use the full resources of my office for the case.
2006 Hire other experts, take more depositions,
2031 More discovery
2032 Full scale discovery
2038 Do more discovery, and depositions, experts use of experts
2054 Pre-trial activities, discover
2078 Do more research, deposition and other information activities
2079 Hiring of investigators,,and additional people for case management
2083 Expert witness, outside investigations
2092 Depends on the specific case
2114 More research
2126 More discovery, or information gathering
2130 We would not diminish the extent of discovery and other Pre-trial preparation. We would never compromise the client's interests.
2139 Broader discovery than normal
2140 just wouldn't take it on if they didn't have resources, other cases I would hire research
2141 Do more work
2145 Done far more investigation
2169 More discovery
2174 More research
2200 the more you have, the more you can buy, research and discovery
2240 Do more research more background better case
2241 Extent of research on common law, procedures etc
2249 Discoveries, depositions,different motions
2253 I would perform a cost benefit analysis

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

Defendants' Attorneys

1000 Hang the bastards. Reduce the time, more settlement conferences
1001 None
1004 A fast track for case under a certain amount of money, mandate settlement conference with a mediator after discovery is completed
1010 None
1012 Not refer dispositive motions to a magistrate
1019 Do away with magistrates because judges won't go against their ways
1022 none
1025 I'd probably put in a request for additional judges. We need more judges. And also additional magistrates or the referral of cases under general order of referral. I would probably encourage restrictions on Discovery.
1026 Hold fewer pre-trial conferences, adhere more strictly to discovery deadlines, and other scheduling orders
1027 Expedite settlement procedures, hold frequent scheduling conferences
1031 Wouldn't make any changes
1033 Curtail use of magistrates
1036 None that I can think of. Overall, I think they're doing a fine job.
1038 I would impose more restrictions on the amount of discovery.
1042 I would limit the extent of written discovery
1043 I would prefer to have a different magistrate handling discovering disputes and motions
1046 Schedule trial dates in the first scheduling conference
1047 Uniform movement of cases between the judges.
1049 Well, I would issue pre-trial orders more quickly and set realistic but tight dates for pre-trial discovery and completion of all pre-trial activities.
1051 I would be quicker to award sanction and attorneys fees against attorney who brings fictitious and nomeritorious motion and claims I would limit the time for argument by attorneys and schedule fewer cases of argument at the same time and our court could use another judge to spread the work load
1058 Make mandatory settlement conferences. Provide impartial judge supervision. (Have a judge not assigned to the case be assigned to counsel parties to settlement.)
1059 I would give a more definite place setting for civil cases and assign several judges to criminal cases so that criminal cases did not keep bumping civil cases.
1061 These judges don't like to get involved in discovery, want them to get more involved in discovery and making more sure that it is more reasonable for the case involved
1062 More uniformity in the type of cases the magistrate or judge handles among all the judges
1064 Limit discoveries - there are too many useless ones, and too expensive for the clients; also, make sure that "experts" are truly such, not just advocates
1066 We had to schedule our times around unprepared judges too much overwork
1073 1) I would have all pretrial scheduling done by the magistrate 2) I would schedule final pretrial and trial dates at the pre-trial scheduling conference 3) Limit the number of interrogatories by local rule

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

1074 I don't know that I'd make any. I think they recently made some rule changes I endorse in the way of filing and docketing.
1076 First, settlement conferences only after considerable discovery has taken place;and have settlement conferences have aa more active role of the magistrates
1077 They set unrealistic deadlines for amending pleadings I would set them a month before the close of discovery
1078 I would impose restrictions of discovery. I would encourage that decisions would be promptly rendered after submission.
1079 Have all parties stipulate to uncontested facts immediately and before scheduling conference
1080 Be more actively involved in scheduling; have initial scheduling before the judge instead of the magistrate
1085 I wouldn't be as lenient on tro se plaintiffs. It stands for people who represent themselves who do not have attorneys. Lay people.
1088 Not use magistrates.
1090 The federal Magistrates conduct aggressive settlement conferences.
1092 Spent more time examining motion and grant them when warranted
1093 More closely manage discovery to keep it moving, manage trial calendar to keep things getting bumped off
1094 Limit discovery
1095 The use of the magistrate is sometimes more of a problem than a help, is a waste of time and money. would modify the way magistrates are used. magistrates should not be allowed to hear substantive motions.
1098 In smaller cases I would do away with the pretrial order at it's present magnitude
1099 I wouldn't make any
1101 Respondent is happy with the system the way it is some motions sit too long encourage motions to be decided faster more active role of magistrate in the settlement process
1103 I would reduce the amount of pretrial and status conferences. I would allow for more telephone conferences. I would allow for filings by fax and would allow access to file by modem. I would give specific times for law and motion matters rather than clumping them in one single time.
1105 The federal court should have a notice to submit as in state court in other words 4-501 of the code of the judicial administration (state code) scheduling conferences should not occur until six months have gone by unless the case involves only a few parties
1107 early meeting with council and early setting of court dates
1108 Nothing comes to mind
1113 Shorten time it takes to have motions heard after they are filed
1115 Limit the role of the magistrate,see more flexibility in scheduling in Federal Court
1117 Limit number of clients
1120 No immediate thought
1122 Not refer so many matter to the magistrate
1123 Needs air conditioning in the courts
1128 There is very little I would change
1130 Get more dependable early trial dates
1131 No recommendations for change.
1133 I don't know that I'd have any at this tome.

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

1134 I would make greater use of mediation and arbitration; i would set tight schedules at the outset of cases and i would pattern that the strict docketing procedures followed in the united states district court for the eastern district of Virginia;
1135 Nothing comes to mind, does a good job
1139 I don't have any suggestions because I've been pretty satisfied with federal court
1142 I'd insist on mediation
1147 More inclined to impose sanctions at attys for frivolous or unnecessary motions or positions
1149 Criminal cases take priority over civil so lots of delays
1154 I can't answer that, our system is working relatively well
1157 Have a system that would guarantee a trial date; have a set time for a long motion calendar; schedule only one case at a time;
1159 No changes
1161 Reduce the time pressure for discovery so as to minimize costs
1163 The losing side should be made to pay all lawyers costs discovery should be limited
1165 Allow more flexibility in allowing attorneys scheduling cutoffs in trial dates to facilitate settlements
1166 I would find some way to adjust criminal matters so that they would not bump civil matters
1169 Magistrates create a delay, judges more involved in settlement conferences
1171 Request to submit on motions when time has passed
1172 Limiting discovery or interrogatory depositions
1178 Consistent policy among judges about the use of United States Magistrates in the disposition of discovery and pre-trial motions and scheduling.
1182 Would enforce discovery orders more strictly
1183 No suggestions
1186 Hire another magistrate and have the magistrates take more and have more involvement in the case
1191 Speed up hearing schedule
1192 System should go back to rule of law
1193 Less concerned with scheduling orders
1194 Bifurcate the civil and criminal trial. When you have a firm date for a civil trial and a criminal case comes up, it can bump the civil case.
1197 Judges could encourage and direct more use of settlement conferences. During oral arguments on motions, let attorneys know more the direction their thinking is taking them
Mechanism needs to be developed for putting cases which have been briefed and argued in front of judges and magistrates for timely decision making
1200 I oppose referring depositive motions to the magistrate, but I would refer the discovery matters to the magistrate
1202 Increase communication with the attorneys involved
1203 Assign trial dates at the time of the initial scheduling conference.
1204 None
1205 No recommendations.
1207 federal court goes pretty well, do better about getting an opinion bank.

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

1210 I would ask that they adopt uniform procedures for status conferences;
scheduling conferences and pretrial, the procedure and timing of them would be the same in each court so they do not vary from judge to judge; get more judges to handle the calendar

1212 Have the magistrates more aggressively schedule the matters

1216 None

1217 1) I would make sure that the clerk puts down on the calendar exactly what is involved at the motion hearing (the calendar did not reflect accurately the matters that were supposed to be heard at that time) 2) I appeared specially to contest the issue of jurisdiction but other orders were made before the jurisdiction was decided . 3) The clerks need to be more sensitive to motions that are filed involving jurisdiction and get those motions decided first before anything else is decided.

1218 Federal court does excellent job but calendaring is a hassle court dies an excellent job in moving cases along should consider discovery limit total number of interrogatories that one party could ask another (should be a flexible rule)

1219 I am very pleased with the way they are handled in fed. court a little more flexibility in the use of magistrates

1221 I am pleased with it the way it is

1224 Actually many or most of the changes that I thought were needed have been implemented in the past three or four years. I would encourage settlement on hold trials to push along the chance of settlement. Force it to the extent proper.

1226 I would have a discovery conference early in the case

1227 I don't know that I'd make any changes.

1233 Might encourage more settlement conferences

1234 More flexibility in the scheduling of trials

1236 None

2236 The judge is doing a good job, early scheduling for conferences schedule adequate time for law and motion conferences

1237 I think they do a good job

1239 He would not use magistrates

1243 I would arrange it so that short hearings such as scheduling hearings could be done by telephone (because I am in St. George and have to drive 180 miles for each hearing, it would save a lot of time)

1244 I would discontinue the use of magistrates with the exception of scheduling matters.

1246 I would not refer dispositive motions to magistrates. That's it.

1247 I would restrict attorneys' amount of wasted time in discoveries that are overly burdensome

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

Plaintiffs' Attorneys

2000 None
2002 Judge should read papers in the file before granting a decision; should be up to speed on applicable laws; in other cases judge should not be allowed to consolidate certain cases
2005 I don't really have any suggestions.
2006 He feels they are doing fine, the way they are
2012 Encourage rapid movement
2013 I feel there is an old boy network in Utah federal court system young attys. are kicked around or attys from small unestablished firms
2014 System is generally ok but the chief justice is one of the worst judges in history of time unfair, unprofessional, irrational uncooperative etc. he should have been removed or arrested years ago
2015 Have cases come up automatically for scheduling conference as soon as there has been an answer filed; I would be stricter about allowing extension of time to do the discovery where it is obvious that attorneys have not diligent in completing discovery
2016 I don't think any
2018 I would increase the role of the magistrate in scheduling non-deposit matters, restrict the #s of jury cases- think the judge should take a more aggressive role in managing the case.
2019 Actually I think they do a very good job in the federal courts. I can't really think of anything at the moment.
2020 Get better qualified judges, be more flexible in scheduling increase court staff personal
2022 Not use the magistrate to hear civil matters, and disregard there opinions forcing added delays and in effect a new hearing on each.
2024 Assign an earlier date for the trial in the course of the case; knowing sooner when the date is
2026 Earlier trial dates
2028 I would not change anything, they are handling the cases well
2032 Require a less extensive pretrial order and fewer status and scheduling conferences
2033 I would establish a time limit in which judges would be required to rule on motions; I'd eliminate the requirement for courtesy copies of pleadings; I would strictly enforce the terms of the scheduling order.
2034 I would not make any
2035 Nothing, I like the way they do it
2037 Get a trial date at the scheduling conference time
2039 Have a pretrial hearing handle by the judge who has trial responsibility so that he will be familiar with the case
2043 Eliminate diversity jurisdiction, and increase the amount of controversy limitation 100,000 dollars, and grant summary judgement more frequency
2048 Well, I can't think offhand. I'm very impressed with the federal court despite the formality. I think there's little leeway for mistakes. The rules are very rigid.
2051 Have mandatory non binding arbitration on civil cases and replace one particular judge
2053 Have scheduling conferences in all cases done by the magistrate

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

2056 The primary place I would attempt to make changes in the discovery process. I would abolish all discovery. You get the same result in an arbitration case without discovery. In my opinion, it's discovery that makes litigation so expensive and ends up costing the client without really effecting the end result. You get the same end result if you treat it as an arbitration case a lot more quickly and a lot less expensively.

2057 I would have motions for summary judgements always heard first by the judge and not by the magistrate

2058 Looks ok to me

2063 Quit giving speeches, and listen to himself, all judges use the magistrates, the judge doesn't do it, mandatory calendaring of motions, shorter cut off periods require statement of reasons for extending time

2065 Require mandatory settlement conferences

2066 I'd shorten the time for response to motions and I think I'd also have judges hear non-dispositive motions better management of the calendar to make cases come to court faster

2068 Force litigants to faster discovery,pre-trial meetings earlier

2072 Hang 'em

2072 Make judges make decisions

2076 Wouldn't suggest anything much different now, than when judge Ritter was in the system

2077 The judge-magistrate system is frustrating; The Respondent thinks there should be some sort of change

2078 None

2082 Attempt to reduce the cost. Allow deposition to use recording

2083 Slow down the process

2085 Streamlining magistrate system, sanctions for discovery abuse and attorney misconduct should be enforced

2087 Feel that the cases should be timed better and not take so long

2088 Don't have any changes

2090 A division between civil and criminal cases

2092 Procedure is fine judges are too unpredictable takes too long for proceeding criminal vs. civil calendar

2093 None

2102 Restrict role of magistrate in nondiscovery matters

2103 Difficulty getting an issue resolved.

2104 Think calendar system should be uniform

2105 I would not permit the use of magistrates; I would institute local rules requiring more effort in early settlement of cases;

2113 Less formal approach when dealing with clients

2115 impose restrictions on discovery system limit the amount of discovery

2116 I am fairly pleased with federal court because the scheduling is handled more efficiently;

2121 Judges should hear their own discovery disputes

2125 Allocate a specific schedule for hearing motions and enforce it also judges should be more involved in case settlements and encourage parties to reach settlements also it would pay to examine state court systems in california in terms of eliminating or shortening procedures

2126 Not have such contincorus judges on the bench

2127 Too unclear about scheduling

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

2130 It appears to be the practice to refer dispositive motions to a magistrate. The magistrate makes his recommended disposition. Then that recommendation is the subject of further briefing and argument before the judge. My recommendation is that the dipostive motions be handed only by the judge to eliminate the additional time and expense involved in having a magistrate render his recommendation.

2135 Bring both parties in and informally discuss case before trial

2139 None

2140 Make them move faster

2141 I would not make any

2145 Telephone conference for status report

2147 Automatic status conferences, discovery costs set up

2152 Likes policy of jury not wearing pants.

2153 Cases are always bumped by criminal cases criminal cases takes precedence over civil decisions are often delayed because of criminal case load

2158 I don't think I'd have any suggestions.

2159 Clerk schedules hearings, instead of the attorney scheduling the hearing date

2160 Limiting the extent of discovery.

2161 More court supervision as far as discovery schedules is concerned and more direct involvement with nonjudicial dispute resolution (eg. magistrate as mediator in early stages of case and requiring mediation)

2164 I would allow fewer continuances, limit the amount of discovery that could be done , would allow more settlement conferences..

2166 No major complaints

2167 Try to have associate judges to approach cases as impartially and conscientiously as the main judge does more open minded and more deliberate in decisions

2169 Implement some program that would encourage mediation or some other pretrial settlement procedure; limit the number of interrogatories or written discovery requests;

2171 Like as is

2173 Judges should not second guess a lawyers strategy in the presence of a jury because it may be the best thought out strategy to be had within the client's financial means

2175 I think the system is working pretty well so I don't think any changes would help. The federal court is busy and there are a lot of cases.

2177 The judges should have a pre-conference with the parties to try to make a compromise and maybe save on some of the costs

2178 I think I'd try to find a way to streamline them. I'd find a mechanism to strongly encourage settlement.

2182 I'd have to think about that. I don't have any specific recommendations.

2184 I would encourage narrowing cases through preliminary motions

2186 Ask the judges to examine discovery more closely,so it doesn't get out of hand

2188 Judge handle all hearings instead of magistrate

2194 Adopt the state system of accepting motions without argument

2199 I don't have any quarrel with it. My partner says he'd make it easier to file depositions. But that's a minor thing. By and large they do a hell of a job.

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

2200	None
2203	None
2206	I would consider instituting a limit on written discovery which would require court permission to go beyond a certain level of written discovery; require mandatory non-binding settlement arbitration similar to what some of the judges currently do
2208	I would cut out all that silly paperwork, like the pre-trial paperwork. That is why I like the state court better because without all that paperwork it makes it less expensive
2210	Judges should decide faster
2211	More precise court calendar that makes an effort to determine the amount of time that a particular case or hearing will take
2216	Set the trial dates sooner, giving them less time for discovery
2221	use of magistrates causes the proceeding to move slowly.
2223	Upon the filing of the case they promptly file a case management hearing and then they stick to the definitive deadlines other than that I think the fed. district court is great.
2224	Would schedule trial date at the same time of pre-trial date scheduling
2226	Make faster trial calendars
2235	None
2237	I would have a pretrial hearing in each case with a separate judge or magistrate.
2240	Expedite trials make the discovery cost relate to value of trial swift and harsh judges should not be pushed around by lawyers
2241	rely more on magistrate
2242	I would do something about getting court dates bumped, they need to hold on to the priority date or gets more expensive for the client
2249	Have the court become more actively involved in discovery disputes and resolve them without avoiding them, and improve scheduling of trial dates on the front end and force them to adhere to them and also I would implement a settlement judge concept
2252	No change
2253	Continue to be very aggressive in moving the cases along with the judge involved in monitoring the cases to this end the court has to be insistent that the discovery process be conformed to and that the parties be required to carry the rules of procedure out in good faith
2254	Looser should pay all fees no diversity jurisdiction minimum amount should be at least 100000

Appendix B. Verbatim Responses by Clients to Open-ended Questions

>PC09< What was the reason you/your attorney decided to try the case in federal/state court?

<6> OTHER (SPECIFY) [specify]

Defendants

4083 It had something to do with it being on a national basis and something else to do with an injunction proceeding.

Plaintiffs

3076 Tried in our city
3155 [COMPANY] was out of state
3252 Interstate Issue.

>PC10< What was the reason you/your attorney decided to remove the case to federal rather than state court?

<6> OTHER (SPECIFY) [specify]

Defendants

4102 Had a national pension plan involved- had to be tried in Federal
4186 Litigation takes less time
4218 Familiarity with federal court system
4178 alleged civil rights violations

>PC11< A court delay may or may not result in a higher cost to the client.

The next few questions ask about costs and fee arrangements you had with your attorney in [CASE NAME].

<6> OTHER (SPECIFY)

Defendants

4010 Lawyer was on retainer.
4047 Salaried
4145 There was no fee we operated on state employment legislative appropriation
4178 I didn't pay the fee my insurance

Plaintiffs

3032 Attorneys that represent themselves
3069 Have in house council with the Fed govt
3072 Not sure but the atty did not do much and charged 15,000 for nada
3104 We started out with an hourly rate and then as the case went along we decided to change contingent fee
3127 Attorney did it for free
3209 No fees because attorney was client's son
3211 Attorney got one third

>PC22< Other than relations with your lawyer, what aspects of this litigation have been **most** satisfying?

Defendants

4010 The settlement out of court.
4025 Well, no litigation is satisfying. Our relationship with our lawyer is good. We had a successful result.
4036 I guess to have it resolved on a reasonable basis.
4049 Not applicable because we were the defendant
4058 The short court hearing, it lasted just a day and a half
4064 Settlement conference
4077 Uncrowded case load
4083 None.
4090 The result of the case
4094 I had a great result.
4102 Winning
4110 That we were able to reach an adequate settlement
4113 Court system was good
4117 There was no aspect of the litigation that were satisfying.
4122 That I won the case
4128 The fact that it was finally resolved
4130 We settled for a nominal amount
4141 The fact that,we won.
4142 That it's done with
4145 The careful review and prompt decision by the judge
4186 Defeating a fraudulent claim
4189 Mediation was a good thing. a lot of satisfaction in letting plaintiff know he was wrong also
4212 Winning
4223 We accomplished our goal to get the case thrown out of court in Utah
4233 I felt that the amount of the settlement was fair to all.
4246 Was resolved out of court
4178 We were vindicated

>PC22< Other than relations with your lawyer, what aspects of this litigation have been **most** satisfying?

Plaintiffs

3006 The trial itself was interesting. I wanted to tell my side of the story. They let me and they believed me. That we won
3013 Having the issue resolved
3032 Got resolved quickly
3038 The verdict
3065 The fact that we eventually won.
3067 Don't really know
3076 There was none
3083 Collection aspects, challenges, legal issues.
3089 Discovery process, that's as far as it went, there was a settlement
3116 We got paid
3125 The ending of it
3155 Winning the case
3161 Knowing that we did what we had to do
3164 The end result
3174 Resolved the account
3206 It was settled out of court
3242 I don't know. I wasn't satisfied with anything.
3127 The fact that we accomplished our goal
3132 A good recovery
3209 Speed of resolution of the case
3178 The resolution of the dispute. The fact that we were able to go to court and use that as a tool to resolve the dispute.

>PC23< Other than relations with your lawyer, what aspects of this litigation have been **least** satisfying?

Defendants

4000 Getting opponent to respond to settlement
4010 I have no bad memories of the case at all, other than having to do a deposition. I think that's the worst.
4013 The result
4025 The fact that it occurred at all. It was unnecessary. A brief explanation there. We were having a dispute that could have been settled outside of the courts.
4036 Just the idea that until the case is resolved you don't know what it's going to cost you.
4038 The result
4047 None
4049 The summons and complaint
4058 The judge was totally inaccurate in analysis of the litigation in my opinion
4064 Length of time for judges to make decisions
4077 None
4079 The opposing lawyers were acting like babies; the judge seemed disinterested and in a hurry just like (s)he didn't care. the opposing lawyers would say very negative and petty things in the hallway and in the courtroom when the judge was not there and in there offices for depositions also the opposing lawyers would try to raise costs with unnecessary depositions and copies of papers
4083 The need to resort to a lawsuit.
4090 The fact mallon was suited in the first place
4094 I had to spend the money and the time for what was not a meritorious case.
4102 Pain in the butt
4110 Time required to prepare for the case
4113 No cause of action to begin with
4117 Well, you'd have to know the circumstances of the case. The case had no basis in law or fact. It was legal blackmail, legal terrorism by the other company. No parts of this case were satisfying.
4122 Court delays
4128 Felt badly about loss of friendship with opposing party
4130 Being sued in the first place
4141 I guess the lack of cooperation on the plaintiff's part in trying to reach a settlement.
4147 Dealing with the plaintiff they were difficult
4163 I felt the judge slept through the whole thing but he came up with a fair answer
4186 Non-cooperation by our former agent
4189 The plaintiffs atty. was a person out for personal gain and milked the case for all it was worth
4193 Time and cost for such a small settlement
4212 Getting sued for 16.5 million dollars
4223 The plaintiff showed up in South Dakota with a preponderance of interrogatories
4224 Too much time involved
4022 The fact that we lost
4139 Quality of opposing counsel is a problem (ignorant counsel)
4165 The whole suit was unnecessary
4247 That it happened at all

>PC23< Other than relations with your lawyer, what aspects of this litigation have been **least** satisfying?

4108	All the extra time this case required All the time and resources spent complying with plaintiff's request for discovery. Much of their requests seemed superficial and designed to facilitate a settlement.
4138	The rigidity of the interpretation of the insurance rules (not being willing to take into account extenuating circumstances); former executive who broke severance agreement and did his best to make us look bad in the eyes of our representatives by giving false impression of our case in federal court and supported insurance company's fraud claims
4217	We were completely right. We even had the original bank that [COMPANY] took over admit to three counts of Fraud. The [COMPANY] has a law called the bail out law which allows them to give protection to the bank. Because of this law they were able to admit to the major counts of fraud with full immunity. They were laughing at us.
4178	The suit was a political ploy so I would lose my bid for reelection as a mayor

>PC23< Other than relations with your lawyer, what aspects of this litigation have been **least** satisfying?

Plaintiffs

3006 It took so long to actually get to trial, that's the biggest thing. That we had to go to federal court
3013 Time commitment
3018 The whole damn thing. From what was told to me in the beginning and what happened was totally erroneous.
3020 Tactics of the other party, giving erroneous information
3032 Having the dispute at all
3038 The fact that the suit occurred
3065 I would say the fact that I was not able to extract the full amount of justice. Only a small portion of the what we should have received we received. It cost four times as much for legal fees as we actually received for the case.
3069 Time consuming and stressful
3076 Time element
3083 Cost of collections.
3089 There were no aspects , we didn't go to court
3090 The amount of time and money it takes to get an end result
3093 The defendants response time to discovery requests
3104 The entire court process; as a small business person I think the legal system in this country is in a mess. it's slow and the laws are written in such a way that it makes it more attractive for con artists because it is slow and costly, so someone that's starting out can not afford many hits
3116 Increasing difficulty of doing business today
3125 The run around by the defendant
3126 I had to negotiate our fees down to reach a settlement
3135 Utah's federal laws regarding employment
3141 Delays that were allowed when there was no reason
3145 Plaintiffs atty was gouging us for to many fees the system is un-american geared to whims of judges and lawyers and to the rich
3161 The system and the red tape
3164 The case being dragged out and being deposed
3174 Extensive, especially removal from state to federal court
3186 Defendants unwillingness to pay
3235 I was really dissatisfied with the age discrimination office in SLC. The EEO or equal employment opportunity office.
3242 The length of time, the amount of the settlement.
3252 Probably the enforcement of decision made by courts. But that doesn't relate to this particular case but to cases in general.
3253 Defendant did not have any money
3127 Being somewhat disheartened with the legal representatives that the school had with the compromise of values versus money
3209 We lost the case
3016 Cost and consumption of time.
3169 The delay in the court system was a source of frustration. The inability of the court to penetrate the defendant smoke screen was a source of dissatisfaction
3171 All of it.
3211 The other lawyers and problems with Workmans Comp.
3236 Well, what happened with this case was that it was converted to a state court action in New York and the time delays in New York have been very dissatisfying.
3177 I think it took too long to come to an end

>PC33< Do you have anything else you'd like to add about your experience in federal court?

Defendants

4000 I think the judge is a wimp and I think some of the judges don't take a very aggressive stance. Overall the Utah [SYSTEM] moves along quickly enough

4010 Well, the fact that we never went, I couldn't comment too much.

4025 Well, I've already kind of expressed [THIS]. Good attorneys and reasonable clients can settle their differences outside of court.

4038 Hire more judges and build more courthouses to speed up process. Also in suing you take a risk of losing more money then if paid opposing party directly

4047 There is some difference between judges- Need to be uniform

4049 I prefer federal to state

4079 I really do have a jaded view of our court system because I was not allowed to tell completely my side of the case. The costs were so astronomical that I can see why some people just give up and justice not being served

4083 Nope

4085 I feel that losing side should pay all atty. fees to stop frivolous suits. I also favor rule 11 laws

4102 No

4113 Favorable

4115 Took too much time

4117 No.

4122 I thought the judge was quite fair

4163 Attitude towards court is that it is a waste of time because no one in the court system understands the construction business. Do away with attorneys and set up a knowledgeable arbitration system instead

4186 I was very pleased with it

4218 I think that federal court is far superior to any state system with better judges, better legal analysis we will choose federal court over any state court in any action

4139 Quite good (the Utah case); other cases are much more difficult to manage

4138 I would like for there to be some provision in the legal system for the plaintiff who is found to have groundless claims to be responsible for the defendants expenses in time and attorney fees and other court costs and any cost related to the case. people would then think twice before filing a claim.

4217 The system's fucked up. I'll tell you one thing I learned. The law is not clear, it's grey. It's not if you're right it's who is better able to argue it. There is no such thing as law.

>PC33< Do you have anything else you'd like to add about your experience in federal court?

Plaintiffs

3006 I was skeptical of the justice system because you always hear of the injustice of it and of the little guys always losing to the huge corporations with money to spare for court costs and all that. I wasn't sure at all that I would win, even though I was wrongly brought to trial. I'm really glad that I had this chance to reaffirm my faith in the judicial system.

3018 The time delay is sickening. In one case two of the witnesses had moved out of state. The cost to bring them back is going to be very high. And that started three years ago. If I never have to talk to an attorney again or go to court again I will be the happiest man alive.

3065 No, that's it.

3072 the atty fees were outrageous and unconscionable; the lawyer was a cheat

3076 None

3083 It takes long to get through it. Delays seem to stretch out forever

3089 I could not force them to produce income tax returns, I asked for other records and they told me I lost them

3090 We had been working on this case for two years; each time they switched attorneys it just added more time in there favor and cost us more money. The end result was that the lender lost money. In the settlement agreement we were told not to discuss the settlement with anyone.

3093 I don't think the federal court had a lot of control it was just the clients and their attorneys and their attorneys tactics. I think that if we could have got to court we would have got a larger judgement and some satisfaction

3104 Business in general in this country is changing. There seems to be more growth in the small business sector. The current laws do not reflect that growth. The small business person is not protected under the current set of business laws.

3125 Federal Court is better than State Court

3135 I think our views on employment policies are in the dark ages

3145 The bankruptcy laws are unfair to unsecured creditors; all creditors should get an equal piece of the pie

3161 Would do it again even though it was very draining personally and financially

3206 I'm glad that the fed court had jurisdiction because the equip company was not an american company

3242 I was pleased with the way the judge moderated and held discussions in his/her chambers between the plaintiff and the defendant. It was his/her goal to keep the case from going to trial. (S)he achieved that goal.

3031 The result was not very satisfying.

3209 I was impressed (pleasantly) with the experience

3169 Its very frustrating because of the speedy trial act pushing the drug cases in ahead of us. there should be some way to expedite the civil cases also by increasing the number of judges.

>PC33< Do you have anything else you'd like to add about your experience in federal court?

3171 Unless the amount is probably over 40,000 dollars we'd rather not even take it to court. It's not worth it when you've got to pay an attorney 20,000 dollars and your award isn't even that. I'll tell you another thing, maybe you don't want to listen, maybe you do. We have another case that's interesting. It was a $700 award and the lawyer's bill was $7500. Then they also awarded him another $2700 that they shouldn't have. I tell you, you picked a bad day to talk to me because I just got his bill and it's disgusting. We're not even going to bother with it again. And I'll tell you something else, I'm not going to pay it. That's ridiculous. I thought there must be some mistake so I called thinking someone had put an extra zero in because the case came to only $700, but it wasn't.

3199 The mediator was biased against us

3211 Time consuming, many delays

3177 The judge ignored all the evidence in my case

Appendix C. Attorney Questionnaire

Federal District Court Survey
Attorney Version

>LEDA< Hello, I'm calling on behalf of the Civil Justice Reform Act Advisory Committee. May I please speak to [reverse][fill FNAM] [fill LNAM][normal]?

INTERVIEWER: THIS PERSON IS AN [reverse][fill A07b][normal]

<1> YES [goto A01]
<2> SPEAKING [goto A01]
<3> NOT AVAILABLE NOW [goto cbck]
<8> OTHER, SPECIFY [specify] [goto last]
<11> LANGUAGE [goto last]
<12> INFIRM [goto last]
<14> WRONG NUMBER [goto wrng]
<15> IMMEDIATE HANG UP WITHOUT COMMENT [goto hgup]
<16> TIME PROBLEM [goto A05a]
<30> CHANGE PHONE NUMBER [goto aa2]
<40> CHANGE RESPONDENT'S NAME [goto new1]
<41> RESPONDENT NO LONGER WORKS HERE [goto A05a]
<88> BUSINESS REFUSAL [goto hhr]
=====>[loc 14/1]

>A01< Hello, this is [fill int] from the University of Utah Survey Research Center. We have been commissioned by the Civil Justice Reform Act Advisory Committee to examine the effects of court delays on clients, and the potential effects of proposed system changes on the clients. Are you familiar with aspects of [CASE NAME], such as choice of forum and fee arrangements?

INTERVIEWER: THIS PERSON IS AN [reverse][fill A07b][normal]
CASE #: [fill csnm]

<1> YES
<3> NO [goto A05a]

<8> DK [goto sry2]
<9> REF [goto PERA]
=====>

>fix2< [if A07b eq <INFORMANT>][goto A05][else][goto A02][endif]

>A02< Do you have time to answer a few questions for me now?

<1> YES [goto A03]
<5> NO, NOT A GOOD TIME [goto cbck]
<9> REFUSED [goto PERA]
=====>

Persuader:

>PERA< The federal courts have been mandated by law to collect information about the civil court process from participants in recent civil court cases. The information is not legally sensitive. Your name will not be associated with the data in any way, and all your responses will be kept confidential.

Do you have time to answer a few questions right now?

TO VERIFY THIS SURVEY:
Call 524-5160 during business hours and ask for either Markus Zimmer, Clerk of the Court, or Louise York, Chief Deputy.

If you live outside Salt Lake County, call 1-800-444-8638 EXT 1-6491.

<1> AGREES TO COOPERATE
<5> NOT A GOOD TIME, CALL BACK [goto cbck]

<7> WON'T COOPERATE [goto sory]
=====>

>A03< Thank you. I want to assure you that this survey is both voluntary and confidential. If there is any question you do not wish to answer, just let me know and we will move on to the next one. Also, my supervisor may listen to all or part of the interview to evaluate my performance if that is all right with you.

<1> PROCEED
<5> PROBLEM, SUPERVISOR NOTIFIED FIRST.
=====>

>A04< According to our records, you represented a client in:
[CASE NAME]
in Federal District Court in Utah.

Is this information correct?

<1> YES [goto Q000]
<3> NO [goto A05]

<8> DK [goto A05]
<9> REF [goto sry2]
=====>

>A05< Do you know who the lead attorney on that case was?
CASE: [CASE NAME]

<1> YES
<3> YES, BUT WON'T GIVE IT OUT [goto A05a]
<5> NO [goto A05a]

<8> DK [goto sry2]
<9> REF [goto sry2]
=====> [goto new1]

>A05a< Is there anyone else you know of I could speak with about this case?
CASE: [CASE NAME]

<1> YES [goto new1]
<5> NO [goto sry2]

<8> DK [goto sry2]
<9> REF [goto sry2]
====>

>PA10< In order for the survey to reflect a random cross-section of cases, I am asking the following questions with respect to the circumstances of [CASE NAME] only.

Was your client the plaintiff or the defendant in this case?

INTERVIEWER: SPECIFY WITH CASE # [reverse][fill csnm][normal]
IF NEEDED.

<1> PLAINTIFF [goto A11]
<2> PLAINTIFY [goto A11]

<8> DK [goto sry2]
<9> REF [goto sry2]
====>[loc 15/1]

>PA11< Was this case originally filed in State or Federal Court?

<1> STATE COURT
<3> FEDERAL COURT

<8> DK
<9> REF
====>

>sk1< [# IF CASE ORIG. FILED IN FED COURT].
[# PLAINTIFY'S ATTY WILL SKIP CHOICE QUESTIONS, A112-A116]
[if A10 eq <2>][if A11 eq <3>][goto A17][endif][endif]

>PA12< The first few questions ask about the decision to litigate the case in federal as opposed to state court.

Did you have a choice whether to have this case heard in federal or state court?

<1> YES [goto A14]
<5> NO

<8> DK
<9> REF
====>

>PA13< Did actions of the opposing party cause this case to go to federal court?

<1> YES
<5> NO [goto no2]

<8> DK
<9> REF
=====> [goto A17]

>no2< [if A12 eq <5>][if A13 eq <5>][goto A14a][endif][endif]

>PA14< Did you make the choice, or did your client?

<1> RESPONDENT MADE CHOICE
<5> RESPONDENT'S CLIENT MADE THE CHOICE
<7> BOTH RESPONDENT AND CLIENT MADE THE CHOICE

<8> DK
<9> REF
=====>

>chk1< [if A14 ne <1>][goto if1][endif]

>PA14a< Of all the federal civil cases in which you have the option, what percentage of these cases do you choose to have heard in federal court?

<0-100> ENTER PERCENTAGE

<998> DK
<999> R
=====>

>if1< [allow 18]
[if A12 eq <5>][if A13 eq <5>][goto A17][endif][endif]
[if A14 eq <1>][store <you> in if1][endif]
[if A14 eq <5>][store <your client> in if1][endif]

>ifx< [allow 7]
[#IF PLAINTIFF'S ATTY AND REMOVAL CASE, STORE "STATE"]
[#IF PLAINTIFF'S ATTY AND OTHER CASE, STORE "FEDERAL"]
[#IF PLAINTIFY'S ATTY AND REMOVAL CASE, STORE "FEDERAL"]
[if A10 eq <1>]
    [if A11 eq <1>][store <STATE> in ifx][endif]
    [if A11 eq <3>][store <FEDERAL> in ifx][endif]
[endif]
[if A10 eq <2>]
    [if A11 eq <1>][store <FEDERAL> in ifx][endif]
[endif]

>if2< [if A10 eq <1> goto A15]
[if A10 eq <2> goto A16]

[#PLAINTIFF QUESTION:]
>PA15< What was the reason you/your client decided to try the case in federal/state court? READ RESPONSES....

<1> We had a better chance of winning
<3> We were likely to get a higher award
<5> Proceedings take less time
<7> Judges are better
<9> Juries are better
<11> Litigation is less expensive
<13> Litigation is more expensive, or,
<15> I'm more comfortable litigating in federal/state court?

<6> OTHER (SPECIFY)[specify]
<98> DK
<99> REF
====>[goto A17]

[#PLAINTIFF QUESTION:]
>PA16< What was the reason you/your client decided to remove the case to federal rather than state court? READ RESPONSES....

<1> We had a better chance of winning
<3> The plaintiff was likely to get a lower award
<5> Proceedings take more time
<7> Judges are better
<9> Juries are better
<11> Litigation is less expensive
<13> Litigation is more expensive, or,
<15> I'm more comfortable litigating in federal court?

<6> OTHER (SPECIFY)[specify]
<98> DK
<99> REF
====>

>PA17< A court delay may or may not result in a higher cost to the client. The next few questions ask about costs and fee arrangements you had with your client in [CASE NAME].

Which of the following best describes the fee arrangement you had?

<1> an hourly rate,
<3> flat rate,
<5> contingent fee,
<7> a contingent fee that varies according to the stage of the case,
<9> hourly rate plus contingent in case of good result,
<11> or some other combination of fee arrangements?

<6> OTHER (SPECIFY) [specify]
<98> DK
<99> REF
=====>

>PA17a< In what percentage of federal civil cases would you say you use this type of fee arangement?

<0-100> ENTER PERCENTAGE

<998> DK
<999> R
=====>

>chk2< [if A17 eq <1> goto A18]
[if A17 eq <5> goto A19]
[if A17 eq <7> goto A19a]
[if A17 eq <9> goto A18]
[if A17 eq <11> goto A18]
[goto A20]

>PA18< What was the hourly rate?

<0-500> ENTER NUMBER

<888> NOT APPLICABLE
<998> DK
<999> REF
=====>

>PA18a< Was there a maximum total dollar amount for the case?

<1> YES [goto A18b]
<3> NO

<8> DK
<9> REF
=====>[goto if3]

>PA18b< What was the maximum total dollar amount?

<1-9999999> ENTER AMOUNT

<d> DK
<r> REF
=====>

>if3< [if A17 eq <1> goto A20]

>PA19< What percentage of the award were you to receive as a contingent fee?

<1-95> ENTER NUMBER
<97> DEPENDED ON STAGE OF THE PROCEEDINGS [goto A19a]

<d> DK
<r> REF
=====> [goto A20]

>PA19a< What percentage of the award were you to receive as a contingent fee if the case DID NOT go to trial?

<0> NONE
<1-96> ENTER NUMBER
<97> DEPENDED ON OTHER FACTORS

<98> DK
<99> REF
=====>

>PA20< Did you have an agreement with the client in [CASE NAME] that a very successful result in the case would be reflected in your bill, in addition to an hourly or other rate?

<1> YES
<3> NO

<8> DK
<9> REF
=====>

>PA20a< Did you reduce the fee because of an unsuccessful result?

<1> YES
<3> NO

<8> DK
<9> REF
=====>

>PA21< Which of the following best describes the degree of choice your client had over the fee arrangement? (READ CHOICES)...

<1> Attorney decided the fee arrangement
<3> Client had a choice among limited options
<5> Client decided the fee arrangement
<7> Both attorney and client decided the fee arrangement

<8> DK
<9> REF
=====>

>PA21a< **Generally** speaking, if a client had **limited** ability to pay, would you most likely.... (READ RESPONSES)

<1> restrict the size of the fee,
<3> restrict the extent of your representational activities,
<5> do both of these, or
<7> do neither of these?

<8> DK
<9> REF
=====>

>PA21b< Again, **generally** speaking, if a client had **considerable** ability to pay, would you most likely.... (READ RESPONSES)

<1> increase the size of the fee,
<3> increase the extent of your representational activities,[goto A21c]
<5> do both of these, or [goto A21c]
<7> do neither of these?

<8> DK
<9> REF
=====> [goto A22]

>PA21c< In what ways would you increase the extent of your representational activities?

<1> SPECIFY [specify]

<8> DK
<9> REF
=====>

>PA22< During the course of litigation, costs other than lawyers fees arise, such as depositions, witness fees, and so forth. What was the approximate total of these nonattorney fees in [CASE NAME]?

PROBE DON'T KNOWS ONCE: "WHAT WOULD YOUR BEST GUESS ON THAT BE?"

<0> NONE [goto A25]
<1-999999> ENTER AMOUNT

<d> DK [goto A25]
<r> REF [goto A25]
=====>

>PA23< Did you pass these costs on to your client directly, or are these costs built into your regular fee structure as overhead?

<1> PASSED COSTS ON TO CLIENT DIRECTLY
<3> COSTS BUILT IN AS OVERHEAD
<5> SOME COMBINATION OF THE ABOVE

<6> SOME OTHER ARRANGEMENT
<8> DK
<9> REF
=====>

>PA24< Did allocation of these costs to the client depend on the outcome of the case?

<1> YES
<3> NO

<8> DK
<9> REF
=====>

>PA25< The next few questions ask about the number of parties and nonparties deposed. First, how many parties were deposed?

<0-96> ENTER NUMBER

<98> DK
<99> REF
=====>

>PA26< And how many nonparties were deposed?

<0-96> ENTER NUMBER
<97> NINETY-SEVEN OR MORE

<98> DK
<99> REF
=====>

>fix4< [if A25 eq <0>][if A26 eq <0>][goto A29][endif][endif]
[if A25 eq <0>][if A26 ge <98>][goto A29][endif][endif]
[if A25 ge <98>][if A26 eq <0>][goto A29][endif][endif]
[if A25 ge <98>][if A26 ge <98>][goto A29][endif][endif]

>PA27< How much time was spent gathering these depositions?

INTS: ENTER NUMBER HERE, IN HOURS OR DAYS

<0>
<1-999> ENTER NUMBER [goto A28]

<d> DK
<r> REF
=====>[goto A29]

>PA28< INT: THE NUMBER YOU JUST ENTERED: [fill A27]

INDICATES THE NUMBER OF **HOURS**, OR THE NUMBER OF **DAYS**?

<1> HOURS
<3> DAYS

<8> DK
<9> REF
=====> [no erase]

>PA29< Did this case go to trial?

<1> YES [goto A30]
<3> NO

<8> DK
<9> REF
=====> [goto A31]

>PA30< Was it a jury or a bench trial?

<1> JURY
<3> BENCH

<8> DK
<9> REF
=====>

>PA31< Have you been involved in other **civil** cases in **federal court** since **July, 1989**?

<1> YES [goto A32]
<3> NO

<8> DK [goto A33]
<9> REF [goto A33]
=====>

>st2< [store <1> in A32]
[goto A33]

>PA32< Including (this case), how many **civil** cases in **Utah Federal** court have you been involved in since **July, 1989**?

<1-999> ENTER NUMBER

<d> DK
<r> REF
=====>

>PA33< If you were the chief judge of the federal court in Utah, what changes would you make in the way civil cases are handled in the federal court system?

<1> SPECIFY [specify]

<8> DK
<9> REF
=====>

>PA34< In order to ascertain the effects of court transit time on clients, it is necessary that we call your client in [CASE NAME].

Was your **primary** client in this case an individual, or an organization?

PROBE: IF ATTORNEY SAYS "ME", ASK "WHO OTHER THAN LEGEL COUNSEL COULD WE CONTACT ABOUT THIS CASE?"

<1> INDIVIDUAL [goto A38]
<3> ORGANIZATION (INSTITUTION, CORPORATION, MUNICIPALITY, ETC.)[goto A35]
<5> BOTH [goto A34a]

<8> DK [goto A34a]
<9> REF [goto THNX]
=====>

>PA34a< Who paid your fee, the individual or the organization?

<1> INDIVIDUAL [goto A38]
<3> ORGANIZATION (INSTITUTION, CORP., MUNICIPALITY, ETC.)

<8> DK
<9> REF
=====>

>A35< What is the name of the organization?

<1> GO TO NEXT SCREEN AND ENTER NAME

<8> DK [goto A37]
<9> REF [goto A37]
=====>

>A36< ENTER THE NAME OF THE **ORGANIZATION** HERE:

=====>[allow 25][loc 17/1]

>A37< Who in this organization would be the most knowledgeable about the case?

<1> ENTER THE PERSON'S NAME [goto A39]

<8> DK
<9> REF
=====> [goto A41]

>A38< What is this individual's name?

ENTER A <g> TO CONTINUE=====>

>A39< ENTER THE **FIRST** NAME HERE:

_____
=====>[allow 12]

>A40< ENTER THE **LAST** NAME HERE:

_____
=====>[allow 15]

>A41< Do you have a phone number for [fill A39] [fill A40]?

ORGANIZATION = [fill A36]

<1> YES [goto A42]
<5> NO [goto A45]

<8> DK [goto A45]
<9> REF [goto A45]
=====>

>A42< WHAT IS THE AREA CODE?

=====>[allow 3]

>A43< WHAT IS THE NUMBER'S PREFIX?

=====>[allow 3] [no erase]

>A44< WHAT IS THE NUMBER'S SUFFIX?

=====>[allow 4] [no erase]

>A45< Do you know what city they are in?

<1> SPECIFY [specify]

<8> DK
<9> REF
=====> [goto end]

Appendix D. Client Questionnaire

Federal District Court Survey
Client Version

>LEDC< May I please speak to
[reverse][fill FNAM] [fill LNAM][normal]?

<1> YES [goto C01]
<2> SPEAKING [goto C90]
<3> NOT AVAILABLE NOW [goto cbck]
<8> OTHER, SPECIFY [specify][goto last]
<11> LANGUAGE [goto last]
<12> INFIRM [goto last]
<14> WRONG NUMBER [goto wrng]
<15> IMMEDIATE HANG UP WITHOUT COMMENT [goto hgup]
<16> TIME PROBLEM [goto C72]
<30> CHANGE PHONE NUMBER [goto ca2]
<40> CHANGE RESPONDENT'S NAME [goto C82]
<41> RESPONDENT NO LONGER WORKS HERE [goto C72]
<88> BUSINESS REFUSAL [goto hhr]
====>

>C72< [#IF NAMED R IS NOT AVAILABLE]

This is [fill int] from the University of Utah Survey Research Center. We have been commissioned by the Federal District Court in Utah to speak with participants in civil cases about court delays.

Can you please give me the name of another person who would be familiar with the court case: [CASE NAME]?

<1> GIVES DIFFERENT DEPARTMENT NAME [goto C84]
<3> GIVES RESPONDENT'S DEPARTMENT NAME (SAME DEPARTMENT) [goto C81]
<5> GIVES NAME OF A PERSON [goto C82]
<7> SPEAKING [goto C90]

<8> DK [goto C81]
<9> REF [goto PER]
====>

>C80< [#IF WE DO NOT HAVE A NAME]

Hello, this is [fill int] from the University of Utah Survey Research Center. We have been commissioned by the Federal District Court in Utah to speak with participants in civil cases about court delays.

Can you please give me the name of a person who would be familiar with the court case: [CASE NAME]?
Case Number: [CASE NAME]

<1> GIVES DEPARTMENT NAME [goto C84]
<3> GIVES NAME OF A PERSON [goto C82]
<7> SPEAKING [goto C90]

<8> DK
<9> REF [goto PER]
=====>

>C81< Can you give me the name of someone who may know?

THE CASE WAS [CASE NAME]

<1> GIVES DEPARTMENT NAME [goto C84]
<3> GIVES NAME OF A PERSON

<8> DK [goto last]
<9> REF [goto PER]
=====>

>C86< Is this person (someone in this department) available now?

NAME: [reverse][fill FNAM] [fill LNAM][normal]

INTERVIEWER: IF NECESSARY ASK TO BE TRANSFERRED

<1> YES [goto C01]
<2> SPEAKING [goto C90]
<8> OTHER, SPECIFY [specify] [goto last]
<3> NOT AVAILABLE NOW [goto cbck]
<11> LANGUAGE [goto last]
<12> INFIRM [goto last]
<16> TIME PROBLEM [goto C72]
<99> REFUSAL [goto PER]
=====>

>C90< We have been commissioned by the Civil Justice Reform Act Advisory Committee to examine the effects of court delays on clients, and the potential effects of proposed system changes on the clients. We are contacting you regarding [CASE NAME] case. Do you have time to answer a few questions for me now?

<1> YES [goto C02]
<5> NO, NOT A GOOD TIME [goto cbck]
<9> REFUSED [goto PER]
====>

>C01< [#TO NAMED INDIVIDUAL]

Hello, this is [fill int] from the University of Utah Survey Research Center. We have been commissioned by the Civil Justice Reform Act Advisory Committee to examine the effects of court delays on clients, and the potential effects of proposed system changes on the clients. We are contacting you regarding the [CASE NAME] case.

Case Number: [CASE NAME]

Do you have time to answer a few questions for me?

<1> YES [goto C02]
<5> NO, NOT A GOOD TIME [goto cbck]
<9> REFUSED [goto PER]
====>

>PERC< The federal courts have been mandated by law to collect information about the court process from participants in recent court cases. The information asked for in the survey is not legally sensitive, and your name will not be released or associated with the data in any way.

Do you have time to answer a few questions right now?

TO VERIFY THIS SURVEY:
Call 581-6491 during business hours and ask for Dr. Lois Haggard.
If you live outside Salt Lake County, call 1-800-444-8638 EXT 1-6491.

<1> AGREES TO COOPERATE
<5> NOT A GOOD TIME, CALL BACK [goto cbck]

<7> WON'T COOPERATE [goto sory]
====>

>C02< Thank you. I want to assure you that this survey is both voluntary and confidential. If there is any question you do not wish to answer, just let me know and we will move on to the next one. Also, my supervisor may listen to all or part of the interview to evaluate my performance if that is all right with you.

<1> PROCEED
<5> PROBLEM, SUPERVISOR NOTIFIED FIRST.
=====>[goto Q000]

>PC03< According to our records, [fill C70] were(was) a participant in [CASE NAME]
in Federal District Court in Utah.

Is this information correct?

<1> YES [goto C04]
<3> NO [goto sry2]

<8> DK [goto sry2]
<9> REF [goto sry2]
=====>[loc 20/1]

>PC04< In order for the survey to reflect a random cross-section of cases, I am asking the following questions with respect to the circumstances of [CASE NAME] only.

Were(was) [fill C70] the plaintiff or the defendant in this case?

<3> PLAINTIFF
<4> PLAINTIFY

<8> DK [goto sry2]
<9> REF [goto sry2]
=====> [goto C05]

>PC05< Were you represented by a lawyer in this case?

<1> YES
<3> NO

<8> DK
<9> REF [goto sry2]
=====>

>PC06< Was this case originally filed in State or Federal Court?

<1> STATE COURT
<3> FEDERAL COURT

<8> DK
<9> REF
=====>

>if5< [#IF CASE ORIG. FILED IN FED CT, DFNDNTS SKIP CHOICE Q'S]
[if C04 eq <4>][if C06 eq <3>][goto if10][endif][endif]

>PC07< Did you have a choice whether to have this case tried in federal or state court?

<1> YES [goto C08]
<5> NO

<8> DK
<9> REF
=====> [goto if10]

>if6< [#IF NOT REP. BY LAWYER, GOTO C18]
[if C05 ge <3> goto C18]

>PC08< Did you make the choice, or did your attorney?

<1> RESPONDENT MADE CHOICE
<5> RESPONDENT'S ATTORNEY MADE THE CHOICE

<7> BOTH RESPONDENT AND ATTORNEY MADE THE CHOICE

<8> DK
<9> REF
=====>

>if7< [allow 18]
[if C08 eq <1>][store <you> in if7][endif]
[if C08 eq <5>][store <your attorney> in if7][endif]

>if8< [allow 7]
[#IF PLAINTIFF IN REMOVAL CASE, STORE "STATE"]
[#IF PLAINTIFF IN OTHER CASE, STORE "FEDERAL"]
[#IF PLAINTIFY IN REMOVAL CASE, STORE "FEDERAL"]
[if C04 eq <3>]
    [if C06 eq <1>][store <STATE> in if8][endif]
    [if C06 eq <3>][store <FEDERAL> in if8][endif][endif]
[if C04 eq <4>]
    [if C06 eq <1>][store <FEDERAL> in if8][endif][endif]

>if9< [#IF PLAINTIFF GOTO C09,]
[#IF PLAINTIFY IN REMOVAL CASE GOTO C10,]
[if C04 eq <3> goto C09]
[if C04 eq <4> goto C10]

[#PLAINTIFF QUESTION:]
>PC09< What was the reason [fill if7] decided to try the case in [fill if8] court? READ RESPONSES....

<1> We had a better chance of winning
<3> We were likely to get a higher award
<5> Proceedings take less time
<7> Judges are better
<9> Juries are better
<11> Litigation is less expensive, or,
<13> Litigation is more expensive?

<6> OTHER (SPECIFY) [specify]
<98> DK
<99> REF
=====>[goto if10]

[#DEFENDANT QUESTION:]
>PC10< What was the reason [fill if7] decided to remove the case to federal rather than state court? READ RESPONSES....

<1> We had a better chance of winning
<3> The plaintiff was likely to get a lower award
<5> Proceedings take more time
<7> Judges are better
<9> Juries are better
<11> Litigation is less expensive, or,
<13> Litigation is more expensive?

<6> OTHER (SPECIFY) [specify]
<98> DK
<99> REF
=====>

>PC11< A court delay may or may not result in a higher cost to the client. The next few questions ask about costs and fee arrangements you had with your attorney in [CASE NAME].

Which of the following best describes the fee arrangement you had?

READ RESPONSES....

<1> an hourly rate, [goto C12]
<3> flat rate,
<5> contingent fee, [goto C13]
<7> a contingent fee that varies according to the stage of the case, [goto C13a]
<9> hourly rate plus contingent in case of good result, [goto C12]
<11> or some other combination of fee arrangements? [goto C12]

<6> OTHER (SPECIFY) [specify]
<98> DK
<99> REF
=====> [goto C14]

>PC12< What was the hourly rate?

<50-500> ENTER NUMBER

<n> NOT APPLICABLE
<d> DK
<r> REF
=====>

>PC12a< Was there a maximum total amount?

<1> YES [goto C12b]
<3> NO

<8> DK
<9> REF
=====>[goto if11]

>PC12b< What was the maximum total amount?

<1-9999999> ENTER AMOUNT

<d> DK
<r> REF
=====>

>if11< [if C11 eq <1> goto C14]

>PC13< What percentage of the award was your attorney to receive as a contingent fee?

<1-95> ENTER NUMBER
<97> DEPENDED ON STAGE OF THE PROCEEDINGS[goto C13a]

<n> NOT APPLICABLE
<d> DK
<r> REF
=====> [goto C14]

>PC13a< What percentage of the award was your attorney to receive as a contingent fee if the case DID NOT go to trial?

<1-96> ENTER NUMBER
<97> DEPENDED ON OTHER FACTORS

<98> DK
<99> REF
=====>

>PC14< Did you have an agreement with your attorney in that a very successful result in the case would be reflected in his or her bill, in addition to an hourly or other rate?

<1> YES
<3> NO

<8> DK
<9> REF
=====>

>PC15< Which of the following best describes the degree of choice you had over the fee arrangement? (READ CHOICES)...

<1> Attorney decided the fee arrangement,
<3> I (client) had a choice among limited options,
<5> I (client) decided the fee arrangement.

<7> BOTH RESPONDENT AND ATTORNEY MADE THE CHOICE

<8> DK
<9> REF
=====>

>PC16< During the course of litigation, costs other than lawyers fees arise, such as depositions, witness fees, and so forth. Did your attorney pass these costs on to you directly, or did he or she pay them?

<1> RESPONDENT PAID COSTS
<3> ATTORNEY PAID COSTS
<5> SOME COMBINATION

<8> DK
<9> REF
=====>

>if12< [if C05 ge <3> goto C18]

[#ASK IF REPRESENTED BY ATTORNEY]
>PC17< How many hours would you say you personally devoted to this case after contact with the lawyer?

<0-9999> ENTER NUMBER OF **HOURS**

<d> DK
<r> REF
=====> [goto C19]

[#ASK IF NOT REPRESENTED BY ATTORNEY]
>PC18< How many hours would you say you personally devoted to this case?

<0-9999> ENTER NUMBER OF **HOURS**

<d> DK
<r> REF
=====>

>PC19< The next few questions ask about how satisfied you were with various aspects of the court process surrounding [CASE NAME].

About the progress of your case in federal court, how satisfied were you with the amount of time your case took to be resolved, (READ RESPONSES)...

<1> totally DISsatisfied,
<3> somewhat DISsatisfied,
<5> neutral,
<7> somewhat satisfied, or
<9> totally satisfied?

<98> DK
<99> REF
=====>

>PC20< How satisfied were you with lawyers fees?

(READ RESPONSES AS NECESSARY)

<1> TOTALLY DISSATISFIED,
<3> SOMEWHAT DISSATISFIED,
<5> NEUTRAL,
<7> SOMEWHAT SATISFIED, OR
<9> TOTALLY SATISFIED?

<98> DK
<99> REF
=====>

>PC21< How satisfied were you with costs other than lawyers fees?

(READ RESPONSES AS NECESSARY)

<1> TOTALLY DISSATISFIED,
<3> SOMEWHAT DISSATISFIED,
<5> NEUTRAL,
<7> SOMEWHAT SATISFIED, OR
<9> TOTALLY SATISFIED?

<98> DK
<99> REF
=====>

>PC22< Other than relations with your lawyer, what aspects of this litigation have been **most** satisfying?

<1> SPECIFY [specify]
<3> NO

<8> DK
<9> REF
=====>

>PC23< Other than relations with your lawyer, what aspects of this litigation have been **least** satisfying?

<1> SPECIFY [specify]
<3> NO

<8> DK
<9> REF
=====>

>PC24< Did you win the case?

INT: WE'RE ASKING THIS QUESTION EVEN IF THE CASE NEVER WENT TO TRIAL. IF RESPONDENT HAS A QUESTION, PROBE WITH: "Do you feel that you won the case?"

<1> YES
<3> NO

<8> DK
<9> REF
=====>

>PC25< All things considered, how important was a favorable verdict, or winning your case, to your overall satisfaction with the case? Was it... (READ RESPONSES)

<1> critically important
<3> very important
<5> important
<7> only somewhat important, or
<9> not important at all?

<98> DK
<99> REF
=====>

>go4< [if C04 eq <4> goto C27]

>PC26< All things considered, how important is the size of the award to your overall satisfaction with the case? Was it ... (READ RESPONSES)

<1> critically important
<3> very important
<5> important
<7> only somewhat important, or
<9> not important at all?

<98> DK
<99> REF
=====>

>PC27< How about the opportunity to present your side of the story?

(READ RESPONSES AS NECESSARY, ... WAS THAT...)

<1> CRITICALLY IMPORTANT
<3> VERY IMPORTANT
<5> IMPORTANT
<7> ONLY SOMEWHAT IMPORTANT
<9> NOT IMPORTANT AT ALL

<98> DK
<99> REF
=====>

>go5< [if C04 eq <4> goto C29]

>PC28< How about the opportunity to force the other side to go to court?

(READ RESPONSES AS NECESSARY, ... WAS THAT...)

<1> CRITICALLY IMPORTANT
<3> VERY IMPORTANT
<5> IMPORTANT
<7> ONLY SOMEWHAT IMPORTANT
<9> NOT IMPORTANT AT ALL

<98> DK
<99> REF
=====>

>PC29< Did this go to trial?

<1> YES [goto C30]
<3> NO

<8> DK
<9> REF
=====> [goto C31]

>PC30< Was it a jury or a bench trial?

<1> JURY
<3> BENCH

<8> DK
<9> REF
=====>

>PC31< Have you been involved in other **civil** cases in **federal court** since **July, 1989**?

<1> YES [goto C32]
<3> NO

<8> DK
<9> REF
=====> [goto C33]

>PC32< Including [CASE NAME],
how many **civil** cases in **federal** court have you been involved in since **July, 1989**?

<1-999> ENTER NUMBER

<d> DK
<r> REF
=====>

>PC33< Do you have anything else you'd like to add about your experience in federal court?

<1> SPECIFY [specify]
<3> NO

<8> DK
<9> REF
=====>[goto end]