Averting Gridlock

Strategies for Reducing Civil Delay in the Los Angeles Superior Court

James S. Kakalik, Molly Selvin, Nicholas M. Pace
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1990
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Foreword

The issue of civil justice reform has been hotly debated over the past several years. Most of this attention has focused on the need for substantive reform in a system reform proponents argue has encouraged an explosion of lawsuits and rapidly escalating damage awards. In contrast, reform opponents maintain that changing the civil justice system’s substantive rules will endanger injured parties’ fundamental rights. Differing on first principles, both sides seem only to agree on one complaint about the system: It takes longer and costs more to process cases.

It is ironic that so much of the reform effort has focused on substantive reform—about which substantial disagreement exists—while the perception that delay in the courts is increasing, reaching crisis proportions in the most congested courts, continues to spread. Not that the issue of delay in the courts has been ignored (two national commissions recently recommended a host of changes designed to reduce court delay and lower processing costs, and in some jurisdictions lawsuits have actually been brought against the court to force action on the issue), but too often these problems are viewed as endemic to the system and thus not readily amenable to major change.

In the absence of formal steps to deal with the problem, however, individual courts and judges have been experimenting with various possible solutions: innovations in court management procedures, changes in lower courts’ jurisdictional levels, aggregation procedures for mass tort cases, and introduction of court-sponsored alternative dispute resolution mechanisms. Frustrated with the current system, litigants—especially corporations and institutions—have turned to privately sponsored alternatives, such as mediation and “rent-a-judge” programs, to expedite the resolution of their disputes.

Indeed, pointing to corporate litigants’ growing use of private-sector substitutes for the public court system in response to the civil justice system’s increasing costs and lengthening delay, some observers foresee the possible emergence of a two-tiered justice system, with a fast-track private system for those who can afford it and a slow-track public system
for those who cannot. These observers note that an apparent increase in
the proportion of litigants who settle their cases rather than endure the
wait necessary to take their cases to trial signals a growing frustration
with the current system. And they warn that in the face of a growing
caseload of criminal cases—especially drug-related cases—that take pre-
cedence over civil cases, this situation will only likely worsen.

In this study, ICJ researchers James Kakalik, Molly Selvin, and
Nicholas Pace take a close look at the delay problem in the nation’s
largest—and one of its most congested—court jurisdictions, the Los
Angeles Superior Court. They identify the critical reasons why civil
litigants must now wait an average of five years from the time they file
their cases until trial. They also discuss a range of options that might
alleviate the problem. The bottom line is that although court produc-
tivity can be improved, the root cause of the delay problem is an imbal-
ance between the demand for court services and the court’s ability to
supply those services.

Although they believe that the court’s first priority should be adding
new judges, they note that political realities will require the court to
adopt a broad-based strategy in attacking the problem. This approach
must supplement attempts to expand the court’s resources with efforts
to use its existing resources more efficiently. Finally, they caution that
the delay problem in the Los Angeles Superior Court developed over
many years, and that even if the court implements the remedies they
suggest, these remedies will take time to work.

The authors also stress that if something is not done about the
current situation, it will only get worse. Civil litigants will face even
longer delays, and the court may need to consider more draconian
solutions—solutions likely to raise serious questions about the public’s
access to the civil justice system.

Kevin F. McCarthy, Director
The Institute for Civil Justice
Executive Summary

OVERVIEW

One decade into its second century, the Los Angeles Superior Court is at a crossroads, facing possible gridlock. Civil delay has risen substantially in the past two decades. Consequently, civil litigants who want a jury trial must now wait an average of five years from the time of case filing. Civil case delay in Los Angeles is much worse than in most other state trial courts and much worse than the generally accepted two-year standard for civil case disposition.

The long wait to trial has caused a profound crisis in the Los Angeles Superior Court—one that impedes civil litigants' access to justice. Frustrated litigants may accept a settlement rather than endure the wait for an open courtroom; even worse, litigants may lose faith entirely in the public justice system's ability to resolve their disputes. In fact, some recent evidence for such disenchantment exists: The trial rate in the Los Angeles Superior Court—the percentage of litigants who take their cases all the way to trial rather than settle or dismiss their claims—has dropped markedly in recent years.

Moreover, civil delay may remain a problem of major proportions for the Los Angeles Superior Court well into the 1990s. The statutory priority accorded criminal defendants in scheduling trials, combined with burgeoning criminal caseloads (especially drug caseloads), will mean continued long delays for civil litigants if something major is not done soon.

Los Angeles Superior Court judges and administrators have long recognized the court's civil case delay problem and have worked hard to speed the disposition of its civil cases. As part of that effort, court officials invited The RAND Corporation's Institute for Civil Justice (ICJ) to conduct this study. This report presents our analysis of the causes of the persistent delay in Los Angeles. It also evaluates the effectiveness and cost of various strategies for reducing delay.

Some measures to reduce civil delay are already in place. One major effort currently under way in Los Angeles involves 25 civil judges in a pilot “fast-track” program mandated by the Trial Court Delay
Reduction Act of 1986. This experimental program processes civil cases using an individual judge calendar system, time standards, limited continuances, and active judicial management of the cases. It incorporates several case management changes we and other researchers have suggested. The fast-track program shows promising preliminary success and is viewed favorably by many judges.

However, the current situation in Los Angeles calls for an even bolder response. Although some strategies we outline in this report may be viewed by state and local policymakers as politically infeasible (largely because of their cost), we believe that substantial and permanent reductions in civil delay cannot occur unless strong measures are taken.

THE SCOPE OF THE DELAY PROBLEM IN LOS ANGELES

The Los Angeles Superior Court is the nation's largest trial court. It is also one of the most delayed. In comparison with 25 other large urban courts in 1987, only 2 courts took longer than Los Angeles to dispose of their civil caseloads.

National organizations of judges and attorneys, the state of California, and the Los Angeles Superior Court have adopted a 2-year time goal for disposition of all civil cases. The average time from filing to disposition of a civil complaint filed in 1980–1982 in Los Angeles was 2.3 years; the median was 2 years (half the cases were disposed within 24 months and half took longer). By 1989, disposing of all civil complaints took more than 5 years.

CAUSES OF DELAY

The causes of civil case delay are multiple and complex:

- **The demand for judicial services exceeds the supply.** Although the number of judicial officers has been growing, the continuing shortage is a major cause of civil case delay. Despite the periodic addition of new judges, this shortage has existed in most years since the early 1970s and has increased sharply in recent years. Because criminal cases and certain other noncivil cases have higher priority on the court's calendar, this shortage primarily affects the civil caseload. Moreover, a growing backlog of cases means that newly filed cases will experience long delays, since cases usually are processed on a "first come, first
served" basis. The demand for judicial services in the Los Angeles Superior Court clearly exceeds the supply.

- **Court and case management need improvement.** Nationwide research on court-resource management has consistently demonstrated that certain management strategies can reduce delay. Significant room for improvement of both court and case management exists in Los Angeles. The court would benefit from adopting innovations, such as active case management and individual or team calendaring, that studies in other jurisdictions have repeatedly recommended as methods of combating delay.

- **Some litigants or their lawyers may be delaying the progress of cases intentionally.** Some delay in the Los Angeles Superior Court is undoubtedly caused by litigants and lawyers. However, such delay is clearly not the primary cause of civil case delay. With five years from filing to trial, lawyers and litigants don't need to use delaying tactics. Policies aimed at preventing delaying tactics would be of some, but limited, value because cases cannot be tried by the court for five years anyway. If delay were reduced substantially by other policies so that the time from filing to trial was one or two years, policies aimed at speeding up lawyers and litigants would be much more relevant. However, strategies for improving court and case management should also reduce lawyer- and litigant-caused delays.

**OPTIONS FOR REDUCING CIVIL DELAY**

Two basic steps are needed to reduce civil delay: 1) increase court resources to correct the imbalance between demand for court services and their supply; and 2) manage current resources more effectively.

The delay problem in Los Angeles has developed over decades and will not be solved by stopgap solutions or quick fixes. No undiscovered "magic bullets" exist in the arsenal of weapons to combat delay. Rather, local and state policymakers must select the right package of policy innovations, then effectively implement and fine-tune those solutions on a long-term basis.
INCREASING THE SUPPLY OF JUDICIAL RESOURCES TO MATCH THE DEMAND FOR SERVICES

To right the imbalance between supply and demand, one can either increase the supply of judicial services or reduce the demand. Increasing the supply of court services could be accomplished in three ways:

- Add new permanent judicial officers;
- Increase the length of the judicial workday;
- Add temporary personnel to help reduce the backlog.

**Add a large number of new permanent judges.** We estimate that at least 106 additional full-time-equivalent (FTE) judicial officers will be needed just to process the new case filings in 1991. This estimate is a minimum because it excludes the number of temporary judges needed to dispose of the case backlog. It also excludes the additional number of FTE judges who would be needed to handle the increased number of trials that might be demanded and the additional cases that might be filed if the time to trial were reduced.

We estimated that 350 FTE judicial officers were needed in 1989 just to process the new case filings. With only 293 FTE judicial officers authorized, the shortage was 57. Because civil cases have last priority in the court system, the entire impact of the 57-judge shortage fell on civil cases. Thus, in 1989, we estimate that civil cases in the Los Angeles Superior Court received less than half the number of FTE judicial officers necessary just to keep up with new civil filings. Speedy-trial laws for criminal defendants work because judges are being preempted from civil cases to work on criminal cases.

The number of judges needed will grow as new case filings increase. We estimate that 399 judicial officers will be needed in 1991 just to process the estimated 335,000 new case filings. Thus, if no additional judges are appointed before then, we estimate a shortage of at least 106 FTE judges in 1991.

No one knows how much the demand for lawsuits and trials will increase. However, we can estimate how many additional FTE judicial officers would be needed if the jury trial rate were to increase 1 percent or if civil filings were to increase 1 percent. If the fraction of civil complaints that go through jury trial were to increase 1 percent, an additional 30 FTE judges per year would be necessary. An increase in civil filings of 1 percent would necessitate approximately 1 additional FTE judge.

The continuing huge shortage of FTE judicial officers prompts the question, Why have the Los Angeles County and California State governments not provided sufficient judges? Both the county and the
state must approve funding for the new judgeships; in general, the number approved is less than the estimated need. There appear to be three basic reasons for the shortage:

- Both the state and the county have overall budget limitations imposed by the voters, and the statewide average annual cost of each judgeship with all associated staff is $566,000 in salary and other operating costs. In Los Angeles in 1989, we estimate that the average annual cost of each civil judgeship with all associated staff was $506,000, plus some $204,000 in annualized capital costs of the courtroom. If 106 new judges were added, the additional annualized cost would be approximately $75 million.
- If the state legislature and governorship are controlled by opposing political parties (as is currently the case), the legislature may be reluctant to give the governor the opportunity to appoint many new judges.
- Some county and state government officials have felt that the courts need to be reformed and made more efficient, rather than increased in size.

Increase the official court hours from 6 to 7 per day. The average workday for Los Angeles Superior Court judicial officers was 6.6 hours in 1984, including 5.3 case-related work hours per day, considerably less than the standard 8-hour workday.\(^1\) Given that judges' work time depends on the availability of lawyers, litigants, witnesses, jurors, other courtroom personnel, and others involved with the cases, how much more case-related time per day judges can productively work on a regular basis is not clear. The court may want to conduct and carefully evaluate an experiment to see whether or not increasing the average judicial workday by 1 hour is feasible. This change would add the equivalent of 54 full-time judges.

Hire at least 66 FTE temporary judicial officers for a period of two years to help clear the existing large backlog of civil cases. At the end of October 1989, a total of some 44,000 open civil cases were at issue in the Los Angeles Superior Court, including 8000 referred to arbitration. This large backlog of unresolved civil cases effectively prevents judicial officers from disposing of newly filed cases in a timely fashion. We estimate that at least 132 FTE work years are needed from temporary judicial officers to reduce the backlog of cases sufficiently to meet state time standards for disposing of civil cases.

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\(^1\)Some judges believe that the average judicial workday in 1990 is longer than it was in 1984, which is the most recent year for which data are available.
If the court is not successful in getting an increased supply of judicial services soon, ways of reducing the demand for court services may have to be considered seriously by local and state policymakers in the near future. Reducing the demand for judicial services for civil cases could be achieved either by diverting civil cases from the courts to other dispute resolution mechanisms or by reducing the types of services available once a case is filed. Cases might be diverted by raising the jurisdiction level of lower courts, increasing court fees for litigants able to pay, requiring the “loser” to pay both sides’ legal fees, changing liability laws (adopting no-fault automobile accident legislation, for example), and encouraging private arbitration, mediation, and “rent-a-judge” programs. The demand for judicial services can also be reduced without decreasing the number of filings by limiting the types of judicial services provided. For example, eliminating jury trials except in exceptional circumstances would substantially reduce the length of trials. Alternatively, the demand for civil judges’ time to process criminal cases might be eliminated by totally separating civil and criminal courts. Such options that limit demand for superior court services raise substantial questions about their impact on justice and are unacceptable to many people.

As a practical matter, long delays may already be affecting the demand for court services. With five years to trial, some potential lawsuits may never be filed because the potential litigants cannot wait or do not want to wait five years for disposition. And some litigants may file suit but settle for less than they want because they cannot or will not wait five years for trial. Thus, long delay may already constitute indirect rationing of court services.

MANAGING COURT RESOURCES MORE EFFICIENTLY

Increasing court resources could probably solve the delay problem if enough money were available to add sufficient judges. But because of the cost and current statewide budget limitations, the court is unlikely to get enough judges to remedy the problem. We believe that each of the following management policy options would contribute to reducing civil delay. However, the civil delay problem has grown too large to be solved by only adopting the productivity measures discussed below.

Active judicial management of civil cases. Previous research has shown that active case management by the court decreases delays without substantially affecting the quality of justice. The Los Angeles court should continue to experiment with and to implement methods of active judicial management of civil cases.
Although active judicial management applies to all phases of civil cases, it is especially relevant to civil trials. Only some 4 percent of all civil complaints disposed in the Los Angeles Superior Court in 1987 received their full-blown “day in court.” But far out of proportion to their small numbers, trials consume more than half of all the time judges spend on civil litigation and the majority of all civil court expenditures. With such a small percentage of cases reaching trial, there is little room for further reduction by using strategies designed to increase pretrial dispositions. However, trial length can be reduced in Los Angeles. Recent research has found that some courts are able to try similar cases in one-half to one-third the time of other courts without impairing the trials’ fairness. Courts with shorter trials for similar types of cases usually had more active judicial management of all phases of trials.

**Replace the master calendar system.** Researchers usually argue that a master calendar system minimizes judge waiting time (thereby increasing efficiency), allows the court to capitalize on the specialized judicial personnel, and is flexible enough to minimize scheduling problems. However, delay in disposing of civil cases is generally greater in master calendar courts. This increased delay may arise from the duplication of effort in master calendar courts and from judges’ lack of responsibility and accountability for a specific set of cases.

Courts with individual judge calendars for civil cases usually have substantially less delay than courts with a master calendar system. The advantages of an individual calendar system usually cited by researchers are that the judge is familiar with the case, is more likely to feel responsibility for moving the case along, and can be accountable for the case, thereby reducing delay.

Assigning cases to a small team of judges rather than to an individual judge or a master calendar appears to combine the best features of both the master and individual calendar systems. The team calendar system appears to have the advantages of judicial responsibility and accountability that can exist in the individual calendar system while it avoids the scheduling problems inherent in the individual system. The team system also allows the advantages of judicial specialization and scheduling that can exist in a master calendar system.

**Hold a single settlement conference conducted by a neutral lawyer soon after each civil case is at issue. Then hold no more than one judicial settlement conference per case, within one**

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2Court administrators now assign judges civil cases on a master calendar basis, which means that different judges will work on different phases of a case as needed when they are assigned from a master calendar of cases. The judge-team calendar system is a hybrid system in which a small team of judges is responsible for a group of cases.
month of the actual trial date. The lawyers we surveyed frequently recommended that settlement conferences be held early in a case rather than waiting until just before the first scheduled trial date (as is now the policy). Having earlier judicial settlement conferences with more cases does not appear cost-effective from the court's viewpoint because most cases now are settled without judicial help. On the other hand, from the individual case lawyer's viewpoint, earlier or multiple judicial settlement conferences represent more "free" assistance from the court. An alternative solution to using scarce judge time for the more and earlier settlement conferences many lawyers want is to have a neutral lawyer conduct a settlement conference soon after the case is at issue. If necessary, a subsequent settlement conference could still be conducted by a judge just before trial.

Other court management improvements. In addition to the reforms discussed above, other steps for increasing active judicial management include:

- Enforcing realistic time standards.
- Enforcing the court's policy of no continuance without good cause.
- Retaining the arbitration program, while enforcing stricter time limits on starting and completing the process.
- Evaluating limits on discovery volume and time.

USING DIFFERENTIAL CASE MANAGEMENT POLICY

Civil cases range from the simplest auto accident or landlord/tenant case to the most complex toxic tort or commercial litigation. Because different cases make very different demands on the civil justice system, treating them according to individual characteristics will speed their processing.

Experiment with focusing extra pretrial judicial effort on cases most likely to require trials (which consume the majority of all judicial resources) and less judicial effort on pretrial disposition of cases very unlikely to go to trial. For example, the court might decide to eliminate settlement conferences for certain types of cases that are very unlikely to go to trial and to hold more intensive settlement conferences for certain types of cases that are most likely to go to trial or to have a lengthy trial.

Only a fraction of civil cases ever reach trial. Therefore, as previous research strongly suggests, holding a mandatory settlement conference for every case is not the optimal policy. Rather, a selective settlement conference policy that does not treat every case the same should be
explored. The end-stage cases that might be part of such a “no MSC” experiment would be those least likely to go to trial. Court officials should also consider experimenting with more intensive settlement conferences for certain types of cases that statistics show are most likely to go to trial or to result in lengthy trials.

**Experiment with different time standards tailored to the type of civil case.** These should include both the time to disposition and to completion for various events in a case’s life. Deadlines for certain case events are currently undergoing experimental testing in Los Angeles; this is a desirable method of fine-tuning the specific time standards for various types of events. The court should consider whether the deadlines for these case events should be tailored to different types of cases.

**Give priority in scheduling trials to cases with shorter estimated trial lengths.** The court might categorize cases into “one-day,” “two-to-five-day,” “six-to-ten-day,” and “long” trial categories, for example. In addition to reducing delay by lowering the number of cases awaiting trial, this technique might reduce the average trial length if lawyers and litigants opt for an earlier shorter trial rather than a later longer trial. Research on waiting lines shows that the order in which cases are tried can strongly influence the average amount of time all tried cases combined must wait. If cases are assigned priorities so that those requiring the shortest trial are scheduled first, the overall average wait for all tried cases combined will be minimized. A maximum time to reach trial could be established to prevent longer cases from having to wait excessively. Just by changing the order in which cases are tried—without doing any more judicial work—the average delay for civil cases is reducible.

**IMPROVING COURT MANAGEMENT POLICY**

Court management and administration are critical to a delay-reduction program’s success. Courts with shorter delay often possess certain management characteristics that courts with longer delay often do not—characteristics that logically should be associated with reduced delay. These characteristics include the strength of court management, thorough information-keeping practices, and judicial accountability.

**Strengthen court management and lengthen presiding officers’ terms of office.** The court should consider electing the presiding judge and executive committee every two years instead of yearly and extending the presiding judge’s maximum term from two years to four or eight years to improve continuity. Principal criteria for
selecting the presiding judge should include court management skills and commitment to reducing delay.

Recent research on other urban courts has found that the absence of strong court leadership was frequently cited by practitioners in the slower courts as a prime reason for delay. Very often, the leadership problems derived from the chief judge’s “traditional” nonassertive role. Historically, in the Los Angeles Superior Court, the chief judgeship has been an essentially honorific rotating post with little real management authority and responsibility. The lack of strong centralized leadership and the frequent rotation of presiding judges has disrupted continuity on the court, hindering its ability to combat the long-term problem of delay.

**Improve management information.** The court should install improved computerized information systems to monitor case progress and workloads. Detailed case information will help the court tell when individual cases are not progressing as they should be. Detailed court information assists in assessing the effectiveness of policies and in pinpointing bottlenecks. The Los Angeles Superior Court recognizes this need and is working to fill it. The new information system being designed by the court for implementation in 1992 or 1993 should remedy much of the lack of case and court management information.

**CONCLUSION**

Delay in the disposition of civil cases in the Los Angeles Superior Court is a severe problem. Litigants who want jury trials now must typically wait five years from the time they file their cases for the trials to begin.

The major cause of delay in the Los Angeles Superior Court is the large imbalance between the supply of judges and the demand for court services. Without taking major steps toward rectifying that imbalance, all other delay-reduction efforts (including the experimental fast-track program) will fail to solve the problem. Therefore, the Los Angeles Superior Court must receive a substantial increase in its judicial work force.

Although such an addition of judges must be the first priority in combating delay, the cost of adding judges may result in fewer new judges than are necessary to solve the delay problem. Thus, the court must attack the delay problem from all sides—by adding as many judges as possible and by improving efficiency. The court can further reduce delay by increasing productivity—by improving court management and the judicial management of civil cases and by experimenting both with different procedures and time standards for processing
different types of civil cases and with increasing the court workday. The policy options we suggest have worked in other courts and should work in Los Angeles. However, the delay problem developed over many years and cannot be expected to disappear quickly. If implemented, the new policies need time to work. But if something major is not done soon, the Los Angeles Superior Court and civil litigants will face even greater delays and potential gridlock in the civil justice system.
Acknowledgments

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Contents

FOREWORD ........................................ iii
EXECUTIVE SUMMARY .......................... v
ACKNOWLEDGMENTS ............................ xvii
FIGURES ........................................ xxiii
TABLES ........................................... xxv

Section

I. SCOPE AND OVERVIEW OF THE STUDY ...... 1
   Research Questions ............................ 3
   Data Sources .................................. 5
   Structure of the Report ....................... 7

II. THE PROBLEM OF CIVIL CASE DELAY IN
    LOS ANGELES AND THE COURT'S
    RESPONSES TO DELAY ....................... 8
    What Is Delay? ............................... 8
    How Long Does Disposing of Civil Cases Take
    in Los Angeles? .............................. 9
    How Does Los Angeles Civil Case Delay Compare to
    Delay in Other Courts? ..................... 13
    The Los Angeles Superior Court’s Past Responses to
    Delay ....................................... 14
    Current Responses to Delay ................ 18

III. FLOW OF CIVIL CASES AND GOVERNMENT
    COSTS ........................................ 20
    The Court System ............................ 20
    Civil Complaints ............................ 21
    Civil Petitions ............................. 31
Using Different Time Standards for Different
Types of Cases ........................................... 107
Scheduling Shorter Trials Earlier Than Longer
Trials ...................................................... 107

IX. IMPROVING COURT MANAGEMENT POLICY .... 109
    Strengthening Court Management ................. 109
    Implementing an Improved Case Management
    Information System ................................. 110
    Implementing an Improved Court Management
    Information System ............................... 112

X. CONCLUSION ........................................... 115
Figures

2.1. Distribution of time to disposition of civil complaints in Los Angeles ........................................ 10
2.2. Median time to jury trial of civil cases in Los Angeles .... 11
2.3. Cases awaiting trial in the Los Angeles Superior Court .... 13
3.1. Flow of all civil complaints cases: Percentage at each stage and method of disposition ................. 22
3.2. Time for all civil complaints cases to reach each stage and disposition ........................................ 28
4.1. Filings and dispositions per authorized judicial officer, 1970–1989 .................................................. 37
4.2. Case-related judge minutes per case filed: All types of cases .......................................................... 43
4.3. Case-related judge minutes per case filed: Noncivil cases . 44
4.4. Case-related judge minutes per case filed: Civil cases .... 46
4.5. Judicial officers needed and shortage in 1989 ............... 51
4.6. Median time to civil jury trial compared with shortage of civil judicial officers ............................. 54
## Tables

2.1. Time from filing to disposition of all civil cases in the Los Angeles Superior Court ............................................. 10

3.1. Percentage of closed civil cases at each stage, by type of case ........................................................................... 23

3.2. Disposition method of closed civil cases, by type of case .................................................................................... 27

3.3. Average months for closed civil cases to reach each stage and disposition, by type of case ................................. 30

4.1. Average case-related judicial work minutes per case filed: Comparison among all types of cases in the Los Angeles Superior Court (1971–1984) ........................................... 41

4.2. Average case-related judicial work minutes per case filed: Comparison among different types of civil cases in the Los Angeles Superior Court (1971–1984) ........................................... 42

4.3. Comparison of FTE judicial officers authorized, available, and needed to dispose of all new case filings in the Los Angeles Superior Court (1970–1991) ...................................................... 53
I. SCOPE AND OVERVIEW OF THE STUDY

We are really approaching gridlock. It's going to be a disaster if something isn't done.¹

Drug-related cases are swamping the courts.... The system has begun to take on so much water we are close to foundering. Too often, civil cases get drowned.²

One decade into its second century, the Los Angeles Superior Court is at a crossroads, facing possible gridlock. Civil delay has risen substantially throughout the past 40 years, despite temporary dips. Consequently, civil litigants who want jury trials must now wait an average of five years from the time they file their cases for those trials to begin. This extreme situation recently prompted the court's executive officer to label civil delay as “the tragedy of the '80s.”³ Civil case delay in Los Angeles is much worse than in most other state trial courts and much worse than generally accepted standards for how long case resolution should take.

We believe that the long wait to trial has caused a profound crisis for the Los Angeles Superior Court—one that impedes civil litigants' access to justice. Waiting years to resolve a dispute is inherently a denial of justice. Moreover, the extreme delay that currently prevails may cause litigants to suffer financially and in other ways. Evidence may deteriorate, memories may fade, and the costs of litigation may increase. Frustrated litigants may accept a settlement rather than endure the wait for an open courtroom; worse still, they may lose faith entirely in the public justice system's ability to resolve their disputes.

In fact, some recent evidence for such disenchantment exists. The trial rate in the Los Angeles Superior Court—the percentage of litigants who take their cases all the way to trial rather than settle or dismiss their claims—has dropped in recent years. At present, the Los Angeles trial rate is lower than that in many other state trial courts or in the federal courts. This low rate is not surprising in light of the

court's aggressive efforts to dispose of civil cases through settlement and arbitration and in light of recent increases in the number of disputes taken outside the court system to so-called private judges for resolution.

Even for cases that stay in the civil trial line, concerns about due process remain. The Los Angeles Superior Court has taken aggressive steps in recent years to manage both individual cases and the overall civil caseload more actively in an attempt to reduce delay.\(^4\) In part because of these efforts, the amount of judge time devoted to individual civil cases is now half what it was in the mid-1970s. Although this drop may mean that in the past judges have spent too much time on civil cases, it may also mean that the volume of pending cases is so great that judges are rushing through hearings, trials, and settlement conferences—that they may now be spending too little time on each case.

Moreover, civil delay may remain a problem of major proportions for the Los Angeles Superior Court well into the 1990s. The statutory priority accorded criminal defendants in scheduling trials, combined with burgeoning criminal caseloads (especially drug caseloads),\(^5\) will mean continued long delays for civil litigants if something major does not happen soon. In addition, since the 1950s, study after study has focused on the problem of civil delay in the Los Angeles Superior Court; the recommendations of these many fact-finding committees, blue-ribbon commissions, and independent consultants have been remarkably consistent. These recommendations, however, have been discounted by state and local policymakers almost as consistently. Nearly every panel that has examined the civil delay problem in Los Angeles has found the court significantly understaffed and has recommended adding a large number of new judges. The court's size has grown steadily, but the number of judges added has generally been much lower than the number the court estimated it needed to reduce delay appreciably.\(^6\) Since 1950, the court has never received more than 25 new judges at one time; the median increase was 12 new judges.

\(^4\)For a discussion of current efforts to reduce delay, see Sec. II. For a review of past efforts, see Molly Selvin and Patricia A. Ebener, Managing the Unmanageable: A History of Civil Delay in the Los Angeles Superior Court, The RAND Corporation, R-3165-ICJ, 1984.


\(^6\)In 1970, for example, the court, with the endorsement of the Board of Supervisors, requested 27 new judges; the Judicial Council scaled this request down to 21, and the legislature approved the addition of 15. See Selvin and Ebener, Managing the Unmanageable, p. 72.
Although these additions have by no means been insignificant, their size has been dictated as much by political considerations as by the court’s needs. Consequently, the court has often been severely understaffed. Similarly, several commissions have recommended that the court significantly increase the pace of civil litigation by automating its case management system. Yet though other, smaller state courts (and the federal courts) have done so, the Los Angeles Superior Court's large size, its geographical dispersion, and its voluminous caseload, as well as the extraordinary costs of automating such a large and far-flung system, have acted as powerful obstacles to automation. Moreover, as the court has continued to grow, these obstacles have loomed ever larger.

Although the Los Angeles Superior Court has long been concerned about rising civil delay and has actively tried to reduce it, the current extreme situation in Los Angeles calls for an even bolder response. The court, as well as the agencies responsible for overseeing its operation and funding (including the state legislature, the Judicial Council of California, and the Board of Supervisors), must adopt a much stronger and more sustained plan of action than has been adopted previously. This report should assist the court and these agencies in developing such a bold response by outlining the extent and nature of the current civil delay problem, analyzing the causes of that delay, and developing a set of strategies for reducing the time to case disposition. Although some strategies we outline in this report may be viewed by state and local policymakers as politically infeasible, we believe that significant and permanent reductions in civil delay will not occur if only modest steps are taken.

RESEARCH QUESTIONS

This study focuses primarily on civil cases: personal injury, death, and property damage (PI/PD) cases; eminent domain cases; contract, property, and other civil complaints cases; civil petitions; and appeals of small claims and other civil cases from lower courts. Other types of cases that are not the focus of this study (except to the extent that they affect civil case disposition times) are criminal, juvenile, family law, probate, mental health, and habeas corpus cases.

We focus primarily on the Los Angeles Superior Court, although we present comparative information from many other courts in California and the nation throughout this report. Each of the 58 counties in California has a superior court. The Los Angeles Superior Court is the largest, with 293 judicial officers in 1989 (more than a third of the total
in the entire state). The superior courts handle probate, juvenile, and family law cases. In addition, they have trial jurisdiction over all felony cases, as well as over all civil matters above the $25,000 jurisdiction of municipal and justice courts. Superior courts also handle civil cases asking for special nonmonetary relief—such as injunctions—and hear appeals from the limited jurisdiction municipal and justice courts. The workload is heavy, comprising some 1000 new cases per year per superior court judicial officer in Los Angeles (not counting the five-year backlog of cases). Superior court judges serve six-year terms and are elected by county voters in a nonpartisan general election; vacancies are filled by the governor.

Our research findings apply primarily to the delay problem in Los Angeles. But many trial courts, in California and in other states, are grappling with burgeoning civil caseloads and lengthening times to disposition. Hence, to the extent that similarities exist in the way cases are processed, in caseload composition, in causes of delay, and in the courts' organization and operation, our methodology and findings may have wider applicability to other courts.

We addressed the following research questions:

- **What is the nature and extent of the civil case delay problem in the Los Angeles Superior Court?** We investigated how the court processes civil cases in practice and how long various types of cases take to progress through different stages.

- **What are the causes of civil case delay?** Many factors have been cited by other researchers and commentators as potential causes of delay, usually without much supporting data; various solutions have been touted, usually without much evidence in their support. We analyze several different possible causes of delay and group them into three major categories: a demand for court services exceeding the supply, less than fully efficient court and case management, and delaying behavior by litigants and lawyers.

- **What are the pros and cons of potential solutions to the delay problem?** To the extent possible using available data, we evaluate the effectiveness and cost of various strategies for reducing civil case delay. With respect to an imbalance between supply and demand for court services as a cause of

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delay, we consider options for increasing the supply of judicial services and reducing the demand. In analyzing court and case management and litigant/lawyer behavior as causes of delay, we note that the same policy options often affect both court behavior and litigant/lawyer behavior. In considering the various stages of litigation, we analyze options for revising and improving motion and discovery practice, arbitration, settlement conferences, and trials. In evaluating overall court and case management, we consider options for revising and improving calendaring, case management, continuances, time standards, differentiated case processing, and court management.

DATA SOURCES

We used research results from other courts and all available data from the Los Angeles Superior Court; we also conducted special surveys in Los Angeles to generate new information to help fill in some major data gaps. We relied on six different sources of information: our own interviews and statistical data collected by the Los Angeles Superior Court,\(^9\) previous studies of other courts, a survey of jury verdict reporter data for 2500 trials in Los Angeles,\(^10\) Judicial Council surveys of how all Los Angeles judges spend their work time,\(^11\) a new

---

\(^9\)We interviewed several dozen judges, court administrators, and plaintiffs and defense attorneys who practice frequently in the Los Angeles Superior Court. We also personally observed each type of court activity, both in court and in chambers, to get a better idea of how the court functions in practice.


\(^11\)Between 1971 and 1984, the Judicial Council conducted five different surveys in which every Los Angeles Superior Court judge and commissioner was asked to report how much time he or she spent working each day and how much of that time was spent on various types of cases during a period of several weeks. The “case-weight” survey data also indicate how much time judges spent on trials and on each type of non-case-related activity. We used both the detailed data submitted by judicial officers in Los Angeles in 1984 and the published information for all judicial officers in California combined.
RAND survey of the civil Register of Actions for 1000 cases,\textsuperscript{12} and a new RAND survey of judges and more than 1000 lawyers for some 500 cases that reached the end stage (mandatory settlement conference [MSC]) in the Los Angeles Superior Court.\textsuperscript{13}

Our study is unique in its use of a wealth of empirical data combined in new ways. Each data source alone is unable to illuminate the delay problem. Together, however, they provide a better understanding of the causes of delay and of the potential viability of alternative court-delay reduction policies.

Many previous studies have been based on "logic" as to what might happen to the delay problem if the court were to adopt one policy option or another. Studies that rely on empirical data generally use "macro-" or court-level data. The detailed case-level data we collected and analyzed allowed us to examine the process of civil case management and disposition—and the likely impact of various policy changes—at a more detailed level than that in previous studies.\textsuperscript{14} We believe that this methodology and approach hold promise for other courts facing rising or intractable civil delay.

\textsuperscript{12}For details, see App. B in Technical Appendixes. We surveyed a random sample of some 1000 civil cases filed in 1980–1982 in all districts of the Los Angeles Superior Court. We did not select cases filed later than 1982 because many of them were not yet disposed at the time of our data collection in 1988. The principal types of new information we obtained from the Register of Actions Survey that were not available from any other sources include time to disposition for all civil cases combined, not just those that require trial (the court does not collect this information); much better information on stage of closure than is available from court statistics; much better information on court involvement at various stages for different types of cases; and a "flow diagram" that indicates what happens when to various types of cases. The new survey data fill a large gap in knowledge for cases that close before the mandatory settlement conference (the great majority of cases).

\textsuperscript{13}For details, see App. C in Technical Appendixes. We surveyed 553 civil cases that had mandatory settlement conferences in 1984 and 1985. The survey included every initial mandatory settlement conference during a six-week period in three of the Los Angeles Superior Court's largest districts: central, southwest, and west. We used three different sets of participants in the litigation process as sources of data for these end-stage cases: the mandatory settlement conference judge, the lawyers for each party in the litigation, and the court clerk, who also retrieved information from the official court file for the case.

\textsuperscript{14}However, our efforts are insufficient to answer all the relevant policy questions. For example, data limitations prevented us from undertaking multivariate statistical modeling using alternative court policy factors potentially related to civil case delay. Although we had extensive data on the Los Angeles Superior Court, we had insufficient comparable data from other jurisdictions with different policies; we did not have good data even for Los Angeles on some critical factors that should influence delay (such as the characteristics of lawyers' caseloads or the incentives judges have in making case management decisions). A review by Luskin of data availability and theoretical multivariate modeling considerations concluded: "We want to know the size of the effects of variables and to be able to make causal statements about case processing time, but thus far the models, data and methods have been largely inadequate." See M. L. Luskin, "Building a Theory of Case Processing Time," \textit{Judicature}, Vol. 65, No. 3, September 1978, pp. 115–127.
STRUCTURE OF THE REPORT

Used in combination, these new empirical data allow us to make a unique contribution to the understanding and reduction of delay in the Los Angeles Superior Court. We address our three broad research questions about the delay problem and its causes and solutions in order.

The first half of this report discusses the delay problem and its causes. In Sec. II, we discuss the nature and extent of the Los Angeles Superior Court civil case delay problem and the court's attempts to solve the problem. In Sec. III, we provide some basic information about how civil cases flow through the court system in practice, how long various types of cases take to reach various stages in their lives, and how much operating the court costs. And in Sec. IV, we analyze various potential causes of delay in civil case disposition.

The last half of the report discusses the pros and cons of potential solutions to the delay problem in Los Angeles. In Sec. V, we summarize different types of policy options and review the delay-reduction policy research literature. In Sec. VI, we discuss increasing the supply of judicial resources. Section VII discusses strengthening case management policy; Sec. VIII, using differential case management policy; and Sec. IX, improving court management policy. We summarize our conclusions in Sec. X.

Our separate RAND Note, Strategies for Reducing Civil Case Delay in the Los Angeles Superior Court: Technical Appendixes, presents more detailed analyses and much additional new data collected by RAND researchers from surveys of lawyers, judges, the Register of Actions, cases that reached the MSC stage, and cases that were tried.
II. THE PROBLEM OF CIVIL CASE DELAY IN
LOS ANGELES AND THE COURT’S
RESPONSES TO DELAY

Civil delay is not a new problem in the Los Angeles Superior Court or in many other trial courts across the nation. Nor are the solutions that have been implemented by the court to mitigate the problem new. This section briefly reviews the evidence about the civil case delay in Los Angeles—and what the court is doing about it.

WHAT IS DELAY?

The goal for time to civil case disposition that has been adopted by national organizations of judges and attorneys, the state of California, and the Los Angeles Superior Court is that all civil cases should be disposed within two years of filing. We discuss details of that goal below.

In a general sense, delay is time spent before case disposition that is not necessary for case development and processing. But this general definition of delay immediately raises the question of what portion of the time to civil case disposition is necessary for case development and court processing and what portion is simply delay.

The amount of time necessary for a civil case obviously depends on the case and involves subjective judgment. But both lawyers and judges generally agree that two years constitutes an upper limit; with rare exceptions, any case that takes longer than two years is delayed.1 In 1984, the National Conference of State Trial Judges set forth standards for timely disposition of civil cases. The American Bar Association’s (ABA’s) House of Delegates then adopted these time standards in August 1984. The standards specify that 90 percent of all civil cases should be settled, tried, or otherwise concluded within 12 months of the date of case filing; 98 percent, within 18 months; and the remainder, within 24 months (except for individual cases in which the court determines that exceptional circumstances exist and for which a continuing review should occur).2

1See Sec. V.

2National Conference of State Trial Judges, Committee on Court Delay Reduction, Standards Relating to Court Delay Reduction, American Bar Association, Chicago, Ill., 1984, p. 11.
California adopted that two-year national goal effective January 1, 1991, as did the Los Angeles Superior Court.\(^3\) Although the courts have adopted the two-year goal, several alternative ways of defining and measuring delay exist,\(^4\) such as the size of the case backlog, the time from trial readiness to trial, and the time standards we noted above. In our view, each of these concepts sheds a different light on the overall delay problem; hence, we present available data on various case processing times in this report.

**HOW LONG DOES DISPOSING OF CIVIL CASES TAKE IN LOS ANGELES?**

The average time from filing to disposition of a civil complaint filed in 1980–1982 was 2.3 years; the median, 2 years\(^5\) (half the cases were disposed within 24 months and half took longer). The distribution of time from filing to disposition for civil complaints filed in 1980–1982 appears in Fig. 2.1; in Table 2.1, this distribution is compared with the goal.\(^6\)

Only about a fourth of the cases are disposed in 1 year, not the 90 percent called for by the goal. In Los Angeles, disposing of 90 percent of civil complaints takes approximately 5 years. And disposing of all civil complaints takes some 7 years, not the 2 years the time goal specifies. Cases that take the longest time to disposition usually require a jury trial.

For all Los Angeles Superior Court general civil cases closed in 1987, the distribution of time to disposition was very similar to what we found for cases filed in 1980–1982. The median was 3.1 years, disposing of 90 percent of the cases took 4.5 years, and 2 percent took 6 years or longer.\(^7\)

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\(^3\)However, California has adopted a three-year time period as an interim goal effective January 1, 1990, because of the current level of delay in Los Angeles and several other California courts (Judicial Council of California, 1989 Annual Report, Vol. 1, p. 1).


\(^5\)Based on the RAND Register of Actions Survey data presented in Sec. III of this report, for cases filed in all Los Angeles Superior Court districts in 1980–1982. Complaints are personal injury, death, and property damage cases; eminent domain cases; and other civil actions such as contract, real property, and commercial cases. The data include cases disposed at all stages of litigation, those that were filed and settled before being answered, and those that went through trial before disposition.

\(^6\)For details, see App. A in *Technical Appendices*.

Fig. 2.1—Distribution of time to disposition of civil complaints in Los Angeles

Table 2.1

TIME FROM FILING TO DISPOSITION OF ALL CIVIL CASES IN THE LOS ANGELES SUPERIOR COURT

<table>
<thead>
<tr>
<th>Percentage of Cases</th>
<th>Goal (Years)</th>
<th>Los Angeles Superior Court(^a) (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>(b)</td>
<td>0.8</td>
</tr>
<tr>
<td>50</td>
<td>(b)</td>
<td>2.0</td>
</tr>
<tr>
<td>90</td>
<td>1.0</td>
<td>4.8</td>
</tr>
<tr>
<td>98</td>
<td>1.5</td>
<td>6.0</td>
</tr>
<tr>
<td>100</td>
<td>2.0</td>
<td>7.4</td>
</tr>
</tbody>
</table>

\(^a\)SOURCE: RAND Register of Actions Survey.

\(^b\)Goal not specified for disposition.
A previous Institute for Civil Justice (ICJ) report analyzed civil delay and congestion in the Los Angeles Superior Court between its founding in 1880 and 1981. In the past, the court did not keep statistics of the time from filing to disposition of all cases, but we do know that since the end of World War II, the time from filing to trial has increased steadily, from 6 months in 1946 to approximately 5 years in 1989.

Two measures of the pace of civil litigation in Los Angeles for which we have historical data appear in Fig. 2.2. One measure is the time from filing of the at-issue memorandum through jury trial; the other, the time from filing through jury trial. The at-issue memorandum filing is the point at which the court begins to schedule trials. The time from filing to disposition is a better measure of the overall pace of

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Fig. 2.2—Median time to jury trial of civil cases in Los Angeles

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8Selvin and Ebener, Managing the Unmanageable.
9For details, see App. A in Technical Appendices.
litigation because it measures the pace from the start of litigation rather than from some midpoint during the case the lawyers filing a memorandum determine. The memorandum is supposed to be filed when the case is at issue and ready for the court’s attention. In practice, lawyers sometimes file the memorandum before they normally would in order to get a place in line for a trial date they know will be years in the future. Or, lawyers may delay filing the memorandum because they know the court is working primarily on five-year-old cases and they see no point in filing the memorandum until they are nearer the time when the court can work on their case. The time from at issue to disposition does not show the same trend as the time from filing to disposition because lawyers’ behavior with respect to when the at-issue memo is filed has been changing, perhaps because of ongoing court experimentation with active judicial case management.

These trends show that Los Angeles’s reputation as one of the most delayed courts in the United States is justified. The median time from filing to jury trial in the Los Angeles Superior Court was two to three years in the early 1970s but in recent years has nearly doubled to five years. Because reaching jury trial currently takes five years, the time from the start of a civil dispute to jury trial is nearly six years (because the average lawsuit requiring trial isn’t filed until nearly a year after the dispute starts).\(^1\)

Civil petitions and small-claims appeals require much less judge time and are disposed much faster than civil complaints. The median time from filing to disposition of a civil petition was one month; the median time to disposition of a small-claims appeal was two months.\(^2\)

The backlog of at-issue civil cases awaiting trial was more than 30,000 in 1989 (see Fig. 2.3).\(^3\) Inspection of the figure immediately shows one problem inherent in using data on the backlog of cases—namely, that the backlog may contain cases that have been disposed of privately but that are technically still open on the court docket because no one notified the court of the disposition. The dramatic drop in the Los Angeles Superior Court civil backlog in the early 1980s resulted from cleaning dead cases out of the backlog, not from any significant increase in court productivity. The court is currently attempting to clean all such dead cases from its active case list.

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1\(^{1}\)See App. D in Technical Appendixes.
2\(^{2}\)Based on the RAND Register of Actions Survey data presented in Sec. III of this report, for cases filed in 1980–1982.
3\(^{3}\)These are open cases for which an at-issue memorandum has been filed by the lawyers. Discussion of the at-issue memorandum appears in Sec. III. For details on the backlog, see App. A in Technical Appendixes.
HOW DOES LOS ANGELES CIVIL CASE DELAY COMPARE TO DELAY IN OTHER COURTS?

California Delay

Compared to 14 other California superior courts with at least 11 judicial officers, Los Angeles had the second-longest median time from the at-issue memo to civil trial in June 1988—26 months. By October 1989 (the latest month available at this writing), the Los Angeles median had risen to 33 months. Historically the state has not collected data on the time from filing to trial or on the time from filing to disposition.¹⁴

National Delay

In comparison with 25 large urban courts in the United States in 1987, Los Angeles was one of the worst. The other large urban courts had a median time to disposition of civil cases that ranged from 0.5 years to 3 years, while the comparable median in Los Angeles was longer—3.1 years in 1987. The other large urban courts had time to disposition of 90 percent of their civil cases ranging from 1.4 years to 5.9 years, while the Los Angeles court took 4.5 years. Only 2 courts took longer than Los Angeles to dispose of 90 percent of their civil cases.15

A 1987 national survey of 800 state trial judges who spend at least half their time on general civil cases16 found that the average time from filing to disposition before trial for a “typical civil damage suit”17 was 12 months in state courts (with a median of 11 months) and that only 6 percent of the judges reported an average of more than 24 months. The average time from filing to trial for a “typical civil damage suit” was 18 months in state courts, with a median of 13 months, and only 15 percent of the judges reported an average of more than 24 months.18 Again, we see from this judge survey that Los Angeles has one of the worst civil case delay problems in the United States.

THE LOS ANGELES SUPERIOR COURT’S PAST RESPONSES TO DELAY

The Los Angeles Superior Court by no means ignored the dramatic fluctuations and increases in civil delay we described. On the contrary, the court has been concerned about the problem and has actively tried to reduce its backlog and time to trial since the early 20th century.19 We can divide the myriad solutions into two broad categories: the addition of temporary or permanent judicial officers, and the imposi-

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16 Humphrey Taylor and Michael Kagay, Judges’ Opinions on Procedural Issues, Louis Harris and Associates, Inc., Study 874017, April 1988. The study excluded judges who spend more than half their time on criminal, family, probate, admiralty, tax, customs, bankruptcy, or small-claims cases.

17 Defined in that survey as “personal injury, property damage, and contract suits for money damages.”

18 Data self-reported by judges are sometimes based on court statistics and are sometimes personal estimates that are less reliable than court statistics.

19 For details, see Selvin and Ebener, Managing the Unmanageable.
tion of new rules or restrictions on lawyers, litigants, and judges to speed the litigation process.

**Adding Judges: The Early Solution of Choice**

As of the early 20th century, the court’s leadership believed that adding temporary and permanent judicial manpower, perhaps more than any other individual innovation, would reduce or contain civil delay in Los Angeles. We discuss the growth in judicial officers over the past two decades in Sec. IV.

The court consistently campaigned for additions to its permanent judicial staff but did not always acquire as many new permanent judges as frequently as needed and desired. The number of new permanent judges the court received was often lower than the number of additions the court and Judicial Council estimated was necessary.

What impact did these infusions of temporary and permanent judicial staff have on time to trial in Los Angeles? Significantly, during the early to mid-20th century, these additional resources seemed to contribute to short-term, sometimes dramatic reductions in time to trial. More recently, however, short-term reductions have not always occurred following the addition of judicial resources, and overall, these additions have been insufficient to prevent long-term growth in civil cases’ time to trial.

**Procedural and Rule Changes: The Search for Greater Efficiency**

The court itself, the Judicial Council, and many local attorneys also recognized that the number of new judges provided would not in and of itself solve the civil delay problem. Consequently, as of the early 20th century, the court instituted several procedures or rules designed to speed the disposition of civil litigation. As with the recruitment of temporary and permanent judges, the court’s efforts to introduce procedural changes were episodic and concentrated during periods of rapidly rising delay.

Some innovations focused on the entire civil caseload; they were designed to speed the processing of all civil cases, to reduce the length of trial for all cases that went to trial, or to settle cases before trial. These procedures include alterations in the court’s calendaring system, restrictions on continuances, and the imposition of mandatory pretrial and settlement conferences. The superior court also devised several innovations directed at specific types of cases on the civil docket. The court instituted various personal injury panels, induced or mandated
arbitration for certain types of disputes, and pushed for increases in the municipal court's jurisdiction. These efforts were to divert or remove the lower-value cases from its docket and induce litigants to waive a jury trial or to waive trial entirely.

Although we will consider the implementation and impact of these individual innovations more closely in subsequent sections of this report, our previous research indicates that, in general, the procedural reforms implemented failed to effect a long-term, significant reduction in delay.

Why Has Delay Persisted in Los Angeles?

Although the Los Angeles Superior Court was undeniably concerned about delay and actively sought ways to alleviate the problem, the court's efforts to reduce delay have been consistently hampered by several long-standing political, institutional, and financial constraints.

First, like most courts, the Los Angeles Superior Court generally did not recognize and respond to the long-term nature of its delay problem. In most instances, the court expressed alarm over the growth of its civil backlog or time to trial in relation to what those measures had been a few years earlier. This short-term view tended to obscure the problem's long-term, persistent nature, perhaps magnifying the importance of year-to-year increases or drops in delay and generating a cyclical or episodic pattern of response by the court. In the history of this court (and, we suspect, of many other courts), the extent to which a procedure (such as restriction of continuances) has come into use, then disappeared, then been revived again at some later date is striking. This may result from a lack of institutional memory because the court leadership changes regularly.

Nearly all solutions to increases in time to trial, whether they involved adding new judges to the court or instituting procedural reforms, required additional funds and diverted judges from their traditional duties of trying cases. The court's and the Judicial Council's success or failure in acquiring and retaining such funds also directly affected their delay-reduction efforts.

Because of the Los Angeles Superior Court's large size (accounting for approximately a third of all superior court judges in the state) and persistent delay problems, it has received special attention over the years from the Judicial Council, legislature, and governor in the form of additional judges and funds for new programs. Perhaps because of this special attention, during periods of economic stringency the court's requests for additional manpower or funds to sustain the operation of existing programs have sometimes been received less enthusiastically than have those from other California superior courts.
The court is in a similar position with regard to the County Board of Supervisors, where it is just one agency among many the board partially funds and supervises. Until 1959, the county paid half of each permanent judge's salary and some expenses for temporary judges on loan to the superior court. A 1959 agreement limited the county's share of each new judge's future salary increases. Despite this agreement, however, the board has often been reluctant to endorse court requests for additional judges because of the fiscal impact on the county.

The superior court also had difficulty reducing delay because interest in court reform in Los Angeles—the degree to which the local bar, court, Board of Supervisors, and Judicial Council were mobilized to combat delay—ebbed and flowed over time. In general, these fluctuations followed variations in the time to trial. Moreover, both the interest of individual presiding judges and individual Judicial Council leaders in the delay problem and the extent of cooperation the court received from the bar and the county supervisors determined not only which procedures or solutions the court implemented, but also how they were implemented and how long each endured.

The court's size, geographical dispersion, and organization have also limited its ability to combat delay effectively. It is the largest trial court in the country, dispersed across ten suburban branches and a central division courthouse. Superior court judges often rotate every few years, both through different departments and different branches. Moreover, the presiding judge, elected by court peers, has historically had a short, rotating tenure in Los Angeles. In addition, the Los Angeles Superior Court (like most metropolitan trial courts) has historically had difficulty effectively analyzing the nature of its civil delay problem or the impact of the solutions it implemented to mitigate delay.

Each of these constraints limited or mitigated the superior court's response to delay by narrowing the range of procedural or manpower solutions from which the court could choose, by affecting the way in which a particular reform was implemented, and by often acting to limit the life of some reforms. The court has long been sensitive to the impact of state and county fiscal concerns on requests for additional judges or funds to institute new procedural reforms. Moreover, the court has been increasingly cognizant of the local organized bar's preferences on rules and procedures issues that might affect civil delay.
CURRENT RESPONSES TO DELAY

Given the recent increases in civil case delay to historically high levels, both the state and the Los Angeles Superior Court have mounted several efforts. We discuss these efforts below.

California’s Trial Court Delay Reduction Act

The California legislature, responding to delay in Los Angeles and elsewhere in the state, passed the Trial Court Delay Reduction Act in 1986.\(^{20}\) This act’s purpose is to reduce, for all types of criminal and civil cases, the time from case filing to resolution; it mandates statewide standards for the timely disposition of cases and three-year pilot programs in nine large counties to test ways of reducing litigation delays.\(^{21}\)

In Los Angeles, 25 civil judges in the central district are participating in the pilot “fast-track” program mandated by the Trial Court Delay Reduction Act of 1986. They are handling odd-numbered general civil cases for all purposes using an individual judge calendar system, time standards, limited continuances, and active judicial management of the cases, while other judges not in the pilot program handle even-numbered cases under the master calendar system without judicial case management.\(^{22}\)

Other Current Responses to Civil Case Delay

In addition to the experimental use of individual calendaring, active judicial management of cases, and time standards resulting from the Trial Court Delay Reduction Act, several other efforts are under way:

- The Los Angeles Superior Court and the Judicial Council are seeking additional permanent judges;
- Retired judges are being hired by the court temporarily to try delayed civil cases;
- Cases have been transferred by the court among its districts to help equalize delay throughout the county;
- Volunteer lawyers are conducting settlement conferences under court auspices to speed the disposition of civil cases;

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\(^{20}\)Assembly Bill 3300, Statutes of 1986, Chap. 1335; California Government Code, Sec. 69600 et seq.


• Discovery reforms and limitations effective statewide in 1987 are being implemented by the court locally;\textsuperscript{23}

• The five-year wait for trial has prompted the Los Angeles County Bar Association to file suit against state officials and others alleging that the failure to provide an adequate number of judges and courtrooms denies citizens "meaningful" access to the superior court in Los Angeles, in violation of the U.S. Constitution and the state legislature's mandates;\textsuperscript{24}

• The Los Angeles Superior Court has considered overcoming the lack of adequate funding and facilities by invoking its inherent judicial power under the Constitution to secure needed resources independently.\textsuperscript{25}

In sum, the court has done and is doing many things to prevent and mitigate delay. But these efforts have been insufficient to stem the tide. Still, without the past and present efforts, the problem of civil case delay would undoubtedly be worse than it is today, although we cannot say how much worse. The superior court's attempts to reduce delay have been hampered by financial constraints and by its episodic approach to this long-term problem.

In Secs. III and IV, we take a detailed look at how cases are processed through the Los Angeles Superior Court in practice and analyze the causes of civil case delay. These sections set the stage for the discussion of alternative delay-reduction policies in the last half of this report.

\textsuperscript{23}See California Code of Civil Procedure, Secs. 2016-2036. Also see Sec. VII of this report for a discussion of those discovery reforms and limitations.


III. FLOW OF CIVIL CASES AND GOVERNMENT COSTS

THE COURT SYSTEM

To understand better the nature of civil case delay, its causes, and the efficacy of potential solutions, we need to understand better how cases move through the Los Angeles Superior Court system and how the government costs and judicial time per case spent in court activities vary with the type of case. This means we must understand better how the court system actually works in practice, not just what the rules and procedures say should happen. We collected new information on the flow of cases from interviews with judges and lawyers and from a RAND survey of the Register of Actions for a random sample of cases filed in 1980–1982.¹

The priorities assigned to various types of cases are: first priority to criminal cases (because of the right to a speedy trial for criminal defendants in California); second priority to juvenile, family, probate, and mental health cases; and last priority to other civil cases. On a daily basis, if a criminal case needs a judge to meet the speedy-trial deadline, the court will preempt a civil case.

The assignment of civil cases to judges occurs primarily on a master calendar basis, which means that different judges will work on different phases of a case when they are assigned by court administrators as needed from a master calendar of cases.² Each case may have several different judges over its lifetime because judges specialize in handling motions, arbitration status conferences and trial-setting conferences, or settlement conferences; there are also the master calendar judge and specialized civil trial judges. In practice, with perhaps several judges involved in each case, the pace of litigation is largely under the lawyers' control.

In the next subsections, we discuss how various types of civil cases typically flow through the court system, the percentage of cases that reach various stages, the percentage of cases disposed by various

¹For details of the survey, see App. B in Technical Appendixes.
²Like any organization, the court has exceptions to the usual method of processing civil cases. An experimental program is under way in the central district wherein the court assigns approximately half the civil cases to individual judges who actively manage their cases for all purposes, from filing to disposition (see Sec. II for details). Also, under the master calendar system, the court assigns a few complex cases to individual judges for all purposes; it assigns all asbestos cases to one judge for all pretrial purposes.
methods, and the judge time and government costs involved at each stage of case processing. This allows us to see how much calendar time and judge time are spent at each stage of the process, information critical to understanding delay and analyzing potential solutions. We broadly categorize civil cases into three types that differ greatly in how they move through the court system: civil complaints, civil petitions, and small-claims appeals.

CIVIL COMPLAINTS

Percentage of All Cases That Drop Out at Each Stage

Figure 3.1 and Table 3.1 show the flow of civil complaints cases through the Los Angeles Superior Court based on data from a random sample of 763 cases filed in 1980–1982 that are now nearly all closed. These civil complaints cases involve motor vehicle personal injury, death, and property damage, other PI/PD, contracts, real property, and other civil complaints. The figure diagrams the aggregate flow of all civil complaints; the table shows variations by type of case.

We discuss the stages shown in the following order: file and answer, at-issue memorandum, arbitration (if appropriate), trial date setting, mandatory settlement conference, trial, and motion hearings (which may take place at any point in a case’s life).

File and Answer. After the plaintiffs file a case, the parties can settle the case with no further court contact, the defendants can formally respond with motions and/or answers, or the plaintiff can file motions (such as for a default judgment). Only some 60 percent of the civil complaints are ever formally answered. Of the 40 percent disposed before an answer is filed with the court, 17 percent are filed only, while 23 percent involve filing plus a motion hearing only.

At-issue Memorandum. The next major stage in a case from the court’s viewpoint is the parties’ at-issue memorandum filing. This at-issue memorandum does not signify that the case is ready for trial, but in practice means that the parties are getting their place in a long line waiting for trial (getting on the civil active list). With the exception of ruling on motions in some cases, judicial officers usually do not work on cases before parties file the at-issue memorandum.

Less than half the civil complaints reach the at-issue stage, which means 55 percent require little or no judicial effort (although 23 percent consume a few judge minutes in a motion hearing even though the case never reaches the at-issue stage). Of the 60 percent that are answered, 15 percent are disposed before the at-issue memorandum
Method of disposition of closed cases: 

- Trial: 4
- Adjudication before trial: 5
- Arbitration award accepted: 4
- Disposed by litigants: 60
- Dismiss for lack of prosecution: 12
- Long dormant, dead cases: 15

NOTES: "All civil complaint" cases include personal injury, death, property damage, and other civil complaints (petitions and small-claims appeals are excluded). Numbers may not sum precisely because of rounding.

The figure shows the flow of closed cases; in addition, 6 of the 763 cases in our sample were open with recent activity; 22 of the 763 were technically open but probably dead (see text).

Fig. 3.1—Flow of all civil complaints cases: Percentage at each stage and method of disposition
### Table 3.1

PERCENTAGE OF CLOSED CIVIL CASES AT EACH STAGE,
BY TYPE OF CASE

<table>
<thead>
<tr>
<th>Type of Civil Case</th>
<th>All Civil Complaints</th>
<th>Motor Vehicle PI/PD Complaints</th>
<th>Other PI/PD Complaints</th>
<th>Other Civil Complaints</th>
<th>Petitions</th>
<th>Small-Claims Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer</td>
<td>60</td>
<td>56</td>
<td>71</td>
<td>60</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>At issue</td>
<td>46</td>
<td>46</td>
<td>55</td>
<td>41</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>To arbitration</td>
<td>15</td>
<td>25</td>
<td>17</td>
<td>6</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>Trial date set</td>
<td>24</td>
<td>16</td>
<td>35</td>
<td>27</td>
<td>85</td>
<td>99</td>
</tr>
<tr>
<td>Mandatory settlement conference</td>
<td>14</td>
<td>7</td>
<td>24</td>
<td>15</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>Trial/petition hearing</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>7</td>
<td>74</td>
<td>87</td>
</tr>
</tbody>
</table>

SOURCE: RAND Register of Actions Survey for cases filed in 1980–1982. Of the 973 cases in the survey, 302 were motor vehicle PI/PD, 150 were other PI/PD, 308 were other civil complaints, 133 were petitions, 77 were small-claims appeals, and 3 were of unknown type.

NOTES: Columns do not add to 100 percent because cases typically involve more than one stage. PI/PD = personal injury/property damage.

*Not applicable/not available.

Filing; another 6 percent are disposed after they are at issue but before the case goes to arbitration and before trial date setting.

**Arbitration.** Once the case is at issue, if the plaintiff has not elected arbitration, if the parties have not stipulated arbitration, or if both parties have not stipulated that the amount in dispute is above the monetary limit for arbitration, an arbitration status conference takes place 30 to 90 days after the at-issue memorandum filing. The purpose of this conference is to see if the case should be diverted to nonbinding arbitration before an impartial paid lawyer or retired judge.³ Nonmonetary relief cases, short-cause cases, preference cases,⁴ class actions, small-claims appeals, unlawful detainer, and family law proceedings are exempt from arbitration.

³A case may get to judicial arbitration in any of three ways: upon the parties' stipulation, regardless of the amount in controversy; upon election by the plaintiff, any action in which the plaintiff agrees that the arbitration award shall not exceed $50,000; or upon order of the court, when the court determines that the amount in controversy does not exceed $50,000 as to any plaintiff (see Rules 1600 and 1600.5, California Rules of Court).

⁴These are cases for which a motion has been granted or for which court policy exists that gives preference in scheduling before normal cases. Examples include cases involving dying parties or parties over age 70 and those involving a tort allegedly inflicted by a convicted felon.
Some 15 percent of the civil complaints cases are scheduled for arbitration; 10 percent are disposed either by settlement or acceptance of the arbitration award. Approximately a third of cases that go to arbitration (5 percent) come back into the main flow of cases because the parties reject the arbitration award and request a trial de novo instead.

**Trial Date Setting.** Another 6 percent of the cases are disposed of after the arbitration status conference but before trial date setting (this includes both cases that went to arbitration and those that did not). If the case does not go to arbitration, or if the arbitrated case is not voluntarily disposed by the litigants, a trial-setting conference takes place to schedule a trial date and a mandatory settlement conference.

**Mandatory Settlement Conference.** An MSC is scheduled to be held by a judge some three weeks before the scheduled trial date for each long-cause civil case (estimated trial length of more than one day). Cases may also have voluntary settlement conferences with a judge, but only 2 percent did so.

A trial date is set for only 24 percent of all civil complaints cases filed. Of that 24 percent, only 4 percent of all cases filed actually result in a contested trial. The rest are disposed of before the settlement conference (10 percent), at the settlement conference (5 percent), or between the MSC and trial (5 percent).

**Trial.** Eventually, only 4 percent of civil complaints cases reach the trial stage. A master calendar judge assigns each case to the next available civil trial judge, perhaps after a wait on a trailing calendar because no trial judges are currently available.

**Motion Hearings.** At any point in the above flow, the case may have a motion hearing; some two-thirds of the cases avail themselves of this opportunity at least once. Figure 3.1 shows the path most such cases take, but certain complex or protracted cases (such as asbestos, class action, eminent domain cases sent to an individual judge for processing) involve special procedures. This simplified flow diagram gives an overview of what is really a complex system with various possible options.

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5 If the conditions under which cases are referred to arbitration change with time, this percentage (which is for cases filed in 1980–1982) will also change.

6 Note that a case may get to arbitration without an arbitration status conference, so we do not precisely know, based on the data we collected, the percentage of cases with an arbitration status conference.

7 The trial-setting conference takes place for nearly all civil cases. The exceptions are short-cause cases (those with estimated trial lengths of one day or less on the at-issue memorandums), the small minority of cases that have more extensive pretrial conferences in lieu of trial-setting conferences, and cases that have motions for preference hearings to establish preference in scheduling before normal cases.

8 Unless the case has been assigned to an individual judge for all purposes, such as cases in the fast-track experimental program.
The flow need not be unidirectional; cases may loop back to an earlier stage (for example, the at-issue memorandum may be stricken, a settlement conference judge may order a case to arbitration, or a continued trial date may generate a second MSC). Cases may also skip certain stages (for example, a short-cause case does not have to have arbitration, a trial-setting conference, or an MSC).

How Cases Are Disposed

Consistent with the pattern found in other courts, less than 10 percent of all civil complaints cases are adjudicated by a judge or jury, and less than 10 percent are disposed by nonbinding arbitration. Hence, more than 80 percent of all civil complaints cases are disposed by the parties to the litigation, without court adjudication and without the quasi-adjudicative arbitration process. As Fig. 3.1 shows, 4 percent of all civil complaints are tried. Another 5 percent are adjudicated by the court before trial (for example, by a summary judgment motion ruling). The percentage disposed by arbitration is between 4 (cases we are sure accepted the award) and 10 (cases that closed after going to arbitration, though we cannot tell what fraction of those settled and what fraction accepted the arbitration award).

Our Register of Actions Survey indicated that 60 percent of the civil complaints cases were disposed privately by the parties, 12 percent were dismissed for lack of prosecution (which means the parties privately dropped, settled, or otherwise disposed of the case, and later the court formally declared it disposed), and 15 percent were long dormant, dead cases still sitting on the court docket. Every court, including Los Angeles, has a certain number of “dead but not buried” cases. We defined a long dormant, dead case as one that is at least five years old and has not had any activity on the Register of Actions for at least three years if at issue or at least one year if it has never been at issue. The five-year limit is significant because California requires civil cases to be tried within that time limit.9 In general, these long dormant, dead cases were either dropped by the parties or settled without letting the court know they had been disposed of privately.

We also found a few other cases (22 of the 763 civil complaints cases in our survey) that probably were closed but technically were still open.

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9California Code of Civil Procedure, Part 2, Title 8, Article 3, “Mandatory Time for Bringing Action to Trial or New Trial,” Sec. 583.310 (“Time Limit for Bringing Action to Trial”), states that “an action shall be brought to trial within five years after the action is commenced against the defendant.” Some active cases exceed or defer that five-year limit (usually because of the huge backlog of cases that makes conducting all necessary trials in less than five years difficult for the court), but the court records gave no indication that the long dormant, dead cases were still active.
These cases averaged 76 months from filing to the point of our data collection and had been dormant an average of 12 months. Most had never had a trial date set, but a few had a trial date set more than a year before—a trial that never took place. Finally, 1 percent (6 cases) were clearly still open, despite having been filed at least \(5\frac{1}{2}\) years before our data collection in mid-1988.10

We also considered variation in disposition for the three major types of cases within the “all civil complaints” category: motor vehicle PI/PD cases, other PI/PD cases, and other civil complaints.11 As Table 3.2 shows, motor vehicle cases are much more likely than all civil complaints cases to go to arbitration (perhaps because motor vehicle cases are more likely to be lower-stakes cases under the monetary ceiling for arbitration). Conversely, only 1 percent of motor vehicle cases go to trial—much less than the 4 percent of all types of civil complaints cases tried. Like motor vehicle PI/PD cases, other types of PI/PD cases are much less likely to go to trial than other non-PI/PD complaints. The two things that stand out when we compare other civil complaints with all PI/PD civil complaints are the low arbitration rate (6 percent) and the relatively high trial rate (7 percent) for non-PI/PD complaints.

**Time for All Civil Complaints to Reach Each Stage and Disposition**

In Fig. 3.2, we show several different measures of time for various stages in a case’s life. In the boxes representing each litigation stage, we show the time from filing to that stage. On the arrows between two stages, we show the time between stages for cases that experienced both stages. Summing the average months on the arrows between filing and a particular stage will sometimes not equal the average shown in the box for that particular stage because not every case experienced every stage along the way and because cases disposed at earlier stages do not have the same average times between stages as those that are disposed later. For example, tried cases may have a longer time between filing and at issue than cases that settle right after the at-issue memorandum filing.

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10One case was on appeal after trial, two had recent substantive motions, and three had a pending trial date within three months of our data collection.

11For details, see App. B in Technical Appendixes. Appendix B also shows selected other characteristics of civil complaints cases that appear on the Register of Actions and may be of interest. Based on the first named party, the plaintiffs in these civil complaints cases are usually single individuals, although 29 percent involve multiple plaintiffs and 20 percent involve organizations as plaintiffs. On the other hand, 43 percent of the defendants are organizations, and 97 percent of the cases potentially involve multiple defendants (from the Register of Actions, we counted “et al.” as multiple defendants). The pattern of plaintiffs v. defendants was individual v. individual, 47 percent; individual v. organization, 33 percent; organization v. individual, 10 percent; and organization v. organization, 10 percent.
Table 3.2
DISPOSITION METHOD OF CLOSED CIVIL CASES, BY TYPE OF CASE
(Percent)

<table>
<thead>
<tr>
<th>Disposition Method</th>
<th>All Motor Civil Complaints</th>
<th>All Other Civil Complaints</th>
<th>Other Civil Complaints</th>
<th>Petitions</th>
<th>Small-Claims Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trial/petition hearing</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>74</td>
</tr>
<tr>
<td>Adjudication before verdict</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Arbitration award accepted</td>
<td>4</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Disposed by litigants</td>
<td>60</td>
<td>67</td>
<td>65</td>
<td>52</td>
<td>3</td>
</tr>
<tr>
<td>Dismissed for lack of prosecution</td>
<td>12</td>
<td>12</td>
<td>7</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Long dormant/dead case</td>
<td>15</td>
<td>12</td>
<td>19</td>
<td>16</td>
<td>20</td>
</tr>
<tr>
<td>All closed cases</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

NOTES: Numbers may not sum precisely because of rounding. PI/PD = personal injury/property damage.

aThis is the percentage for which the Register of Actions indicated the award was accepted; the actual percentage accepted may be higher. See the accompanying figures for the number disposed after going to arbitration, which includes the percentage that settled plus the percentage that accepted the arbitration award.

bAll petitions and all small-claims appeals in our survey were closed. Nearly all civil complaints were closed, although 6 of the 783 cases were open with recent activity and 22 of the 783 were technically open but probably dead (see text).

The average time to disposition for all civil complaints cases filed in 1980–1982 is 27 months,\(^{12}\) considerably less than the average time to trial because most cases settle well before trial. The median time to disposition is 24 months, which means half the cases were disposed in two years or less.\(^{13}\)

\(^{12}\)Because this is a sample of cases rather than data from all cases, we calculated a statistical confidence interval around the 27-month estimate of average time to disposition. We have 95 percent confidence that the true average time to disposition for all civil complaints cases is between 25 and 29 months.

\(^{13}\)We used the actual disposition date of the case if available. For the 12 percent of cases dismissed for lack of prosecution, this means the date of dismissal, not some unknown earlier date when the case may have been privately dropped or settled without notice to the court. For the 15 percent of cases that were long dormant, dead but technically still on the court's docket, we used the date of the last activity appearing on the Register of Actions as a proxy for the unknown date on which the case was privately disposed.
Fig. 3.2—Time for all civil complaints cases to reach each stage and disposition
The time to disposition ranges from 1 month for cases disposed right after filing to more than seven years for one case. The median was more than four years for long-cause cases requiring trial.\textsuperscript{14} Note that short-cause and preference cases typically reach trial in less than a year because of the priority they receive. The trial lengths averaged 1.6 days for short-cause and preference cases and 5 days for other long-cause trials in RAND’s sample.\textsuperscript{15}

The Register of Actions does not have information on the date of the incident that eventually resulted in a lawsuit being filed. The only information we had on that time period was from cases that went through jury trial in Los Angeles.\textsuperscript{16} That information showed an average of some 11 months between the incident and the lawsuit filing. Thus, the total time from incident to disposition averages some three years—approximately one year to filing and two years to disposition after filing.

Complaints usually receive answers within 6 months, are at issue in less than a year, and have an arbitration status conference within a year and a half (see Table 3.3). The Register of Actions does not show the date of arbitration (if held).

For the two-thirds of the cases that had any motion hearings/orders, the average number was 2.6 motions. For all cases, including those with no motions, the average was 1.7 (median 1). If a case reached the trial date-setting stage (which happens a little more than two years into the life of the average complaint), the records show that, because of continuances, an average of two trial dates were set.

The mandatory settlement conference first takes place some three years into the average civil complaint case’s life, which, because of continuances, is several months before trial actually begins, not three weeks as the rules intended.\textsuperscript{17} Of cases that reached the mandatory settlement conference stage, 31 percent had more than one such conference. The average was 1.4 settlement conferences; this does not include the informal settlement conferences the trial judge may hold or the master calendar judge may hold in districts outside the central district. Of all cases with MSCs (such conferences are not required for short-cause and preference cases), 42 percent settled at the conference, 42 percent settled after the conference, and 16 percent went to trial.\textsuperscript{18}

\textsuperscript{14}With more recent data on time to trial shown in Sec. II, we know that the median has grown to nearly five years in 1989.
\textsuperscript{15}For details, see App. B in Technical Appendixes.
\textsuperscript{16}See App. D in Technical Appendixes.
\textsuperscript{17}If a case had more than one MSC, we measured time from the first.
\textsuperscript{18}See App. C in Technical Appendixes for more detailed information on settlement conferences based on RAND’s End-Stage Case Survey.
Table 3.3

AVERAGE MONTHS FOR CLOSED CIVIL CASES TO REACH EACH STAGE AND DISPOSITION, BY TYPE OF CASE

<table>
<thead>
<tr>
<th>Stage</th>
<th>Type of Civil Case</th>
<th>Motor Vehicle Complaints</th>
<th>Other PI/PD Complaints</th>
<th>Other Civil Complaints</th>
<th>Petition</th>
<th>Small-Claims Appeal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Answer</td>
<td></td>
<td>5</td>
<td>5</td>
<td>4</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>At issue</td>
<td></td>
<td>10</td>
<td>10</td>
<td>11</td>
<td>10</td>
<td>(a)</td>
</tr>
<tr>
<td>Arbitration status conference</td>
<td></td>
<td>16</td>
<td>14</td>
<td>18</td>
<td>18</td>
<td>(a)</td>
</tr>
<tr>
<td>Trial date set</td>
<td></td>
<td>28</td>
<td>27</td>
<td>31</td>
<td>27</td>
<td>(a)</td>
</tr>
<tr>
<td>Mandatory settlement conference</td>
<td></td>
<td>35</td>
<td>31</td>
<td>35</td>
<td>39</td>
<td>(a)</td>
</tr>
<tr>
<td>Short-cause or preference trial/petition hearing</td>
<td></td>
<td>8</td>
<td>(a)</td>
<td>8</td>
<td>(a)</td>
<td>(a)</td>
</tr>
<tr>
<td>Regular trial/petition hearing</td>
<td></td>
<td>46</td>
<td>48</td>
<td>45</td>
<td>46</td>
<td>2</td>
</tr>
<tr>
<td>Disposition</td>
<td></td>
<td>27</td>
<td>25</td>
<td>32</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>95% confidence interval</td>
<td></td>
<td>25-29</td>
<td>22-27</td>
<td>28-36</td>
<td>24-30</td>
<td>2-6</td>
</tr>
</tbody>
</table>

NOTE: PI/PD = personal injury/property damage.
\( ^a\)Not applicable or not available.

The pattern of activity within the life of most cases is sporadic. Some activity always occurs at a case's start and end, but in between are periods when nothing apparently happens. Some of these gaps in court activity on a case may result from a requirement for extended time for complex discovery or the stabilization of medical conditions. Other gaps may result from insufficient court resources to work on cases in a timely fashion, lawyers' work habits (conditioned by many years of delay in the Los Angeles Superior Court's civil case processing), and litigants who do not want their cases to progress in a timely fashion.

We noted above that different types of complaints cases—such as motor vehicle PI/PD, other PI/PD, and other civil complaints—were not equally likely to reach the various stages of litigation. However, the average time to reach each stage of litigation is remarkably consistent for the various types of civil complaints. As Table 3.3 shows, the average number of months to trial is 45 to 48 for the different types of civil complaints (excluding short-cause and preference cases), indicating that time to trial is not determined and driven by the case's characteristics, but by the availability of judges to conduct the trials.
Because the court does not usually give priority to one type of complaint over another, the time civil complaints cases must wait for trial has, in practice, been equalized by the court.

Considering the time to disposition for all complaints cases (not just those that go to trial), we see in Table 3.3 that motor vehicle PI/PD cases are disposed in an average of 25 months; other PI/PD cases, in an average of 32 months; and non-PI/PD complaints, in an average of 27 months.\(^{19}\)

**CIVIL PETITIONS**

We now turn to a different type of civil case—petitions. Although some petitions are extremely complex and time consuming, the great majority are relatively simple (such as when a person asks the court to approve a name change). Civil petitions generally consume much less judge time and use a greatly simplified process without answers, at-issue memos, arbitration, or mandatory settlement conferences. This simplified process involves filing, perhaps hearing motions, setting a petition hearing date, and conducting the petition hearing. A petition hearing (the equivalent of trial for a complaint) takes place for 74 percent of petitions, and only 19 percent have any motions recorded on the Register of Actions. Because the hearings for disposition of petitions are often very short, little incentive to avoid this speedy and low-cost adjudication exists.

Fully 74 percent of the petitions are disposed by the court after a petition hearing; another 2 percent are adjudicated based on motions before the hearing. Most of the remaining cases are long dormant, dead cases with no disposition indicated on the Register of Actions; these probably include cases where the petition was privately dropped without notifying the court.\(^{20}\)

Compared to complaints, most civil petitions require very little time. The average time to a petition hearing is two months from filing; half reach a hearing in one month. The case's formal disposition may be a month or so after the hearing, allowing time for paperwork.\(^{21}\)

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\(^{19}\) For details, see App. B in Technical Appendixes.

\(^{20}\) No petition cases in our sample were still open (that is, all were either officially disposed or at least five years old, with no activity for at least the last three years before data collection).

\(^{21}\) See App. B in Technical Appendixes.
SMALL-CLAIMS APPEALS

Small-claims appeals consume much less judge time than do civil complaints in general and use a greatly simplified process without at-issue memos, arbitration, or mandatory settlement conferences. Fully 87 percent of these appeals reach the trial stage; 27 percent involve at least one motion.

The disposition method of small-claims appeals is adjudication in 90 percent of the cases—81 percent at trial and 9 percent pretrial. Another 7 percent are dismissed for lack of prosecution, and only 3 percent are settled privately by the litigants.22

The time to trial for small-claims appeals averages some three months; half are tried within two months. Because nearly all these appeals result in trial, the average time to disposition for all such cases is also three months. We note that these trials usually take only an hour or so; hence, the court can use them as fillers for civil judges’ schedules during gaps in other proceedings.23

JUDGE TIME AND GOVERNMENT COSTS OF PROCESSING CIVIL CASES

The above discussion showed how much calendar time the court spends on civil cases. When considering policy options, knowing how much judge time and government money is spent on various types of cases and on various judicial activities (such as the average trial, settlement conference, arbitration status conference, or motion hearing) is also vital.24

We estimate that civil complaints consumed 89 percent of all judge work time and court expenditures on civil cases in 1989, while petitions consumed 5 percent and small-claims appeals consumed 6 percent.25 The estimated average case-related judicial time spent is 72 minutes over the life of the average civil complaint filed in the Los Angeles Superior Court; this results in a government operating expenditure of some $500 per case in 1989-value dollars, not counting the capital cost

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22Although most of these cases opt for trial rather than private settlement, note that this is an appeal process. Most small-claims matters that were going to settle privately did so while the case was in small-claims court before appeal. In Los Angeles in 1987, 167,000 small-claims cases were filed, compared to only some 6000 small-claims appeals.

23See App. B in Technical Appendices.

24For detailed information on judge time and government expenditures for civil cases, see App. E in Technical Appendices.

25See App. A in Technical Appendices for estimates of the number of full-time-equivalent judges needed for various types of civil cases.
of the courthouse.\textsuperscript{26} The average is 6 minutes for the average civil petition (some $50) and 57 minutes for the average small-claims appeal (approximately $400). These average times and expenditures are this low because most civil complaints cases do not involve trials and because the judicial time spent per petition hearing or small-claims trial is low.

Approximately $500 per civil complaint case for the court’s services seems low—an apparent bargain compared to the private costs of litigation and the money and issues at stake in the litigation.\textsuperscript{27} For civil complaints cases, the average motion heard consumes some 11 minutes of judge time ($77 in government operating expenditures), the average MSC consumes 61 minutes ($440), and the average jury trial consumes 36.1 hours of case-related judge time (more than $15,000 in government operating expenditures, excluding the courthouse’s capital cost).\textsuperscript{28} Even though less than 5 percent of civil complaints cases go to trial, trials are so expensive that they consume approximately half of all judge time and half of all government expenditures on those cases.

If a civil complaint case is filed and then privately disposed by the parties without judicial time being spent, the only government operating expenditure is clerical and the total is usually less than $50. If the case proceeds through one motion hearing and arbitration before being disposed, the estimated government cost is $234, including the arbitrator’s fee. If the case proceeds to the end stage and has a mandatory settlement conference but settles before trial, the estimated cost is $618. Proceeding through trial dramatically increases the judge time necessary and, hence, the government expenditure: an estimated average of some $11,000 for a nonjury trial and approximately $16,000 for a case that proceeds through jury trial. Clearly the economic incentive for the court to encourage pretrial disposition is quite high.

\textsuperscript{26}For all types of cases combined, we estimated the government operating expenditure in 1989 was $714,000 per judicial officer in the Los Angeles Superior Court (not counting the capital cost of courthouses); the annual expenditure was $507,000 per full-time-equivalent judicial officer working on civil cases. This is $7.22 per judge minute of case-related work on civil cases (again, not counting the capital cost of the courthouse). All types of cases combined have a higher expenditure per judicial officer, because certain types of noncivil cases (such as criminal and juvenile) have a higher level of support personnel for each judge than civil cases do. The courthouse’s annualized capital cost is approximately an additional $204,000 per judicial officer, bringing the total operating plus annualized capital expenditure per civil judicial officer per year to some $700,000 in 1989-value dollars.

\textsuperscript{27}The court expenditures per civil case are a small fraction of civil litigation cost. For example, of all expenditures for tort litigation in the United States in 1985, court expenditures accounted for only some 2 percent. Plaintiffs’ and defendants’ legal fees and expenses accounted for 42 percent, and 56 percent was paid in net compensation to the injured plaintiffs.

\textsuperscript{28}Other average trial times are shorter: 3.5 hours per short-cause trial and 24.9 hours per bench trial.
IV. CAUSES OF DELAY

The potential causes of civil case delay are multiple and complex. We have grouped them into three broad categories:

- *The demand for judicial services may exceed the supply.* The demand depends on the number of new case filings, the backlog of unresolved cases, and the judicial work necessary per case. The supply consists of the number of judges and other resources available and the amount of work each judge can accomplish. If the demand exceeds the supply of judge time available, civil cases cannot be resolved in a timely fashion and the time to disposition increases.

- *Court and case management may need improvement.* This category of causes concerns how the court handles individual cases. A judge may be available to work on a case, but the case may not progress toward disposition as expeditiously as it should because of less than full efficiency in the court’s processing.

- *Litigants or their lawyers may delay the progress of cases intentionally.* This group of causes concerns how the litigants and their lawyers handle individual cases. A judge may be available to work on a case, but the case may not progress toward disposition as expeditiously as it should because the lawyers or litigants are not ready for it to progress or do not want it to progress.

SUPPLY AND DEMAND FOR COURT SERVICES

In this section, we examine several hypotheses about the supply and demand for court services as a cause of delay. We will focus on data from the 1970–1989 time period, thereby viewing the most recent changes in the context of the longer-term time trends.

Growth in the Court’s Size Has Almost Matched Growth in Litigiousness

One hypothesis about court delay is that increasing litigiousness in the population has resulted in a growth of lawsuits that exceeds the growth in the court’s size, and that an increase in lawsuits per judge is forcing an increase in the time to disposition. We first will consider
the growth in the absolute number of cases filed, then compare those filings with the growth in population to show filings per capita, and finally compare those filings with the growth in the court’s size to show filings per judicial officer.

All filings of all types combined (civil, criminal, family law, juvenile, mental health, probate, and habeas corpus cases) grew from 187,000 in 1970 to 304,000 in 1989—an average annual growth rate of some 2.6 percent.\(^1\) Civil cases (including motor vehicle and other personal injury, death, and property damage; eminent domain; other civil complaints; other civil petitions; and appeals from lower courts) more than doubled, from 58,757 in 1970 to 145,688 in 1989. The annual growth rate of civil cases was some 4.9 percent—considerably above the 1.1 percent experienced for all other types of criminal and other noncivil cases combined. The average annual rate is fairly consistent for all major types of civil cases in the Los Angeles Superior Court.\(^2\)

To place the volume of civil case filings in superior court in the context of all civil filings in all courts in Los Angeles County,\(^3\) we note that of the 508,000 civil cases filed in 1988 in Los Angeles County, 32 percent were small claims, 40 percent were filed in municipal or justice courts, and 28 percent were filed in superior court.\(^4\) The 5 percent annual growth rate in civil filings in superior court is approximately double the percentage growth rate experienced in the lower courts.

The average annual growth in Los Angeles County population was only 1 percent between 1970 and 1988, so the 5 percent annual growth in civil case filings was some 4 percent per year above the population increase. That rate of growth is sufficient to cause the civil filings to double, from 8 per 1000 residents in 1970 to 16 per 1000 in 1988.\(^5\) If civil filings per resident had not doubled, court delay might not be as long as it is today.

An increase in litigiousness in Los Angeles has generated increased demand for court services, but has the growth in the court’s size kept

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\(1\) For details, see Tables A.4 and A.6 in App. A of Technical Appendixes.
\(2\) Civil case filings rose steadily (with the exception of 1980, when the dollar limit was raised for municipal and justice court filings, and some cases that otherwise would have been filed in superior court were diverted to these lower courts). The municipal and justice courts handled civil case filings valued up to $5000 before July 1, 1979; up to $15,000 before January 1, 1986; and up to $25,000 thereafter (see Judicial Council of California, 1982 Annual Report, San Francisco, Calif., 1982, p. 100; and Judicial Council of California, 1987 Annual Report, p. x).
\(3\) See Table A.5 in Technical Appendixes.
\(4\) The small-claims limit was $300 to March 1972; $500 to January 1977; $750 to January 1982; $1500 to January 1, 1989; $2000 to January 1, 1991; and $2500 thereafter (see “New Rules in 1989 for Small-Claims Courts,” Los Angeles Daily Journal, September 2, 1988).
\(5\) See Table A.7 in Technical Appendixes.
pace with the growth in litigiousness? The answer is almost, but not quite, in terms of the number of filings per judicial officer. The average annual growth in the court’s size has been 2.3 percent between 1970 and 1989, slightly less than the 2.6 percent annual growth rate in the number filings of all types of cases combined. We considered all types of cases filed (civil, criminal, and all other types) and all types of judicial officers (judges and commissioners) because criminal cases have priority; hence, we cannot consider the civil caseload in isolation.

The Los Angeles Superior Court’s size increased from 189 full-time authorized judicial positions in 1970 (including 134 judges) to 293 authorized judicial positions in 1989 (including 238 judges and 55 commissioners). If we consider the full-time-equivalent (FTE) judicial positions (the number of authorized positions adjusted by adding part-time and temporary judicial officers, adding assistance received by judges assigned to Los Angeles from other courts, subtracting assistance provided by Los Angeles judges assigned to other courts, and subtracting position vacancies), the average annual growth rate from 1970 to 1989 was almost the same as that for authorized judicial officers—2.2 percent.

Since 1970, the annual filings of all types of cases per authorized judicial officer has fluctuated up and down but ended up slightly higher (5 percent), as Fig. 4.1 shows. In comparison with 14 other California superior courts with at least 11 authorized judicial officers in 1988, Los Angeles had approximately the same total number of cases of all types filed per authorized judicial officer. Los Angeles had 1034 filings per judicial officer, whereas the other 14 counties had an average of 1105 cases.

In sum, the number of cases filed per judicial officer has risen 5 percent from 1970 to 1989. Although civil filings per judicial officer have risen, other noncivil filings per judicial officer have declined; hence, the total shows only a small rise. Though litigiousness has increased in Los Angeles, this increase in the total number of case filings has been nearly matched by the increase in the court’s size. The failure of the growth in the size of the court to keep up fully with the growth in the number of filings contributes to the delay problem, but we need to look beyond simple increases in total case filings per judicial officer to

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6In December 1988, the Los Angeles County supervisors authorized 14 additional superior court and 8 municipal court judges (see “L.A. Supervisors Authorize Appointment of 22 Judges,” Los Angeles Daily Journal, December 28, 1988, p. 2).

7For details, see Table A.8 in Technical Appendixes.

8The decline in 1979–1980 resulted from the combined effects of adding new judicial officers and reducing superior court civil filings by raising the size of civil cases that could be filed in municipal courts. For details, see Table A.9 in Technical Appendixes.

Fig. 4.1—Filings and dispositions per authorized judicial officer, 1970–1989

explain why the average time to case resolution has increased so markedly. For example, close inspection of the filings data for recent years reveals that criminal cases per judicial officer have more than doubled since 1980. When we later discuss the rising trend in judicial work time necessary per criminal case, this recent trend in criminal filings will assume major importance.

Growth in Case Dispositions Has Matched Growth in Filings

Another hypothesis about the causes of increased time to case disposition is that a decrease in dispositions per judge per year may have occurred (for any number of potential reasons) and may be causing added delays in processing cases. Since filings per judicial officer have grown little from 1970 through 1989 but the time from filing to trial has increased markedly, we next look at the number of case dispositions per judicial officer per year to see if that statistic shows evidence of a decline over time.
If filings are the work input to the court system, dispositions should be a measure of the work output. Unfortunately, before 1988, the data kept by the court on dispositions have some deficiencies. First, before 1988, every filing did not eventually result in a disposition. Thus, the number of dispositions in a year was always less than the number of filings because some cases just died quietly without being disposed officially. For example, a case may be filed and privately settled without ever being at issue, the lawyers may not notify the court of the settlement, and the court may not "clean the docket" to dispose officially of the case before the case file transfers into storage. Second, the official dispositions do not always take place in the year the dispute is really resolved. If the case is closed because of court action (for example, a trial or a summary judgment), or if the lawyers notify the court of the lawsuit's settlement or dismissal, the official disposition date is near the date the dispute is actually resolved. If the lawyers do not notify the court, the case may be disposed officially perhaps two or three years later. Such a "docket cleaning" disposal occurs when the court sends letters to lawyers for cases suspected of being settled or dropped because the cases have had no known activity for a long period of time; the letters ask the lawyers to show cause why the case should not be dismissed. But the amount of docket cleaning to dispose of previously settled or dropped lawsuits varies from year to year, making interpretation of time trends in dispositions difficult. And finally, though many cases are disposed in the year of filing, civil cases that require trial may not be disposed for five years. Hence, a time lag between the year of filing and the year of disposition occurs and makes interpreting disposition statistics difficult. Bearing the above caveats in mind, we found that the growth in total dispositions for cases of all types combined has roughly matched the growth in filings.\textsuperscript{10} Both total filings and dispositions grew at an average annual rate of some 3 percent since 1970, while civil filings and dispositions grew at an average annual rate of some 5–6 percent. So the growth in the court's reported output appears to be keeping up with the growth in the court's input. We need to look beyond simple counts of reported case dispositions to explain why the average time to case resolution has been increasing for civil cases.

\textsuperscript{10}For details, see Tables A.10, A.11, and A.12 in Technical Appendixes.
Slight Increase in Judicial Work Time per Case Because Decrease for Civil Mostly Offsets Increase for Criminal

Another hypothesis about the cause of increased time to civil case disposition is that changes in the law, in legal practices, and in case management may be generating more work per case over the life of the case, thereby not only increasing the judge's work time per case disposed but also increasing the amount of time lawyers need to prepare and dispose of their cases effectively. Again, we considered the judicial work time per case for all types of cases, not just civil, because criminal cases have priority and, hence, we cannot consider the civil caseload in isolation.

Small Increase in Average Judge Minutes per Case for All Cases Combined. Every few years since 1971, the Judicial Council has conducted a survey of the average minutes of judicial work time per case to dispose of various types of cases. The council uses that case-weight information, plus data on the number of minutes in the average judicial work year and the number of case filings of various types, to make an estimate of the number of judicial officers needed to process the anticipated case filings in each county in the state. Depending on which of the five different survey years is under consideration, the council sometimes combined data from all or several other California counties with data from Los Angeles County before making its estimate for Los Angeles County. Thus, the estimate made by the council can be influenced by factors other than the basic data on work time in Los Angeles.

Our research used the methodology used by California and several other states\(^{11}\) because it is the best available. We used the basic data from the Judicial Council surveys of judicial work time per case in Los Angeles and the judicial work year in Los Angeles; we did not use the case weights adopted by the Judicial Council if those council estimates included data from other counties. Our study involves Los Angeles only; hence, we used survey data specific to Los Angeles.

The method involves surveying to determine the average judicial officer minutes of case-related work per case disposed (for each different type of case), then adjusting by the ratio of dispositions to filings (as we discussed previously, because of a quirk in the statistical reporting system, a small fraction of the filed cases were never officially disposed). These case-related judicial work minutes per case filed can be interpreted as the average amount of judicial officer work time spent from the time a case is filed until the time a case is concluded.

Tables 4.1 and 4.2 show the average number of judicial officer case-related work minutes spent to dispose of a filed case in Los Angeles for various types of cases. Case-related work is time judicial officers spend, both on and off the bench, that can be directly related to the processing of a specific case or type of case. For all types of cases combined, civil and noncivil, judicial officers spent an average of 1⅛–1¼ hours in case-related work time per case in each of the five survey years. The average case-related work time was 75 minutes in 1971, 73 minutes in 1984, and an estimated 81 minutes in 1989. The rise between 1984 and 1989 resulted from a shift in the mix of cases filed and the increased work time for particular types of cases, especially the large increases in criminal filings and judge time per criminal case in recent years.

The average judicial officer work time per case to dispose of cases filed has changed very little for all types of cases combined over the entire time period since 1971. These averages include many cases that are filed and then either dropped or settled privately with little or no judge involvement, cases that involve a moderate amount of judicial work (such as ruling on motions or conducting a settlement or other conference), and the small fraction of cases that go to trial and may require days or even weeks of judicial effort. For comparison, the average case filed in superior court in the entire state of California in 1984 consumed 76 minutes of judicial effort—3 minutes more than in Los Angeles.

The relatively constant overall average in Los Angeles masks some fundamental shifts in the case-related work time for different types of cases, however. When we consider civil cases separately from criminal and other noncivil cases, we see in Fig. 4.2 that the average case-related work time for noncivil cases has been growing, while for civil cases it has been declining. In Los Angeles in 1971, the average civil case filed received 79 minutes of case-related work time by a judicial officer; the average dropped to 50 minutes per civil case filed in 1984 and an estimated 44 minutes per civil case filed in 1989. On the other hand, the average noncivil case received 73 minutes of case-related work time in 1971, 96 minutes per case in 1984, and an estimated 114

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12The 1989 estimate used time per case from 1984 for each case type and the 1989 mix of filings of various case types to obtain an average across all case types.

13Civil cases include personal injury, death, property damage, eminent domain, other civil complaints, other civil petitions, and appeals from lower courts. Noncivil cases include criminal, juvenile, family law, mental health, probate and guardianship, and habeas corpus cases.
Table 4.1
AVERAGE CASE-RELATED JUDICIAL WORK MINUTES PER CASE FILED: COMPARISON AMONG ALL
TYPES OF CASES IN THE LOS ANGELES SUPERIOR COURT (1971-1984)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>All Types</th>
<th>Civil&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Noncivil</th>
<th>Criminal</th>
<th>Family Law</th>
<th>Juv. Delinq.</th>
<th>Juv. Depend.</th>
<th>Mental Health</th>
<th>Probate and Guardian</th>
<th>Habeeb Corpus</th>
</tr>
</thead>
<tbody>
<tr>
<td>L.A. 1971&lt;sup&gt;b&lt;/sup&gt;</td>
<td>75</td>
<td>79</td>
<td>73</td>
<td>136</td>
<td>43</td>
<td>80</td>
<td>86</td>
<td>29</td>
<td>23</td>
<td>16</td>
</tr>
<tr>
<td>L.A. 1974&lt;sup&gt;b&lt;/sup&gt;</td>
<td>90</td>
<td>103</td>
<td>81</td>
<td>226</td>
<td>36</td>
<td>96</td>
<td>141</td>
<td>65</td>
<td>20</td>
<td>(c)</td>
</tr>
<tr>
<td>L.A. 1976&lt;sup&gt;b&lt;/sup&gt;</td>
<td>91</td>
<td>87</td>
<td>94</td>
<td>284</td>
<td>51</td>
<td>83</td>
<td>160</td>
<td>105</td>
<td>20</td>
<td>(c)</td>
</tr>
<tr>
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<td>80</td>
<td>68</td>
<td>92</td>
<td>271</td>
<td>50</td>
<td>108</td>
<td>91</td>
<td>99</td>
<td>37</td>
<td>9</td>
</tr>
<tr>
<td>L.A. 1984&lt;sup&gt;d&lt;/sup&gt;</td>
<td>73</td>
<td>50</td>
<td>96</td>
<td>249</td>
<td>49</td>
<td>91</td>
<td>53</td>
<td>32</td>
<td>33</td>
<td>28</td>
</tr>
<tr>
<td>Calif. except L.A. 1971&lt;sup&gt;b&lt;/sup&gt;</td>
<td>(c)</td>
<td>(c)</td>
<td>(c)</td>
<td>150</td>
<td>27</td>
<td>54</td>
<td>48</td>
<td>18</td>
<td>20</td>
<td>16</td>
</tr>
<tr>
<td>All Calif. 1984&lt;sup&gt;e&lt;/sup&gt;</td>
<td>(c)</td>
<td>(c)</td>
<td>(c)</td>
<td>150</td>
<td>27</td>
<td>54</td>
<td>48</td>
<td>18</td>
<td>20</td>
<td>16</td>
</tr>
<tr>
<td>Average county&lt;sup&gt;f&lt;/sup&gt;</td>
<td>87</td>
<td>67</td>
<td>105</td>
<td>287</td>
<td>61</td>
<td>58</td>
<td>88</td>
<td>13</td>
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<td>23</td>
</tr>
<tr>
<td>Average case&lt;sup&gt;f&lt;/sup&gt;</td>
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<td>60</td>
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<td>67</td>
<td>35</td>
<td>36</td>
<td>24</td>
</tr>
</tbody>
</table>

NOTES: Table presents average judicial case-related work minutes per disposition during the study period, adjusted to minutes per filing using the ratio of dispositions to filings during the year (see text for methodology).

<sup>a</sup>Civil includes personal injury, death and property damage, eminent domain, other civil complaints, civil petitions, and appeals from lower courts. Noncivil includes criminal, family law, juvenile, mental health, probate and guardianship, and habeas corpus.

<sup>b</sup>Webb et al., Report of the Advisory Committee.

<sup>d</sup>Not available.

<sup>e</sup>Analysis by RAND using the Judicial Council methodology and data from Los Angeles only. For example, average case-related minutes per disposition in Los Angeles during the study period were adjusted to minutes per filing using the ratio of dispositions to filings during fiscal year 1983-1984 in Los Angeles for each type of case (see references in footnotes (b) and (e) of this table for a complete description of the Judicial Council methodology).

<sup>f</sup>State total for 1984 only; data not available for state except Los Angeles. See Judicial Council of California, 1988 Annual Report, Vol. 1, pp. 26-29, and Judicial Council of California, 1986 Annual Report, San Francisco, Calif., January 1, 1986, p. 39. The average per case for California was calculated every survey year. In 1984 only, the Judicial Council also calculated a separate average for each court (county) that participated in the study and averaged those county averages to calculate the statewide weights in minutes for the average county (in these county averages, each participating county influenced the average equally rather than in proportion to the volume of case filings).

For maximum relevance in comparison with Los Angeles total average work minutes data, the state total average work minutes were calculated using state work minutes for each different case type and the mix of case filings from Los Angeles in 1984.
Table 4.2

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Civil</th>
<th>PI/PD</th>
<th>Eminent Domain</th>
<th>Other Civil Complaints</th>
<th>Civil Petitions</th>
<th>Appeals from Lower Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>L.A. 1971a</td>
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<td>67</td>
<td>128</td>
<td>142</td>
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<td>164</td>
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<td>L.A. 1974a</td>
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<td>99</td>
<td>183</td>
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<td>125</td>
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<td>59</td>
<td>211</td>
<td>180</td>
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<td>L.A. 1978a</td>
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<td>139</td>
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<td>46c</td>
<td>115</td>
<td>110</td>
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<tr>
<td>Calif. except L.A. 1971a</td>
<td>(d)</td>
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<td>85</td>
<td>108</td>
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<td>All Calif. 1984b</td>
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<td></td>
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<td>Average county</td>
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<td>81</td>
<td>120</td>
<td>117</td>
<td>13</td>
<td>49</td>
</tr>
<tr>
<td>Average case</td>
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<td>67</td>
<td>171</td>
<td>112</td>
<td>12</td>
<td>51</td>
</tr>
</tbody>
</table>

NOTES: Civil includes personal injury, death and property damage, eminent domain, other civil complaints, civil petitions, and appeals from lower courts. PI/PD = personal injury/property damage.

aWebb et al., Report of the Advisory Committee.
bAnalysis by RAND using the Judicial Council methodology and data from Los Angeles only. For example, average case-related minutes per disposition in Los Angeles during the study period were adjusted to minutes per filing using the ratio of dispositions to filings during fiscal year 1983–1984 in Los Angeles for each type of case (see references in footnotes (a) and (e) of this table for a complete description of the methodology).

cIn 1984, the average motor vehicle tort case consumed 33 judicial minutes, while the average other tort case consumed 60 minutes. Pre-1984 data are not available for motor vehicle torts separate from other torts.
dNot available.

eState total for 1984 only; data not available for state except Los Angeles. See Judicial Council of California, 1988 Annual Report, Vol. 1, pp. 26–29, and Judicial Council of California, 1986 Annual Report, p. 59. The average for California was calculated each survey year. In 1984 only, the Judicial Council also calculated a separate average for each court (county) that participated in the study and averaged those county averages to calculate the statewide weights in minutes for the average county. In these county averages, each participating county influenced the average equally rather than in proportion to the volume of case filings.

fFor maximum relevance in comparison with Los Angeles total average work minutes data, the state total average work minutes were calculated using state work minutes for each different case type and the mix of case filings from Los Angeles in 1984.
minutes per noncivil case filed in 1989. ¹⁴ This trend difference between noncivil and civil cases is especially significant when a shortage of judges exists, because criminal and other noncivil cases have priority over civil cases.

**Increasing Average Judge Minutes per Criminal Case.** Figure 4.3 shows the time trends for the three types of noncivil cases—criminal, juvenile delinquency, and family law—that consume 90 percent of the time judges spend on all noncivil cases. The average amount of judge time per case for both juvenile delinquency and family law cases has risen slowly, with a growth rate averaging approximately 1 percent a year between 1971 and 1984. The time spent per case on criminal cases, however, has nearly doubled, from 136 judge minutes in

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¹⁴The figures we present in this subsection are based on actual survey data from Los Angeles Superior Court for 1971, 1974, 1976, 1979, and 1984. For the other intermediate years, we estimated values for each type of case by "straight-line" interpolation. For years before 1971 and after 1984, we used the 1971 and 1984 data on work time per case for each type of case, respectively. Averages across different case types (such as all civil, all noncivil, and all cases combined) used the mix of case filings of different types in the year for which the averages were calculated.
1971 to 249 judge minutes in 1984. This large increase in case-related minutes per criminal case filed accounts for most of the growth in judge time spent per case on noncivil cases. Upward trends also existed for mental health, probate and guardianship, and habeas corpus cases; the only downward trend in the amount of judge time per noncivil case filed was for juvenile dependency (see Table 4.1 for details).

We also compared the Los Angeles Superior Court with all superior courts in the state of California. Table 4.1 shows that for criminal cases (which consume more FTE judges than any other type of civil or noncivil case), the Los Angeles Superior Court spends slightly more judicial time per case filed (249 minutes) than is spent on the average case filed in the entire state of California (236 minutes). The time spent per criminal case filed increased greatly in California between 1971 and 1984, just as it did in Los Angeles. In 1984 for all types of noncivil cases combined, the Los Angeles Superior Court judicial officers spent an average of 96 case-related minutes per case filed—slightly more than the 91 minutes required by the average noncivil case filed in superior courts in California.
We looked at the fraction of the criminal cases that were tried and found that an increase in the trial rate had not contributed to the increase in the judge work time per criminal case. We asked judges why they thought the average judge minutes per criminal case had risen since 1970. They cited the various changes in the criminal area (such as increased defendants' rights) that may have increased both pretrial time and criminal trial length. Although a detailed discussion of these changes for criminal cases is beyond the scope of this report, the judges we interviewed offered the following possible explanations for the rise in judge work time per criminal case: The allowable questioning of potential jurors in criminal cases has been expanded; allowable challenges to the competency of counsel has led some lawyers to raise more issues; reduced plea bargaining has led to increased work; various Supreme Court rulings in death penalty cases have greatly increased the judge work time for those cases; instructions to juries now take longer to prepare; disputes over the admissibility of evidence may have increased; and increased criminal penalties may have led to increased disputing by defendants.

Decreasing Average Judge Minutes per Civil Case. Figure 4.4 shows the time trends for the types of civil cases that consume 90 percent of the time judges spend on all civil cases—personal injury, death, and property damage cases (also sometimes called tort or PI/PD cases)—and for other civil complaints (such as commercial, contract, and property cases). The average amount of judge time devoted to both PI/PD and other civil complaints cases has been declining since the early 1970s. The judicial work per PI/PD case dropped from 67 minutes in 1971 to 45 minutes in 1984, while the judicial work per other civil complaint case dropped from 142 minutes in 1971 to 110 minutes in 1984. Similar downward trends are evident in Table 4.2 for all other categories of civil cases (eminent domain, civil petitions, and appeals from lower courts).

The reasons for the decline in the average amount of judicial work time per civil case filed are multiple and include the following: increased court efficiency in processing cases, a smaller fraction of cases going to trial because of various court programs that promote pretrial disposition, and a smaller fraction of cases going to trial because the parties settle rather than wait the increasingly longer time periods necessary to obtain a trial. If the time to trial were reduced, some pent-up demand for trial would likely be released and the civil trial rate would likely rise somewhat, which would put upward pressure on the average judicial work time per case.

As App. D of Technical Appendixes shows, the percentage of criminal cases that had jury trials has remained relatively stable at 3 to 4 percent since 1970.
Fig. 4.4—Case-related judge minutes per case filed:
Civil cases

We compared the Los Angeles Superior Court with all superior courts in the state of California. Table 4.2 shows that for PI/PD cases, the Los Angeles Superior Court spent less judicial time per case filed than did the average other California superior court. For other civil complaints cases (which may be more complex, on average, in larger urban counties like Los Angeles), the Los Angeles Superior Court spent more time than other California courts in 1971 but spent approximately the same amount of time as the average superior court in California in 1984. In 1984, for all types of civil cases combined, the Los Angeles Superior Court judicial officers spent an average of 50 case-related minutes per case filed—10 minutes less than the average of 60 minutes per civil case filed in all California superior courts.¹⁶

¹⁶For maximum relevance in comparison with Los Angeles total average work minutes data, we calculated the state total average work minutes using state work minutes for each different case type and the mix of case filings from Los Angeles in 1984.
In sum, the average case-related work time by judicial officers in Los Angeles underwent only small growth—from 75 minutes in 1971 to 81 minutes in 1989. Although the average judge work minutes per civil case went down from 79 to 44 during that same time period, the average work minutes per noncivil case went up from 73 to 114, and the overall case average rose slightly. To explain why the average time to case resolution has been increasing markedly for civil cases, we need to look beyond the slight increase in the average judicial work time to dispose of a filed case. Changes in the law and legal practices are generating more work per criminal case, but the judge work per civil case has actually declined. In comparison to other courts in 1984, the Los Angeles Superior Court spent 3 minutes less judge time per case filed than did the average superior court in California (an average of 10 minutes less per civil case and 5 minutes more per noncivil case filed in Los Angeles).

Recent Changes in the Mix of Civil Cases Have Been Minimal

Another hypothesis about increased delay in civil case processing is that changes in the mix of types of cases filed in recent years may be generating more complex cases, which may be increasing the average judge time necessary per civil case. Within all civil cases combined, the mix of civil case types has not changed much since 1970. The maximum change for any single case type was a 9 percent increase for petitions, which require much less judge time than the average civil case. Personal injury, death, and property damage cases, which also require less judge time than the average civil case, rose slightly as a percentage of all civil cases. Eminent domain and other civil complaints cases, which require more judge time than the average civil case, fell slightly as a percentage of all civil cases.\(^\text{17}\) Thus, any changes in the mix of civil cases filed were relatively small and in a direction that lessened judge work per case rather than increased it. We conclude that changes in the mix of civil cases filed are not a significant cause of the increased delay in the processing of civil cases since 1970.

Length of Judicial Workday Is Comparable to That in Other Courts

Still another hypothesis about the increasing time to disposition is that the court personnel may not be working productively enough hours per day. Although judges do not fill out timesheets regularly indicating their time worked, they do provide such data periodically as

\(^{17}\)For details, see App. A in Technical Appendixes.
part of the Judicial Council's surveys of the average minutes of judicial work time per case. These data on the length of the judicial workday and work year can be criticized as potentially high because they are self-reported, but we believe them to be consistent with what we have observed as we studied the court system.

The judicial work year is currently 219 days—up from 215 in 1971. These 219 days on which the average judge is present at the court and available for case-related work consist of the 261 weekdays in a year less 12 holidays, 21 vacation days, 6 sick-leave days, and 3 days of training. 18

The average total workday for Los Angeles Superior Court judicial officers was 6.6 hours in 1984 (the most recent year for which data are available). Some 5.3 hours of the total was spent on case-related work. 19 In Los Angeles, the non-case-related work time averaged 24 percent of case-related work time in 1984. The breakdown of the non-case-related work time in Los Angeles is as follows: 36 percent court administration, 32 percent research, 18 percent delay/waiting time, 11 percent civic activities, and 2 percent travel. 20

Because of differences in methods of reporting survey results for the various years, we cannot present good time trend data for Los Angeles separately. We have separate Los Angeles data only for 1971 and 1984, when the case-related work hours per day were similar (within a half hour of each other). Some judges believe the average judicial workday in 1990 is longer than it was in 1984.

The average case-related work time of judicial officers in Los Angeles and elsewhere in California clusters between 5 and 6 case-related work hours per judicial workday in the various survey years since 1971. 21 The California statewide average for case-related judge work time was 5.73 hours in 1984—some 23 minutes per day longer than the Los Angeles average of 5.34 hours.

19 Analysis by RAND of Judicial Council survey data for the Los Angeles Superior Court. The Los Angeles average for judges was 6.68 hours, including 5.29 case-related work hours. The average for commissioners was 6.49 hours, of which 5.49 were case related. Some 10 percent of the judicial officers worked more than 8-hour days on average (including more than 7 hours of case-related work), and some 10 percent worked 5 hours or less (including approximately 4 hours of case-related work). Half the judicial officers reported an average of 6.3 total hours or less worked per day. Days absent from the court (for example, because of sickness or vacation) are excluded from these averages for days worked.
20 Analysis by RAND of Judicial Council survey data for the Los Angeles Superior Court.
21 For details, see Table A.13 in Technical Appendixes.
In comparison with other states, California judges work a fairly typical workday.\textsuperscript{22} In a national survey of all state general jurisdiction trial court judges in 1977, judges reported working an average of 8 hours, but direct observation found "judges in the field to work 7\% hours per day (including lunch)."\textsuperscript{23} Allowing 1-1/4 hours for lunch means an observed workday of 6-6\% hours—approximately the same as reported in Los Angeles.

The official court hours are 9:00 A.M. to noon and 1:30 P.M. to 4:30 P.M.—a total of 6 hours. The average judicial officer in Los Angeles Superior Court self-reported some 6.6 total hours per day worked, of which approximately 5.3 hours per day worked are spent on case-related activities.\textsuperscript{24}

A standard 8-hour workday contains more hours than are being used effectively by the court under the current system. Given the dependence of judge work time on the availability of lawyers, litigants, witnesses, jurors, other courtroom personnel, and others involved with the cases, how much more case-related time per day judges can productively work on a regular basis is unclear. Judges we interviewed felt that 6 hours a day was near the limit of a juror's effective attention span, but judges and lawyers can do much work without jurors and when jurors are not there. Judges we interviewed also pointed out that the court is not an assembly line with cooperative people all striving for the same goal; rather, it is an adversarial process that is not inherently efficient because the disputants and other people involved in the process have conflicting goals.

\section*{Shortage of Judges in Most Years since the Mid-1970s}

We have shown that annual total civil and noncivil case filings of all types per judge have grown only 5 percent since 1970, despite much year-to-year fluctuation in filings per judge. We also have shown that the average judge work time per case, for all types of civil and noncivil cases combined, has grown only slightly—from 75 to 81 minutes between 1970 and 1989. So why has delay in resolving civil cases been increasing markedly in the same time period? One answer is that a shortage of judges in Los Angeles has existed in most years since the mid-1970s; that shortage has been increasing recently. When a

\textsuperscript{22}In a study of the hours in a judicial workday in five other states that conduct judicial time surveys, the number of work hours available for judicial activity was 4.1–5.6 in Washington, 4.9–5.5 in Wisconsin, 5.1–6.4 in Minnesota, 5.5 in New Jersey, and 6.5–7.5 in Georgia (see Webb et al., \textit{Report of the Advisory Committee}, p. 16).

\textsuperscript{23}John Ryan et al., \textit{American Trial Judges}, Macmillan, New York, 1980, p. 43.

\textsuperscript{24}For details, see Table A.14 in Technical Appendixes.
shortage of judges exists, priorities assigned to criminal and other types of noncivil cases result in insufficient judges left to handle the civil workload, and civil case delay increases. And in a court system running near or above capacity for several years, even slight increases in filings per judge and average judge minutes per case filed can have major effects on delay.

We will now estimate the size of the shortage of judges by combining the data on case-related judge work time per case, the length of the judges' workday and work year, and case filings for various types of cases. In 1982, a committee of professors and other experts studied methods used in 19 different states to estimate judge needs. The committee reported to the Judicial Council that the "weighted caseload system is the best method for determining judgeship needs."\(^{25}\) We concur and have used that method with data specific to Los Angeles in conducting this RAND study. In this section, we multiply the case-related judge work minutes per case times the number of case filings for various types of cases to yield an estimate of the total workload generated by new case filings each year. We then divide that total by the average number of case-related work minutes per judge in a year to estimate the number of judicial officers needed. The estimates we present below do not include the number of extra judges that would be needed on a temporary basis to dispose of the backlog of cases and to handle the increased number of lawsuits that might be filed and trials that might be demanded if the time to trial were reduced.

We estimated the number of FTE judicial officers needed to process the new cases filed for each type of case for each year from 1970 to 1989.\(^{26}\) Of the 350 judicial officers needed in 1989, some 48 percent were needed for criminal cases; 26 percent, for civil cases; and 26 percent, for other noncivil cases. Criminal cases are only 16 percent of all case filings but consume nearly half the available judges. This is because the average criminal case requires approximately five times as much judicial work as does the average civil case, based on actual judicial work time per case disposed in 1984 in Los Angeles.

According to RAND estimates, 350 judicial officers were needed in 1989 just to process the new case filings. With only 293 FTE judicial officers authorized, the shortage was 57 judicial officers,\(^{27}\) not including any additional FTE judicial officers to work on reducing the five-year backlog of civil cases.


\(^{26}\)For details, see Tables A.15 and A.16 in Technical Appendixes.

\(^{27}\)In mid-FY 1989, 14 additional judicial officers were authorized; the average number of FTE judicial officers available in FY 1989 was 288 (see Table 4.3). Based on 288 FTE judicial officers available, the shortage was 52 in FY 1989.
Later in Sec. VI of this report we discuss how much the FTE judicial officer shortage is likely to grow with increased filings in 1990 and 1991 and consider options for increasing the supply of judicial work time. These options include adding new permanent judges, increasing the length of the judicial case-related workday, and adding temporary personnel to help reduce the backlog.

Figure 4.5 shows how the judicial officers RAND estimated were needed in 1989 were divided between civil cases and criminal and other noncivil cases. The 293 authorized judicial officers must give first priority to criminal cases because of criminal defendants' right to a speedy trial. Other noncivil cases (such as juvenile, family, probate, and mental health) have second priority after criminal cases and before civil cases. These criminal and other noncivil cases consumed an estimated 258 FTE judicial officers in 1989, leaving only 35 FTE judges to work on civil cases. Because civil cases have last priority in the court system, the entire impact of the 57-judge shortage fell on civil cases; thus, that civil case

![Pie chart showing distribution of judicial officers needed and shortage in 1989](image)

A total of 350 full-time-equivalent judicial officers are needed for new case filings in 1989.

**Fig. 4.5—Judicial officers needed and shortage in 1989**
delay has been increasing is not surprising. In 1989, we estimate that civil cases in the Los Angeles County Superior Court received less than half the number of FTE judicial officers needed just to keep up with new civil filings, not to mention to work on reducing the backlog. Speedy-trial laws for criminal defendants work because judges are being preempted from civil cases to work on criminal cases.

The number of judicial officers needed for civil cases rose from 59 in 1970 to 92 in 1989, while the total number of judicial officers needed for all types of cases rose from 181 to 350 during the same years. The FTE judicial officers authorized rose from 189 in 1970 to 293 in 1989, as Table 4.3 shows.

Note the relationship between a surplus or a shortage of FTE judicial officers available and the delay in civil case disposition, as Fig. 4.6 shows. In the early 1970s, the court had a few more judges than it needed to process new case filings; within one or two years, the median time to civil trial began to lessen significantly. From 1974 to 1981, the court did not have enough judicial officers to process new filings; beginning in 1976, the time to civil jury trial rose from two to nearly five years.

In the mid-1980s, the court had approximately the number of judicial officers it needed to process new filings, and time to trial stabilized at just under five years. Since 1986, the shortage of judicial officers has grown markedly, reaching 62 FTE judicial officers in 1989, based on available judicial officers (57 FTE judicial officers in 1989, based on authorized judicial officers). The time to civil trial is probably being held below five years in 1989 only by the state law that says civil cases should be tried within five years and by the existence of several special efforts and experiments aimed at reducing time to trial.

Large Backlog of Civil Cases Delays Newer Cases

The backlog of more than 30,000 civil cases at issue in 1989 contributed to delay because the large backlog effectively prevented judicial officers from disposing of newly filed cases in a timely fashion. Priority among civil cases is given to those at or approaching the five-year

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28 In the central district in 1986 and 1987, for example, judges assigned to the civil departments generally spent one-quarter to one-third of their time on criminal cases, according to the court’s executive officer, Frank Zolin (see Vivian Dempsey, “Putting the Courts on Fast Track,” California Lawyer, December 1987).

29 The lag of a year or two between a change in the number of judges and a reported change in the time to trial is explainable (at least in part) by the inertia that exists in any large system: Some activities are scheduled months in advance, new judges need time to become fully productive, and experienced judges may be able to handle an increased load for a short time but not permanently.
### Table 4.3

COMPARISON OF FTE JUDICIAL OFFICERS AUTHORIZED, AVAILABLE, AND NEEDED TO DISPOSE OF ALL NEW CASE FILINGS IN THE LOS ANGELES SUPERIOR COURT (1970–1991)

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Judicial Positions Authorized</th>
<th>FTE Judicial Positions Available</th>
<th>FTE Judicial Positions Needed</th>
<th>Annual Shortage of Judicial Positions&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Cumulative Shortage since 1974</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>189</td>
<td>189</td>
<td>181</td>
<td>(8 surplus)</td>
<td>(b)</td>
</tr>
<tr>
<td>1971</td>
<td>205</td>
<td>202</td>
<td>188</td>
<td>(14 surplus)</td>
<td>(b)</td>
</tr>
<tr>
<td>1972</td>
<td>217</td>
<td>209</td>
<td>187</td>
<td>(22 surplus)</td>
<td>(b)</td>
</tr>
<tr>
<td>1973</td>
<td>217</td>
<td>218</td>
<td>206</td>
<td>(12 surplus)</td>
<td>(b)</td>
</tr>
<tr>
<td>1974</td>
<td>217</td>
<td>220</td>
<td>221</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1975</td>
<td>227</td>
<td>228</td>
<td>250</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>1976</td>
<td>227</td>
<td>238</td>
<td>262</td>
<td>24</td>
<td>47</td>
</tr>
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<td>1977</td>
<td>233</td>
<td>233</td>
<td>257</td>
<td>24</td>
<td>71</td>
</tr>
<tr>
<td>1978</td>
<td>225</td>
<td>228</td>
<td>255</td>
<td>27</td>
<td>98</td>
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<tr>
<td>1979</td>
<td>226</td>
<td>220</td>
<td>258</td>
<td>39</td>
<td>137</td>
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<td>1980</td>
<td>251</td>
<td>221</td>
<td>241</td>
<td>20</td>
<td>157</td>
</tr>
<tr>
<td>1981</td>
<td>261</td>
<td>240</td>
<td>242</td>
<td>2</td>
<td>160</td>
</tr>
<tr>
<td>1982</td>
<td>259</td>
<td>252</td>
<td>252</td>
<td>0</td>
<td>160</td>
</tr>
<tr>
<td>1983</td>
<td>261</td>
<td>254</td>
<td>254</td>
<td>0</td>
<td>159</td>
</tr>
<tr>
<td>1984</td>
<td>261</td>
<td>258</td>
<td>255</td>
<td>(3 surplus)</td>
<td>156</td>
</tr>
<tr>
<td>1985</td>
<td>269</td>
<td>268</td>
<td>279</td>
<td>11</td>
<td>167</td>
</tr>
<tr>
<td>1986</td>
<td>278</td>
<td>301</td>
<td>313</td>
<td>12</td>
<td>179</td>
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<tr>
<td>1987</td>
<td>280</td>
<td>277</td>
<td>331</td>
<td>54</td>
<td>233</td>
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<tr>
<td>1988</td>
<td>279</td>
<td>289</td>
<td>324</td>
<td>35</td>
<td>268</td>
</tr>
<tr>
<td>1989</td>
<td>293</td>
<td>288</td>
<td>350</td>
<td>62&lt;sup&gt;c&lt;/sup&gt;</td>
<td>330</td>
</tr>
<tr>
<td>1990&lt;sup&gt;d&lt;/sup&gt;</td>
<td>(e)</td>
<td>(e)</td>
<td>374</td>
<td>81&lt;sup&gt;c&lt;/sup&gt;</td>
<td>411</td>
</tr>
<tr>
<td>1991&lt;sup&gt;d&lt;/sup&gt;</td>
<td>(e)</td>
<td>(e)</td>
<td>399</td>
<td>106&lt;sup&gt;d&lt;/sup&gt;</td>
<td>517</td>
</tr>
</tbody>
</table>

**SOURCES:** Los Angeles Superior Court statistics and RAND estimates (see text).

**NOTE:** FTE – full-time-equivalent.

<sup>a</sup>The shortage is the number of FTE judicial officers needed to dispose of all new case filings minus the FTE judicial officers available. The shortage does not include the number of additional FTE judicial officers who would be needed to help clear the five-year backlog of civil cases, nor the number of additional FTE judicial officers who would be needed to handle the increased number of trials that might be demanded if the time to trial were reduced. Numbers may not sum to totals because of rounding.

<sup>b</sup>Not applicable.

<sup>c</sup>The shortage based on FTE judicial officers needed minus FTE judicial officers authorized was 57 in 1989, 81 in 1990, and 106 in 1991.

<sup>d</sup>Based on projections of filings for each type of case based on the average annual growth in filings for that type of case between 1980 and 1989.

<sup>e</sup>Not available.
Fig. 4.6—Median time to civil jury trial compared with shortage of civil judicial officers

limit. In addition, nearly 4000 criminal cases were awaiting trial in 1989; those cases have priority over civil case trials.\textsuperscript{30}

In sum, the greatly increased civil delay since 1970 is not caused by greatly increased total case filings per judge. The growth rate in the court’s size has nearly kept pace with the growth rate in the number of filings. Increased delay is also not caused by greatly increased judge work time per case filed. The average judge work time to dispose of a civil case has been declining. Changes in mix of civil cases filed, the law, and changes in legal practices have not resulted in any increase in the average judge work time per civil case. However, the average work time per noncivil case has been increasing, and the average judge work time per case for all types of cases combined has risen slightly. The length of the judicial workday may or may not be contributing to civil

\textsuperscript{30}See Sec. II for details on the backlog of civil cases.
case delay. The self-reported 6.6-hour judicial workday in Los Angeles is similar to that of courts elsewhere, and how much the workday could be increased productively is not clear. Although the number of judges has been growing, a major problem clearly contributing to civil case delay is the shortage of judicial officers that has existed in most years since the early 1970s and increased markedly in recent years. This shortage has led to increased delay in disposing of civil cases, which have lower priority than criminal and other noncivil cases. The large backlog of unresolved civil cases is also a cause of delay because it constitutes a five-year-long line—a line newly filed cases must endure if they need a trial. The demand for judicial services in the Los Angeles Superior Court clearly exceeds the supply, and the shortage of judges is a primary cause of civil case delay.

COURT AND CASE MANAGEMENT

Another hypothesis about delay is that court management and judicial case management may need improvement. This category of causes concerns how the court handles individual cases. A judge may be available to work on a case, but the case may not progress toward disposition as expeditiously as it should because of less than full efficiency and effectiveness in the court’s processing.

With the understanding that efficiency is not the court system’s primary objective, we note that “justice” has a timeliness component that both court and case management influence. However, quantifying and assessing the court’s efficiency is very difficult—at what point does doing things “faster” start to have an effect (or too much effect) on the quality of the case outcomes and the litigants’ perceptions of the quality of justice?

In later sections of this report, we will discuss each of the court’s various activities with an eye to finding ways for judges to be more productive without unduly affecting justice. We will look at motions, arbitration, settlement conferences, and trials. We will also look separately at court management functions that cut across the different court activities, such as how cases are calendared and managed, how various types of cases are processed differently, how the court obtains and uses information about its operations, and how judges and the court as a whole are organized and managed. To the extent that room for improvement in any of these areas can be found, court and case management is a partial cause of delay.

In sum, significant room for improvement of both court and case management appears to exist, but this is not the primary cause of delay
in Los Angeles. The average judicial officer work time per civil case filed has declined markedly (from 79 minutes in 1971 to 50 minutes in 1984),\textsuperscript{31} probably indicating increased productivity in the court’s processing of civil cases. Moreover, the percentage of cases tried has greatly diminished since 1970.\textsuperscript{32} The potential for further diversion from trial is limited, as are delay reductions that might result from other improvements in court and case management. Some analysts would argue that the court already has too few trials and is already too efficient—that the court’s purpose is to adjudicate, not to “force” pre-trial settlement of cases. We believe that court and case management can be improved and that such improvement will help the delay problem. However, the court has become more productive in recent years, and still further improvements in efficiency cannot solve the entire delay problem.

LITIGANT AND LAWYER BEHAVIOR

The third major hypothesis about delay is that litigants and their lawyers may be delaying the progress of cases. This category of causes concerns how individual cases are handled by the litigants and their lawyers. A judge may be available to work on a case, but the case may not progress toward disposition as expeditiously as it should because the lawyers or the litigants are not ready for it to progress or do not want it to progress.

Perhaps the lawyer is too busy with other cases or is not too busy and does additional paid work on this case rather than settling it. Perhaps the defendant does not want to pay the plaintiff until absolutely necessary or to have the correctness of the plaintiff’s position acknowledged. Perhaps the plaintiff does not want to let the defendant “off the hook” so soon or to have the correctness of the defendant’s position acknowledged.

We do not have data on the extent to which civil case delay is exacerbated by litigants and lawyers. The difficulty in assessing delay caused by litigants and lawyers is that what one person might consider delay, another might consider essential time for legal work.

Some delay is undoubtedly caused by litigants and lawyers for some cases in the Los Angeles Superior Court. However, delay by litigants and lawyers is clearly not the primary cause of civil case delay. With five years from filing to trial, lawyers and litigants don’t need to use delaying tactics. Policies aimed at preventing delaying tactics would be

\textsuperscript{31}See Table 4.2 for details.
\textsuperscript{32}For details, see App. D in Technical Appendixes.
of limited value because the case couldn’t be tried by the court for five years anyway. If delay were reduced substantially by other policies so that the time from filing to trial was one or two years, policies aimed at speeding up lawyers and litigants would be much more relevant.

CONCLUSION

The demand for judicial services in the Los Angeles Superior Court clearly exceeds the supply, and the large shortage of judges is a primary cause of civil case delay. Room for improvement in court and case management and in litigant and lawyer behavior exists, but further improvements in efficiency and case management cannot solve the entire problem—the shortage of judges in Los Angeles must be eliminated if the delay problem is to have a solution. The court must have enough judges, support personnel, and facilities to handle the backlog and the volume of new cases in a timely fashion. In the next sections of this report, we discuss potential solutions to the civil case delay problem.
V. CIVIL DELAY REDUCTION POLICY OPTIONS: THE RESEARCH LITERATURE

In the remainder of this report, we will discuss options for reducing civil delay and congestion in the Los Angeles Superior Court. These options grow out of the findings we presented in the preceding sections regarding the scope and causes of the problem in Los Angeles. Those findings were based largely on the analysis of existing court data, as well as of new data we collected in Los Angeles.¹

With respect to an imbalance between supply and demand for court services as a cause of delay, we consider options for increasing the supply of judicial services and reducing the demand. The same policy options often affect court behavior and litigant/lawyer behavior as well. For example, the case calendaring system affects both the responsibility and accountability of individual judges and the way lawyers interact with those judges. In considering the various stages of litigation, we weigh options for revising and improving motion and discovery practice, arbitration, settlement conferences, and trials. In considering overall court and case management, we weigh options for revising and improving calendaring, case management, continuances, time standards, differentiated processing of cases with different characteristics, and court management.

If one wants to reduce delay, one may choose to increase the judge work time available, decrease the number of cases filed, and/or decrease the judge work time required per case filed. The tough issues include the feasibility of the various options, their costs in terms of both money and justice, and evaluation of their potential effectiveness.

Although our analyses of ways to reduce delay build on data from Los Angeles, they do not emerge solely from our study of the local situation; rather, they are informed by a long research tradition. Civil delay is and has been a major problem in numerous jurisdictions around the country, as the plethora of studies that have appeared in recent decades proves. This previous research has covered every aspect of docket management, from concerns with such overarching issues as the prevailing “legal culture” in a jurisdiction to tinkering with individual procedures (such as telephone conferencing) to speed disposition.

¹For a historical review of civil delay in Los Angeles, see Selvin and Ebener, Managing the Unmanageable.
Although the previous empirical research on civil case management is extremely diverse in its scope and methodology, viewing it together, we discover many consistencies among those findings. Relatively few "solutions" have been posed repeatedly over the years to reduce civil delay. Both researchers who have looked at the national picture and those who have focused on individual jurisdictions (including Los Angeles) consistently recommend some of the same dozen or two dozen innovations.

Consequently, we believe that the arsenal of weapons to combat delay has no undiscovered "magic bullets." Rather, solving the delay problem is a matter of selecting the right package of policy innovations that address the particular court's problems, then effectively implementing and fine-tuning those solutions on a long-term basis. Although the range of solutions proposed has changed little over the years, the sophistication with which those solutions have been chosen, implemented, and evaluated has improved significantly.

We start from this point, then, in our review of the literature on civil case management. Our goal in the following several pages is to sketch the scope, methodology, and findings of previous research on delay and the range of solutions proposed to reduce delay in urban trial courts. We will focus first on the major solutions and then review the findings with respect to expediting specific stages of litigation.

SCOPE AND MAJOR THRUST OF CIVIL DELAY RESEARCH

The Need for Institutional Commitment and Bar Cooperation

Beginning in the mid-1970s, almost every major study of delay, regardless of its methodology, scope, or specific recommendations, has stressed the importance of a firm and formal commitment by the court and the local bar to reducing delay through cooperative effort. Many

2 The period following World War II saw the first sustained attention to the specific issue of delay and congestion. Research on delay published during this period made significant advances in measuring delay. Yet researchers were guided by the implicit belief that the pace of litigation in an individual court was more or less mechanically determined by the availability of court resources and the formal rules and procedures employed. Consequently, many monographs from this period focus on the promotion or evaluation of specific procedural innovations. See, for example, Hans Zeisel, Harry Kalven, and Bernard Buchholz, Delay in the Court, Little, Brown, Boston, Mass., 1959; Harry D. Nims, Pretrial, Baker, Voorhis & Co., New York, 1960; and Maurice Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," in The American Assembly, Columbia University, The Courts, the Public, and the Law Explosion, Prentice-Hall, Englewood Cliffs, N.J., 1965.

One study both of particular relevance to our analysis and typical of the postwar period is James G. Holbrook et al., A Survey of Metropolitan Trial Courts, Los Angeles
researchers view the existence of such a commitment as the most critical (though by no means the only) element in any delay-reduction program. Thomas Church is a leading spokesperson of this view. Although earlier research on court delay "was based on a model of court operation that assumed that the pace of litigation was determined by court resources and formal rules and procedures," Church writes, "[r]ecent studies posit a different orientation: that the pace of litigation is strongly affected by the informal norms, expectations and procedures found in local court systems." Although the judicial resources available and the formal rules and procedures "can have a substantial effect on court operation," different courts with similar resources and similar formal rules and procedures may experience substantially different lengths of delay in disposing of their civil caseloads because of different informal relationships, norms, and practices. In other words, "it's not just what you say you'll do, it's how you do it."

Church's views on the importance of this "local legal culture" in determining the pace of litigation emerged in part from an empirical study of civil cases in 21 urban trial courts. Church and his colleagues concluded that informal practices and local legal culture can be changed, but that "if any one element is essential to the effort to reduce pretrial delay, it is concern by the court with delay as an institutional and social problem."

Active Judicial Case Management Found in "Fast" Courts

Apart from this overriding concern about delay and a courtwide commitment to its reduction, several empirical studies have identified a set of procedures or practices associated with fast and/or productive

Area, University of Southern California, Los Angeles, Calif., 1956. Holbrook examined all the trial courts in Los Angeles (the superior, municipal, and justice courts). He compiled information about the size of their caseloads and evaluated their administrative and case management procedures. Many of Holbrook's recommendations were designed to eliminate civil delay, which, though significantly lower than at present, was high by contemporary standards. These recommendations included creating the executive office of the Los Angeles Superior Court, lengthening the term of that court's presiding judge and extending the powers of the office, employing a full-time statistician, reducing the number of jurors in a civil case, increasing the use of temporary judges, experimenting with the use of an impartial medical expert panel, limiting continuances, and introducing pretrial conferencing. Many of Holbrook's recommendations have since been implemented; others have been echoed in the findings of subsequent research and commission reports focusing on delay in the Los Angeles Superior Court.

4Church et al., "The 'Old and the New,'" p. 398.
courts (as opposed to the others). The findings of these analyses\(^6\) are remarkably consistent. The researchers found, first, that the pace of litigation is not associated with factors such as the court's size, the jurisdiction's population, the jury trial rate, or the presence of an alternative dispute resolution (ADR) procedure. Second, they found that speedy case disposition is associated with active judicial case management: early and continuous court monitoring and scheduling of events in the litigation, minimization of continuances, active but selective judicial involvement in settlement discussions, adherence to time standards for each event in the case, and, in particular, adherence to a prompt, firm trial date.\(^7\) Many procedures that allow courts to carry out these functions along with others have been adopted by several trial courts across the country in recent decades. However, jurisdictions vary significantly in the design, implementation, and administration of these procedures.\(^8\)

STRATEGIES TO REDUCE DELAY IN GENERAL AND AT SPECIFIC LITIGATION STAGES

Discovery and Motions Practice

Almost every monograph that has explored the causes of civil delay has focused, to a greater or lesser extent, on the discovery process. Complaints about discovery abuses, frivolous motions, and "churning"


\(^7\)See further discussion of these individual procedures later in this section and in the remainder of this report.

\(^8\)In 1981, RAND's Institute for Civil Justice conducted a national inventory of the procedures in use to reduce pretrial delay in civil cases. Researchers surveyed 50 state and 40 major metropolitan courts. The study focused both on procedures to streamline and improve the management of cases moving through the system and on efforts to divert cases progressing toward trial to resolution, either through settlement or by means of an ADR mechanism (Patricia A. Ebener, J. Wilson-Adler, M. Selvin, and M. S. Yesely, *Court Efforts to Reduce Pretrial Delay: A National Inventory*, The RAND Corporation, R-2722-ICI, 1981).
the case file have become commonplace. The recommendations of the numerous studies and commissions that have addressed these problems are also, in the main, consistent. They are based on the premise that "shortening discovery time is in turn associated with shortened disposition time." These recommendations include beginning discovery quickly, imposing judicial controls on the quantity of discovery, establishing separate discovery "tracks" for cases of different complexity, setting reasonable and firm deadlines for completion, and imposing judicial sanctions for failure to comply with time standards or other discovery abuses.

**Court-Annexed Arbitration Policy**

Court-annexed arbitration has become an increasingly common part of state trial court systems. The claim usually made for arbitration programs is increased efficiency: The programs are intended to lower court costs and reduce the time required to dispose of cases. The ICJ has taken a close look at programs in Pennsylvania (specifically, in Pittsburgh), New Jersey, and California. The programs in these

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10. Such as by limiting the number of interrogatories.


jurisdictions vary significantly in terms of the value of cases eligible for arbitration, the process by which case value is determined, the procedures for selecting arbitrators and scheduling hearing dates and locations, the rules that govern hearings and awards, and the disincentive system to limit appeal rates.\textsuperscript{14}

What are some common problems with court-annexed arbitration programs? First, the way in which a program is designed and implemented significantly affects that program's effect on time to disposition and the cost of litigation. For instance, when California began its mandatory arbitration program in 1979, it set the value for program-eligible cases such that only approximately one-fifth of civil suits pending in participating courts were diverted to arbitration. Consequently, the program's implementation did not cause an expected sharp reduction in court congestion. Second, regardless of the method of implementation, claims of lower cost and speedier disposition resulting from arbitration are very difficult to measure. For example, although litigants can generally obtain an arbitration award at significantly lower cost than a full-blown trial, claims of cost savings generally do not take into account the costs the court incurs in administering the program and, in some cases, processing appeals from arbitration awards. Moreover, to reduce costs significantly, an arbitration program would have to reduce the number of trials substantially. But very few cases ever go to trial. The ICJ found no statistically measurable reduction in trial rates for cases assigned to the New Jersey program; however, trial rates in that jurisdiction were already less than 5 percent.

In general, claims that arbitration programs have resulted in significant savings in time and cost have not yet been established clearly. But apart from these difficulties, one consistent finding from all ICJ studies of arbitration is that litigants want a hearing, an opportunity to present their case before an impartial third party and to receive a judgment based on the case's merits. Arbitration appears to provide the opportunity for such a hearing; to that extent, litigants generally like arbitration.\textsuperscript{15}

Most recent attention devoted to improving court-annexed arbitration programs' operation has focused on earlier diversion of cases into

\textsuperscript{14}See Elizabeth Rolph, \textit{Introducing Court-Annexed Arbitration: A Policymaker's Guide}, The RAND Corporation, R-3167-ICJ, 1984, which discusses each of these program elements in terms of the effects of alternative choices on three policy objectives: disposing of cases faster, reducing processing costs, and maintaining (or, one hopes, increasing) litigant satisfaction with the adjudicative process.

arbitration. For instance, the National Center for State Courts' (NCSC's) 1985 report noted that “preliminary indications are that the key variable is the way cases diverted into the ADR process are managed. Early referral—shortly after the issue is joined by the filing of an answer—correlates with speedy overall case processing times.”

**Settlement Conference Policy**

Research focused specifically on the effectiveness of judicial settlement conferences has consistently argued for selective rather than uniformly active judicial participation. The conclusions of the 1976 NCSC study are representative:

>[E]xtensive court involvement in civil case settlement activity is nonproductive. A judge may produce the final “nudge” needed to crystallize a settlement in selected cases, but dedicating substantial judicial resources to settlement discussions in every case may neither increase judicial productivity nor speed dispositions.17

**Trial Policy**

Although an increasingly widespread belief exists that judges need not hold protracted settlement discussions in every case, in contrast, a growing consensus also exists that strong judicial involvement is appropriate for all trials. Median trial lengths vary substantially across urban court jurisdictions. Some courts are able to try similar cases in one-half to one-third the time of other courts. Courts with more product liability cases and attorney *voir dire* had longer median trial lengths, but “even accounting for these differences, . . . [there are] wide variations in the duration of comparable trials. . . . One conclusion is inescapable: the degree of judicial management of the trial process is the single most important factor distinguishing courts in which comparable cases are tried more quickly than elsewhere.”18

Recommendations to strengthen judicial management of all phases of trials generally include defining areas of dispute before the trial begins, judicial *voir dire*, setting reasonable time lengths for each trial

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17 Church et al., *Justice Delayed*, p. 76.
18 Dale Anne Sipes, “The Lengths Courts Go to Try a Case—and Possible Remedies,” *State Court Journal*, Vol. 12, No. 1, Winter 1988, pp. 4–17. This study collected data on 1500 trials in nine courts in New Jersey, Colorado, and California. Trial statistics were supplemented by interviews and questionnaires sent to judges and lawyers.
segment, prohibiting repetitive or unnecessary trial evidence, and conducting the trial without interruption.  

Case Calendaring

Within the past decade, a shift in the consensus of researchers has occurred with respect to the most effective method of calendaring civil cases. Before 1977, little empirical data involving more than one court was available. One review of the then-existing literature concluded that “the type of calendaring system chosen by a jurisdiction is much less significant for its performance in case processing than are other, more basic aspects of case management.” An exception to this trend relevant to this analysis is the 1974 fall report commissioned by the Judicial Council. Although that report concludes, in part, that it finds “no reason to recommend statewide adoption of any of the calendar systems studied,” it notes that “at least one large metropolitan court has implemented the judge-team concept for calendaring, resulting in backlog reduction.” It urges “further experimentation with this concept at the municipal and superior court level,” particularly in larger urban courts, “[b]ecause of the apparent advantages of the judge-team approach.”

More recently, however, the NCSC, in three empirical analyses, found that strong evidence supports the conclusion that individual calendaring systems have faster average times to disposition than do master calendar systems for civil cases in urban courts. The time to trial was nearly twice as long in the master calendar courts as it was in the individual calendar courts. Although “the individual calendar system does not emerge . . . as a panacea,” NCSC researchers believe that it is preferable because it provides more accountability for individual judges and increases productivity, thereby decreasing delay. The NCSC study of urban trial courts in 1987 found that 8 of the fastest 12 courts used individual calendars, while 11 of the slowest 13 courts used

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20Church et al., Pretrial Delay, p. 32. A 1977 survey of all state trial judges similarly concluded that the judges revealed “no differences in the proportion of judges waiting, or time spent waiting, in individual and master calendar systems (in similar-size courts).” However, the survey did not collect data on civil case delay as a function of the calendar system. See Ryan et al., American Trial Judges, p. 71.


22Church et al., Justice Delayed, pp. 72–75; Mahoney et al., Changing Times in Trial Courts, pp. 73–75.
master calendars.\textsuperscript{23} The study concluded that “individual calendars are more likely to produce faster civil case processing times.”\textsuperscript{24}

Time Standards

In 1984, the American Bar Foundation and the National Conference of State Trial Judges drafted time standards governing the life of a case, with the intention that they be adopted by individual state courts.\textsuperscript{25} These standards were predicated on the belief that

...any elapsed time other than reasonably required for pleadings, discovery, and court events is unacceptable and should be eliminated.
To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation.\textsuperscript{26}

Courts in several jurisdictions have now implemented time standards.\textsuperscript{27} Evaluations of the pace of litigation in states with and without such standards have found, first, that instituting time standards has increased the efficiency of those courts, and second, that courts with such standards more “expeditiously” process their civil caseloads than do courts without such standards.\textsuperscript{28}

Differential Case Management

Although several courts, including the Los Angeles Superior Court, have for some time maintained separate “tracks” for certain types of cases, little focused empirical research evaluates the pros and cons of the concept as a delay reduction technique. Instead, recent commissions and published surveys have consistently called for “tracking” or differential case management (in a rather abstract sense) as a promising tool to reduce civil backlogs. In general, such tracking would separate cases according to their complexity or size; different tracks

\textsuperscript{23}Goerd et al., \textit{Examining Court Delay}, pp. 30–32.

\textsuperscript{24}Goerd et al., \textit{Examining Court Delay}, p. 32.

\textsuperscript{25}National Conference of State Trial Judges, \textit{Standards Relating to Court Delay Reduction}.

\textsuperscript{26}National Conference of State Trial Judges, \textit{Standards Relating to Court Delay Reduction}, Sec. 250, “Caseflow Management and Delay Reduction: General Principle.” See discussion later in this section and in Sec. VII on the adoption of time standards.

\textsuperscript{27}Kansas was the first state to do so, adopting statewide time standards for the resolution of both criminal and civil cases in 1980, before publication of the National Conference of State Trial Judges standards.

would include different discovery rules, time standards, and levels of judicial involvement. One general principle behind differential case management is allocating more judicial resources to more complex, time-consuming cases in an effort to settle them before trial.²⁹

Court Management

In addition to specific procedural innovations, recent research has identified various court management characteristics associated with faster or more productive trial courts. These characteristics include a committed and effective presiding judge who is a skilled manager; computer-assisted monitoring of all cases, from filing through disposition; and good communication and broad consultation within the court (including both judges and staff), between the trial court and state-level leaders, and with the private bar.³⁰

Next, we will apply the results of past research and what we have learned about the delay problem and its causes in Los Angeles to analyze potential solutions. We organize our analyses in the remainder of this report around four categories of policy options: increasing the supply of judicial resources to match the demand, adopting systematic and active judicial case management, using differential case management based on case characteristics, and improving the court’s management.


³⁰State Bar of California, Reducing Delay; and Mahoney et al., Changing Times in Trial Courts.
VI. INCREASING THE SUPPLY OF JUDICIAL RESOURCES TO MATCH THE DEMAND FOR SERVICES

INTRODUCTION

In Sec. IV, we discussed various possible causes of delay in disposing of civil cases. We found that the greatly increased civil delay since 1970 is not caused by greatly increased total case filings per judge. The growth rate in the court's size has nearly kept pace with the growth rate in the number of filings. Increased delay is also not caused by greatly increased judge work time per case filed. The average judge work time to dispose of a civil case has been declining. Changes in mix of civil cases filed, in the law, and in legal practices have not resulted in any increase in the average judge work time per civil case. However, the average work time per noncivil case has been increasing, and the average judge work time per case for all types of cases combined has risen slightly. The length of the judicial workday may or may not be contributing to civil case delay. The self-reported 6.6-hour judicial workday in Los Angeles is similar to that of courts elsewhere, and how much the workday could be increased productively is not clear. Although the number of judges has been growing, a major problem clearly contributing to civil case delay is the shortage of judicial officers—a shortage that has existed in most years since the early 1970s and increased markedly in recent years. This shortage has led to increased delay in disposing of civil cases, which have lower priority than criminal and other noncivil cases. The large backlog of unresolved civil cases also is a cause of delay because it constitutes a five-year-long line—a line newly filed cases must endure if they need a trial. The demand for judicial services in the Los Angeles Superior Court clearly exceeds the supply, and the shortage of judges is a primary cause of civil case delay.

To right the imbalance between supply and demand, one can either increase the supply of judicial services or reduce the demand. Although the demand for judicial services is largely beyond the control of court policymakers, we note a few options for reducing demand before we discuss increasing the supply of judicial services.
OPTIONS FOR DECREASING THE DEMAND FOR JUDICIAL SERVICES

Reducing the demand for judicial services for resolution of civil disputes is accomplishable by either diverting civil cases from the courts to other dispute resolution mechanisms or reducing the types of services available once a case is filed. Civil disputes may be diverted from superior court in several ways. For example, cases may be diverted by raising the jurisdiction level of lower courts, increasing court fees for litigants able to pay, requiring the "loser" to pay both sides' legal fees, changing liability laws (adopting no-fault automobile accident legislation, for instance), and encouraging private arbitration, mediation and private "rent-a-judge" programs. The demand for judicial services is also reducible without decreasing the number of filings by limiting the types of judicial services provided. For example, eliminating jury trials except in exceptional circumstances would substantially reduce trial length.³

Alternatively, the demand for civil judges' time to process criminal cases might be eliminated by totally separating civil and criminal courts.

If the court is not successful in increasing its supply of judicial services soon, it will have to consider seriously ways of reducing the demand for court services in the near future. These options limiting demand for superior court services typically raise substantial questions about their impact on justice and may be unacceptable to many people.

¹This does not solve the problem, however—it just moves it from one court to another.


³In England, for example, a 1981 law provided that jury trials were to be used in only exceptional circumstances. The result was that virtually no personal injury cases and only some 2 percent of all civil cases are tried before a jury. One British judge indicated that abandoning jury trials was "the single biggest contribution" in controlling costs and delay in civil litigation, mainly by reducing the time necessary for trials (civil trials in England average only three days, substantially below the nine-day jury trial average for Los Angeles). See "Litigation Critics Happy with British Curbs on Lawsuits," Los Angeles Daily Journal, July 7, 1988.
The key question is whether the benefits of reducing delay in superior court more than offset any disadvantages that may arise from effectively denying certain cases access to the superior court civil justice system. Because we do not have the information necessary to answer this question, we make no suggestions about controlling the demand for judicial services.

Note, however, that long delays may affect the demand for court services. With five years to trial, some potential lawsuits may never be filed because the potential litigants cannot wait or do not want to wait five years for disposition. And, some litigants may file suit but settle for less than they want because they cannot or will not wait five years for trial. Thus, long delay is one way of indirectly rationing court services.

We now turn to ways of increasing the supply of court services. These options include adding new permanent judges, increasing the length of the judicial case-related workday to the extent feasible, and adding temporary personnel to help reduce the backlog.

**ADDING PERMANENT JUDGES TO PREVENT THE BACKLOG FROM INCREASING**

**OPTION 1:** Add a large number of new permanent judicial officers before 1991. We estimate that at least 106 additional FTE judicial officers will be needed just to process the new case filings in 1991.

For decades, researchers and court analysts have touted adding judges as a solution to delay in the courts, yet delay persists. Hence, some people dismiss the idea of adding more judges as the “old” solution that hasn’t worked; they view it as throwing more money at the problem, when what is really needed is more efficiency in litigation. In our view, the existing judges and lawyers can work more efficiently but simply cannot handle the workload.\(^4\) If the court had not added judges in the past, delay would be much worse than it is now. The question today in Los Angeles is not whether more FTE judges are needed, but how many more are needed.

\(^4\)See Goerd et al., *Examining Court Delay*, p. xv. That NCSC study found that “[t]here is a point when the caseload per judge becomes so large that even effectively managed courts produce slower processing times.” The study also found little difference between the faster and slower courts in the total number of cases filed per judge. Unfortunately, the researchers did not have data on differences in the average judge work time necessary per case in the different courts they studied, so they could not adjust for differences in judge work caused by differences in the mix of types of cases filed and size of cases filed in the different courts.
In 1982, a committee of experts studied methods used in 19 different states to estimate judge needs; the committee reported to the Judicial Council that the “weighted caseload system is the best method for determining judgeship needs.” We concur and have used that method with data specific to Los Angeles in conducting this RAND study. In Sec. IV, we multiplied the case-related judge work minutes per case times the number of case filings for various types of cases to make an estimate of the total workload generated by new case filings each year. We then divided that total by the average number of case-related work minutes per judge in a year to estimate the number of FTE judicial officers needed.

The weighted caseload system assesses judicial needs based on the current system and does not tell us about how the current system will operate in the future, about any alternative system, or about any idealized system as it “should” operate. However, knowing how many FTE judges are needed to operate the current system is important. Periodic studies to update case weights would allow court staffing to be adjusted as new laws are enacted and new court policies are implemented and prove either more or less demanding of judicial resources than current laws and court policies.

The available data show how much time judges actually spend per case and how long they actually work per day. One could argue that the work time per case or per day should be different. Perhaps the case-related judge work time per day can be increased without harming justice and imposing unrealistic demands on the judges. Perhaps the judge work time per case can be decreased without compromising justice by adopting different case or trial management strategies. In later sections of this report, we will explore these areas; here, however, we make estimates of the number of FTE judicial officers needed to process new case filings, assuming that the current system is used and that the judge time per case and per day remain unchanged. If increasing the judicial workday permanently proves feasible, for example, fewer new judges will be needed.

The estimates we develop below in this subsection do not include the number of extra judges that would be needed on a temporary basis to dispose of the backlog of cases or to handle the increased number of trials that might be demanded and additional cases that might be filed if the time to trial were reduced. Thus, the estimates are the minimum additional FTE judges needed, assuming no change in the average judge minutes necessary per case.

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In Sec. IV, where we talked about causes of delay, we estimated that 350 FTE judicial officers were needed in 1989 just to process the new case filings. With only 293 FTE judicial officers authorized, the shortage was 57 FTE judicial officers. The judicial officers must give first priority to criminal cases; other noncivil cases (such as juvenile, family, probate, and mental health) have second priority after criminal cases and before civil cases. Those criminal and other noncivil cases consumed an estimated 258 FTE judicial officers in 1989, leaving only 35 FTE judges to work on civil cases. Because civil cases have last priority in the court system, the entire impact of the 57-judge shortage fell on civil cases. Thus, in 1989, we estimate that civil cases in the Los Angeles County Superior Court received less than half the number of FTE judicial officers needed just to keep up with new civil filings. Speedy-trial laws for criminal defendants work because judges are being preempted from civil cases to work on criminal cases.

The number of judges the court needs will grow as new case filings increase in the future. We estimate that 399 judicial officers will be needed in 1991 just to process the estimated 335,000 new case filings. Thus, if no additional judges are appointed before then, the RAND estimate is a shortage of 106 FTE judges in 1991 (not including any additional judges needed to work on reducing the five-year backlog of civil cases and on processing increased demand for trials that may materialize if delay is reduced).

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6For details and methods of the estimate, see Table 4.3 in Sec. IV and Tables A.4, A.15, and A.16 in Technical Appendixes. We have data on actual case filings through fiscal year (FY) 1989; we estimated the number of case filings in the Los Angeles Superior Court for FY 1990 and FY 1991 using the average annual growth rate from FY 1980 through FY 1989. We used the average annual compound growth rate for each type of case, then totaled the estimates. The result was an estimated 319,000 filings of all types in FY 1990 and 335,000 in FY 1991. The California Administrative Office of the Courts (AOC) uses a five-year historical growth rate to make its projections. We found the growth rate from year to year to be highly variable for several types of cases and have used a ten-year historical average annual compound growth rate because it results in more stable estimates. We were particularly concerned about the fluctuations and small decline in the civil filings that occurred in FY 1988, about the time the fast-track experiment began in the Los Angeles Superior Court. The reason for the decline is not clear, but, based on interviews with court personnel and the knowledge that growth in filings resumed in 1989, we hypothesize that some lawyers may have waited to file until they were ready to move on a fast track or may have had more cases than they could handle on a fast track and thus were not accepting new cases until they disposed of some of their old caseload.

7Estimates for 1991 by the California AOC were unavailable as of this writing. Both RAND and the AOC use the case-weight method of estimating the number of judges needed. However, the AOC estimate may differ from the RAND estimate because RAND uses Los Angeles data on the judge's work year and average judge minutes per case (whereas the AOC uses statewide data instead of Los Angeles data for those factors), and because the RAND projection of 1991 total filings (civil and noncivil) is 335,000. We based our projections on the average annual growth rate between 1980 and 1989 for
This is a huge shortage of FTE judicial officers, and one must ask, Why have the Los Angeles County and California State governments not provided sufficient judges? Both the county and the state must approve funding for the new judgeships; in general, the number approved is less than the estimated need. Three basic reasons for the shortage appear to exist:

- Both the state and the county have overall budget limitations imposed by the voters, and the statewide average annual cost of each judgeship with all associated staff is $566,000 in salary and other operating costs. In Los Angeles in 1989, we estimate that the average annual cost of each civil judgeship with all associated staff is $506,000, plus some $204,000 in annualized capital costs of the courtroom. If 106 new judges were added, the additional annualized cost would be an estimated $75 million. The problem of insufficient judgeships is exacerbated by the lack of empty courtrooms in which to house new judges if they are appointed. The time to construct a new courthouse is five to seven years; the county estimates the cost at $2.5 million per courtroom.

- If the state legislature is controlled by one political party and the governor is a member of another political party (as is currently the case), the legislature may be reluctant to give the governor the opportunity to appoint many new judges.

- Some county and state government officials have felt that the courts need to be reformed and made more efficient rather than increased in size.

The underfunding of courts is not unique to Los Angeles—it is apparently a problem in many courts nationwide. A 1987 national survey of 800 state and 200 federal trial judges who spend at least half their time on general civil cases found that “the fact that there are too

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9For a discussion of the court budget, see App. E of Technical Appendices.
few judges for the caseload is thought to be a cause of delay by sizable
majorities of both state and federal judges.”

Charles Vogel, former president of the Los Angeles County Bar
Association, summed up the need for more judges quite well: “Simply
stated, it is impossible for the court to handle its caseload if judicial
resources are provided on a too-little, too-late basis. Consequently, I
believe that no amount of ‘creative calendar management’ will provide
a magic solution to the backlog problem in Los Angeles. Continuing
experimentation with all the tried and worn recommendations simply
ignores the real problem.”

We noted above that implementing policies that lessen delay may
release pent-up demand for lawsuits and trials and, hence, increase the
number of judges needed above and beyond the minimum number we
have estimated. Consider the potential relationship between delay and
trial rate, for example. A recent study of the relationship between civil
delay and trial rate made a hypothetical case for trial rate increasing as
delay decreases; the preliminary empirical analysis was “suggestive” of
the hypothesis’s validity. In the Los Angeles Superior Court before
1978, when the median time from filing to trial was typically two to
three years, the fraction of civil complaints cases with contested trials
ranged from 4 to 9 percent. After 1981, when the median time to trial
has been nearly five years, the fraction of civil complaints cases with
contested trials has been much lower—2 to 4 percent.

On the other hand, for civil cases involving private parties in U.S.
district courts between 1971 and 1986, the fraction tried declined mark-
edly, from 10.9 percent to 6.6 percent, but the time to disposition was
essentially unchanged. In 1971, 60 percent of civil cases were disposed
in one year or less, while 8 percent took more than three years. In
1986, 61 percent of civil cases were disposed in one year or less, while 7
percent took more than three years. In a study of urban trial courts
in 1987, the National Center for State Courts found that “the percen-
tage of the cases disposed by jury trial had no apparent effect on case
processing times.”

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10Taylor and Kagay, Judges’ Opinions on Procedural Issues. The study excluded
judges who spend more than half their time on criminal, family, probate, admiralty, tax,
customs, bankruptcy, or small-claims cases.
12George L. Priest, “Private Litigants and the Court Congestion Problem,” Boston
13For details, see Table D.1 in Technical Appendixes.
14T. Dungworth and N. Pace, Statistical Overview of Civil Litigation in the Federal
15Goerd et al., Examining Court Delay, p. 25.
The point is that no one knows how much the demand for lawsuits and trials might increase if delay decreased, and the court should monitor these factors each year so that it can adjust the estimates of judges needed accordingly. The problem is complex, because many factors interact to determine the demand for court services.

However, we can estimate how many additional FTE judicial officers would be needed if the jury trial rate hypothetically increased 1 percent or if civil filings hypothetically increased one percent. If the fraction of civil complaints that go through jury trial were to increase by 1 percent of filings, an additional 1000 or so civil jury trials would be necessary, which at 36 judge hours per trial would require an additional 30 FTE judges per year. An increase in civil filings of 1 percent would mean an additional 1600 or so civil complaints and petitions, which at 50 judge minutes per case would require approximately 1 additional FTE judge. Given the $75 million annualized cost of adding at least 106 new judges, whether the existing Los Angeles judges could productively work longer days on a permanent basis (thereby reducing the number of new judges needed) needs to be explored.

LENGHTENING THE COURT WORKDAY

OPTION 2: Increase the official court hours from 6 to 7 per day and the average case-related workday of judges by 1 hour. This is equivalent to adding 54 new judges.

The average workday for Los Angeles Superior Court judicial officers was 6.6 hours in 1984, including 5.3 case-related work hours per day.\textsuperscript{16} The California average is 5.7 case-related work hours per day—approximately half an hour per day longer than the average in Los Angeles.\textsuperscript{17}

Some 10 percent of the Los Angeles judicial officers reported working 8 or more hours per day on average (including 7 or more hours of case-related work), and some 10 percent reported working 5 hours or less (including about 4 hours of case-related work). Half the judicial officers reported an average of 6.3 total hours or less per day worked.

\textsuperscript{16}See Sec. IV of this report. These data were self-reported by judicial officers in 1984 (the most recent year for which data are available).

\textsuperscript{17}In Los Angeles, the non-case-related work time averaged 24 percent of case-related work time in 1984. The breakdown of the non-case-related work time in Los Angeles is as follows: 36 percent court administration, 32 percent research, 18 percent delay/waiting time, 11 percent civic activities, and 2 percent travel. The non-case-related work time (excluding time absent from the court) also amounts to 24 percent of all case-related work time statewide.
Days absent from the court (such as sick-leave or vacation days) are excluded from these averages for days worked.

The current official court hours are 9:00 A.M. to noon and 1:30 P.M. to 4:30 P.M.—a total of 6 hours, considerably less than the standard 8-hour workday. Given the dependence of judge work time on the availability of lawyers, litigants, witnesses, jurors, other courtroom personnel, and others involved with the cases, how much more case-related time per day judges can work productively on a regular basis is not clear. Researchers may want to conduct and carefully evaluate an experiment to see whether or not increasing the average judicial workday by 1 hour is feasible.

Judges we interviewed felt that 6 hours a day was near the limit of a juror’s effective attention span, but judges and lawyers can do much work when jurors are not present. Judges we interviewed also pointed out that the court is not an assembly line with cooperative people all striving for the same goal; rather, it is an adversarial process that is not inherently efficient because the disputants and other people involved in the process have conflicting goals.

Perhaps judges in Los Angeles could spend more than 5.3 hours per day on case-related work and more than a total of 6.6 hours per day at work. The average superior court judge in California spends half an hour more per day on case-related work than does the average judge in Los Angeles. And judges in some other states work longer hours than California judges.

If case-related work could be increased from 5.3 hours to 6.3 hours per judicial workday,\textsuperscript{18} it would be the equivalent of adding 54 new judges to the Los Angeles Superior Court. This would not solve the entire delay problem (because more than 54 new judges are needed), but it would help.

**ADDING TEMPORARY JUDGES TO REDUCE THE BACKLOG**

**OPTION 3:** In addition to increasing the FTE permanent judges, hire at least 66 FTE temporary judicial officers for a period of two years to help clear the existing large backlog of civil cases.

\textsuperscript{18}The official court work hours might be extended by 1 hour per day by beginning work at 8:30 A.M. instead of 9:00 A.M. and working until noon, then taking 1 hour for lunch instead of 1/2 hours, and then starting the afternoon session at 1:00 P.M. instead of 1:30 P.M. and working until 4:30 P.M.
As of October 1989, 10,233 open civil cases had had their trial dates set, 19 25,839 additional open civil cases were at issue but had no trial dates set, 20 and another 8000 or so open civil cases were at issue but had been diverted to arbitration. 21 

Thus, at the end of October 1989, a total of some 44,000 open civil cases were at issue in the Los Angeles Superior Court, including 8000 referred to arbitration. This large backlog of unresolved civil cases effectively prevents judicial officers from disposing of newly filed cases in a timely fashion. In addition, 7030 criminal defendants were awaiting trial in October 1989; those cases have priority over civil case trials. 22 

The California system of adding new judges based on estimates of the number of judges needed to process new filings is deficient in two major ways. First, funding usually is unavailable even for the number of judges needed to process the new filings in Los Angeles County. Second, the system of adding judges completely ignores the huge backlog of old cases, and reducing the backlog is essential to achieve the state goal of reducing delay. Thus, once a court has fallen behind in case processing, state and local funding agencies do not systematically provide resources for catching up, and the problem continues and worsens because the existing judges cannot even handle the new filings, let alone attack the backlog.

The backlog reduction could be handled either by employing temporary judicial officers or appointing some permanent judicial officers sooner than they would normally be needed to handle new filings. After the backlog has been cleared, the growth of new filings probably will have risen sufficiently to provide permanent work for some of the judicial officers initially hired to clear the backlog of pending civil and criminal cases.

The court and the county government have been making efforts to add temporary personnel to help with the backlog. In early 1988, the Los Angeles Superior Court hired 35 retired judges to serve in a pro tem capacity at a rate of $450 per day. Together, the 35 part-timers constitute 15 FTE judges hired to preside over backlogged civil case

19Including 6554 requesting jury trial, 2965 requesting nonjury trial, 414 requesting short-cause trial, and 300 on the trailing calendar awaiting the next available judge (Los Angeles Superior Court, “Monthly Conspectus,” October 1989; and Los Angeles Superior Court, “Calendar Report for the Month of October 1989, Superior Court of Los Angeles County”).

20Including 17,672 requesting jury trial, 5560 requesting nonjury trial, and 2607 requesting short-cause trial (Los Angeles Superior Court, “Monthly Conspectus”; and Los Angeles Superior Court “Calendar Report”).

21Interview with Arnold Pena regarding Los Angeles Superior Court arbitration statistics for December 1989.

22Los Angeles Superior Court, “Monthly Conspectus.” See Sec. II for details on the backlog of civil cases since 1970.
trials. Lawyers with civil cases on the trailing trial calendar were asked by the court to stipulate to having a retired judge chosen by the lawyers conduct the trial using court-provided staff and either court or private facilities.\textsuperscript{23}

In August 1988, the county of Los Angeles approved a master courthouse construction plan which included authorization to acquire 77 superior court courtrooms immediately (including 48 courtrooms to be leased) and another 84 courtrooms in the long term, for a total of 161 new superior court courtrooms.\textsuperscript{24} In late 1988, the superior court received authority to lease those 48 courtrooms,\textsuperscript{25} and retired judges temporarily hired by the court could use the courtrooms to hear civil cases in an effort to reduce the backlog.

But these efforts are not nearly sufficient to reduce backlog and delay to a point where state time standards for disposition of civil cases can be met. We estimate that in 1991 the Los Angeles Superior Court will need at least 106 more permanent FTE judicial officers than it has, just to handle new case filings. In addition, at least another 132 FTE work years are needed from temporary judicial officers to reduce the backlog of cases to the level where state time standards for disposing of civil cases within two years can be met.

If the court wished to dispose of the backlog over a two-year period, 66 FTE temporary judges would be needed per year.\textsuperscript{26} We estimated the 132 FTE judge work years to clear the backlog by considering the amount of judge time necessary to provide settlement conferences and trials to the backlog portion we estimate will need them. Because of lack of data, we did not estimate the time necessary for law and motion work and that time would probably add a few more work years to the total needed for backlog reduction.

The key assumption we made in estimating the number of judge work years needed to clear the backlog of “at-issue but not trial set,” “referred to arbitration,” and “trial set” cases was that cases in the current backlog are typical of those that reached similar stages of case


\textsuperscript{24}Richard B. Dixon, chief administrative officer, Los Angeles County, “Master Courthouse Construction Program,” submitted to Board of Supervisors, Los Angeles County, June 20, 1988; and “Master Court Building Plan Approved,” Los Angeles Daily Journal, August 11, 1988.

\textsuperscript{25}Officials are Negotiating for Lease of Courtroom Space,” Los Angeles Daily Journal, November 2, 1988.

\textsuperscript{26}We arrive at this number by dividing 132 work years by two.
processing in our Register of Actions Survey. We multiplied the number of cases in the backlog (separately by stage of case maturity and by type of trial requested) by the fraction of cases we estimate would require settlement conferences and trials to estimate the total number of settlement conferences and trials of each type necessary to clear the backlog. We then multiplied the number of conferences and trials by the average amount of judge time per conference and per trial of each type to get the total judge work minutes necessary to clear the backlog. Dividing by the average number of case-related work minutes in a judge year yields an estimate of the number of FTE judge work years required.

Using the above method, we estimate that disposing of the 36,000 civil complaints at issue or set for trial in October 1989 will require some 4200 trials and 19,000 settlement conferences; disposing of the 8000 cases referred to arbitration will require some 100 trials and 1800 settlement conferences. We have no better data to use, but if we did know more about the cases in the backlog, we suspect they might be more mature cases, more likely to require trial than the average case in our Register of Actions Survey that reached the same stage. Hence, our estimate of the number of judge work years to clear the backlog may be an underestimate.

The estimate we made for 132 judge work years to dispose of 36,000 at-issue cases implies an average of 248 case-related work minutes per disposition. Most cases will settle and require little judge time, but those that require trial bring the average up. For comparison, we showed in Sec. IV that the average personal injury case filed in Los Angeles requires 45 minutes of judge time, while the average other civil complaint requires 110 minutes of judge time. Thus, the average case

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27 In Sec. III, we provided data from the RAND Register of Actions Survey for cases filed in 1980–1982. We know, for example, what fraction of cases that reached the at-issue stage had one or more settlement conferences and what fraction were eventually tried. We also know what fraction of cases that had a trial date set eventually had a contested trial. We know from that Register of Actions Survey and from arbitration program data discussed in Sec. VII what fraction of cases referred to arbitration were eventually tried. In Sec. III, we presented data on the amount of judge time spent on the average jury trial, nonjury trial, short-cause trial, and mandatory settlement conference. We also presented data on the average number of settlement conferences held for cases that reached that stage. In mid-1988, the Register of Actions contained some cases that were “dead but not disposed,” as we discussed in Sec. III. We further assume that the Register of Actions was as clean in October 1989 as it was in mid-1988.

28 Of the total, we estimate that 70 percent will be jury trials, 23 percent will be nonjury trials, and 7 percent will be short-cause trials. Note that the short-cause cases have priority in trial scheduling and, hence, are not prevalent in the backlog.

29 Note that the cases referred to arbitration are lower-value cases less likely to require trial after the arbitration process than higher-value cases not referred to arbitration.
in the backlog requires a great deal more work than the average new case filed. This is because the “easier” cases are disposed by the parties and do not become part of the backlog of older, “harder-to-dispose” cases.

We need to consider the cost of hiring temporary judges to help clear the backlog. We noted above that Los Angeles was paying them $450 per day in 1989. But this amount is not nearly the total cost since temporary judges need the same types of support personnel and facilities as do permanent judges. We have not done a detailed cost analysis for temporary judges but if we assume they cost approximately the same as the $710,000 permanent judges cost, the bill for 132 FTE temporary judges would be some $94 million. And if the new permanent and temporary judges are not added soon, the delay problem will worsen and even more temporary judicial officers and money will be needed to catch up.

30Recall that we estimated above that in Los Angeles in 1989, the average annual cost of each civil judgeship, with all associated staff, was $506,000 plus some $204,000 in annualized capital costs of the courtroom.
VII. STRENGTHENING CASE MANAGEMENT

INTRODUCTION

The policy options we discussed in the previous section for reducing delay by increasing the number of FTE judicial officers would probably solve the problem—if enough money were available to add sufficient judges. But because of the cost, the court is unlikely to get enough judges, so it should consider various ways of increasing productivity. This can be done by reducing the judge work time per case, thereby increasing dispositions per judge, and/or by reducing the time cases spend waiting between stages of processing. The civil delay problem has gone well beyond the stage of resolution by increased productivity alone. A substantial number of judges must be added. Nonetheless, improvements in productivity are possible and should be considered. In the remainder of this report, we discuss these productivity policy options.

A court’s case management policies have much to do with the pace of civil litigation, as previous research shows. The package of case management policies used by a court includes the degree to which the court actively manages civil case progress, rather than allows lawyers to control the litigation pace; the type of case calendaring system used; the type of case monitoring and time standards used; the continuance policy; the extent to which the court manages discovery; and the arbitration, settlement conference, and trial management policies. We discuss each of these different elements of overall case management policy in this section. In Sec. VIII, we discuss differential case management policies, wherein different types of cases are managed differently.

STRENGTHENING CASE MANAGEMENT

OPTION 4: Continue experimentation with and implementation of active judicial management of civil cases.

The general options for judicial case management include passive management, in which judges play a responsive role and work on a case only when asked to do so by a lawyer; and active management, in which judges manage the pace of the litigation and may get involved in managing the discovery process or other aspects of the case. The

1We reviewed major empirical research studies in Sec. V.
current policy in the Los Angeles Superior Court is essentially passive case management, with the exception of the recent fast-track delay-reduction experiment. The American Bar Association and the National Conference of State Trial Judges endorse the following standard relating to court delay reduction: "To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation..." A summary of previous research found that nearly every recent study of court delay has come to one common conclusion: Left to attorneys' scheduling priorities and notions of when matters are "ripe," cases in a lawyer-controlled system almost inevitably move at a more leisurely pace than in a court that exercises independent management of case flow.

Recent empirical studies have shown that active case management by the court is associated with shorter time to disposition of civil cases, without major impact on the quality of justice. For example, in 1984, the ABA issued a report on reducing court costs and delay that included results of experimentation with active case management. Lawyers and judges interviewed said the quality of the litigation process had not been adversely affected. Judges also said that their shift to an active case management role was not difficult; they did not believe they spent more time per case under the new rules, because increased case management time was offset by a decrease in motions hearings and other miscellaneous case activity.

Further experimentation with active case management is necessary because certain questions have not been fully answered. Two such questions are how exactly judges should manage cases and how far the court should go in managing the pace of civil litigation. Professor Judith Resnik has cautioned that judicial management of cases should be evaluated carefully so as not to influence judicial impartiality unduly and to ensure that judges have time for deliberation; "judges [should be held] accountable for the quality—not merely the quantity—of their actions."

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2Described in Sec. II.
3National Conference of State Trial Judges, Standards Relating to Court Delay Reduction, Sec. 250, "Caseflow Management and Delay Reduction: General Principle," 1984 (see also Sec. 251).
4Church, "The 'Old and the New,'" p. 405.
6See Commission to Reduce Court Costs and Delay, Attacking Litigation Costs and Delay.
Changing the local practices of lengthy case processing times and excessive delays takes considerable time, so the court's experiments with active case management should have enough time to work. In Maricopa County, Arizona, a court sometimes cited by researchers as having a successful delay reduction and prevention program, judges and lawyers reportedly took some five years to achieve a harmonious new working relationship.

IMPROVING CASE CALENDARING

OPTION 5: Experiment with a judge-team calendar system for civil cases. If after this experiment and the ongoing fast-track experiment, the court decides not to adopt the team calendar approach, replace the master calendar system with an individual judge calendar system.

The general options for assigning cases to judges include: individual calendaring, in which each judge has a calendar of cases for which he or she is responsible from filing through trial; master calendaring, in which the court has one master calendar of cases for all judges combined, different judges are assigned if they are needed for different stages of the case (such as pretrial motions, arbitration referral, trial setting, settlement, and trial), and no one judge has responsibility for the case as a whole; and team calendaring, in which a small team of judges has a calendar of cases for which it is responsible from filing through trial. The court may use a hybrid of the above calendaring systems, such as assigning some complex cases on an individual calendar basis and most of the cases on a master calendar basis, or using individual calendaring for all pretrial processing and master calendaring for trial only.

Individual Calendar

States' courts are split relatively evenly between use of the master calendar and individual calendar systems. The current trend, however, is toward adopting the individual calendar system.  


8Although a second judge may conduct a settlement conference so the individual calendar judge who would conduct the trial is not influenced by information from the settlement discussions.

9Ryan et al., American Trial Judges, p. 56.

10In recent years, judges in Anchorage, Houston, New York City, Salt Lake City, and other places have switched from master to individual calendar systems. Regarding the New York experience with individual calendaring, see Robert J. Sise et al., "Report to
Courts with individual judge calendars for civil cases usually have substantially less delay than courts using the master calendar system.12 The advantages usually cited by researchers for an individual calendar system are that the judge is familiar with the case, is more likely to feel responsibility for moving the case along, and is accountable for the case, thereby reducing delay.13 When only one judge must be familiar with a case, judicial time may be saved. When each judge is individually responsible for disposing of a given set of cases, a judge is more likely to be motivated to do all he or she can to encourage the timely disposition of these cases. An individual calendar system also potentially makes individual judges accountable if summary data on each judge’s caseload and disposition times are collected by the court and made available at least to other judges so that peer pressure or presiding judge pressure may come into play. In addition, delaying tactics by litigants and their lawyers may be reduced if the litigants and lawyers always have to deal with the same judge on each case.

Most potential disadvantages of the individual calendar system stem from different judges’ having different skills and work styles and from scheduling problems protracted cases and cases that settle immediately before trial create for individual judge calendars. Problems may arise in compensating for the conscientious but slow judge or for extended judge absence because of illness or leave. Finally, disparity among judges regarding rules and procedures is more likely with individual calendars.

Master Calendar

Researchers usually cite the following reasons in favor of a master calendar system: a reduction in judge waiting time should increase judge efficiency, the advantage of specialization of judicial personnel is

12See Church et al., Justice Delayed, pp. 36–39 and pp. 72–75, which shows that time to civil trial was nearly twice as long in the master calendar as in the individual calendar courts. See also Mahoney et al., Changing Times in Trial Courts, pp. 73–75, which shows that in urban courts, the individual calendar civil courts cluster at the top of the rankings and the master calendar courts cluster at the bottom. The most recent NCSC study of urban trial courts in 1987 found that 8 of the fastest 12 courts used individual calendars, while 11 of the slowest 13 courts used master calendars (see Goerdit et al., Examining Court Delay, pp. 30–32). That latest NCSC study concluded that “individual calendars are more likely to produce faster civil case processing times” (Goerdit et al., Examining Court Delay, p. 32).

13In addition to the sources we cited above, for a discussion of the pros and cons of alternative calendaring systems see also Maureen Solomon, Caseflow Management in the Trial Court, American Bar Association Commission on Standards of Judicial Administration, Supporting Studies 2, Chicago, Ill., 1973, and Fall and Associates, Master-Individual Calendar Study.
available, and flexibility exists in the allocation of judges. The master calendar also represents a way for courts to compensate for the inevitable differences in the speed with which individual judges work and the length of time processing individual cases takes. If a judge is slow or has a very lengthy trial, for example, all other cases need not wait, because the master calendar judge can assign them to the next available trial judge. In addition, a master calendar system enhances court-wide uniformity on procedural questions.

However, delay in disposing of civil cases is generally greater in master calendar courts. Theoretical advantages do not always materialize in practice. Master calendar systems theoretically should be more efficient for the reasons we noted above, but in practice, most master calendar courts are slower than individual calendar courts in disposing of civil cases. This increased delay may arise from the duplication of effort in master calendar courts and from judges' lack of responsibility and accountability for a specific set of cases. Thus, master calendar judges may not have some of the psychological incentives individual calendar judges have to achieve high productivity.

Los Angeles uses a master calendar system for civil cases, with exceptions such as individual judge calendars for a few unusually complex cases and for cases in the fast-track delay-reduction experiment. Each location of the court maintains its own master calendar. The court also makes exceptions for asbestos personal injury cases because they have much in common. The court assigns all asbestos cases to one judge for all pretrial purposes but puts them on the master calendar for trial.

In Los Angeles, 25 civil judges in the central district are participating in a fast-track pilot program to reduce civil case delay; it includes active judicial case management, time standards, and an individual calendar system, which is being evaluated as an alternative to the current master calendar system. Since early 1988, these judges have been handling odd-numbered general civil cases for all purposes using an individual judge calendar system; other judges not in the pilot program handle even-numbered cases in the central district under the master calendar system.14

It is still too early in this experiment to evaluate its outcome definitively. However, preliminary indications are that civil cases in the experimental program are being disposed of faster, not only in Los Angeles but also in some other large courts in California.15

Team Calendar

Assigning cases to a small team of judges rather than to an individual judge or a master calendar appears to combine the best features of both the master and individual calendar systems. The team calendar system appears to have the advantages of judicial responsibility and accountability that can exist in the individual calendar system while avoiding the scheduling problems inherent in the individual system. The team system also allows the advantages of judicial specialization and scheduling that can exist in a master calendar system. For example, one team member might specialize in motions, while another might specialize in settlements.

The most focused recent research on calendaring systems is the Master-Individual Calendar Study commissioned by the California Judicial Council and conducted by John G. Fall and Associates in 1974. Although the study did not recommend statewide adoption of any calendar system under study, it did conclude: “Because of the apparent advantages of the judge-team approach to calendaring and its successful implementation in several courts, we recommend further experimentation with this concept at the municipal and superior court level.” The study also recommended that “[j]udge-team concepts . . . be employed in larger courts.” The experimental method of implementation would enable the court to analyze the effectiveness of the team approach and to work out operational problems before widespread implementation.

Smaller district courthouses of the Los Angeles Superior Court already have in effect a type of team-calendaring system because they usually operate on a master calendar with the small number of judges (the “team”) based in the district. Before the recent transfer of cases among Los Angeles districts to equalize civil case delay throughout the county and dispose of cases within the five-year limit, some of these smaller districts consistently had much shorter times to trial than did the large central district. Although time to disposition in the various districts clearly depends on more than the calendaring system, ascertaining whether the potential advantages of team calendaring are achievable in practice appears worth some experimentation.

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16 See, for example, Ernest Freisen, dean of the California Western School of Law, quoted in “State Courts Scuffle Over the Calendar,” National Law Journal, March 11, 1985.

17 For examples of some different options for implementing a team system, see Fall and Associates, Master-Individual Calendar Study.

18 Fall and Associates, Master-Individual Calendar Study.

19 Fall and Associates, Master-Individual Calendar Study, transmittal letter to Donald R. Wright, chief justice of California, pp. 2, 3, and 386.
REFINING TIME STANDARDS

OPTION 6: Adopt and enforce realistic time standards for civil case disposition and for completion of various stages in a case's life.

The National Conference of State Trial Judges and the American Bar Association have promulgated standards for the timely disposition of civil cases: 90 percent of all civil cases should be settled, tried, or otherwise concluded within 12 months of the case filing date; 98 percent, within 18 months; and the remainder, within 24 months (except for individual cases in which the court determines that exceptional circumstances exist). The professional judgment reached by these national associations of judges and lawyers is that approximately 18 months to two years should be sufficient to dispose of nearly all cases without jeopardizing "justice."\(^\text{20}\)

The Judicial Council and the Los Angeles Superior Court endorsed the two-year national standard as a long-term goal but adopted an interim goal of four years for civil cases until 1991.\(^\text{21}\) The delay in implementing the stricter guidelines gives courts with longer times to disposition four years to meet the stricter standard.

One component of the Los Angeles Superior Court's pilot fast-track project is time standards both for the total time to disposition and for various events that may occur during the case. The Los Angeles Superior Court adopted the time standards, "which specify as an ultimate goal, to be achieved by July 1, 1991, the disposition of 90 percent of all civil cases within one year of filing, 98 percent within 18 months of filing and 100 percent within two years of filing."\(^\text{22}\)

In mid-1988, the Los Angeles Superior Court conceded that it could not, given the current backlog, meet the 1991 goal of disposing of 90 percent of cases within one year. The court set a new, more realistic 1991 goal of disposing of 90 percent of the civil filings within three years.\(^\text{23}\) Even meeting the interim goal would be a major improvement over the current situation.

Time standards by themselves cannot eliminate case delay, but they help. Establishing time standards is a goal for the court system and, if

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\(^{20}\) See National Conference of State Trial Judges, *Standards Relating to Court Delay Reduction*, p. 11.


\(^{22}\) Los Angeles Superior Court Rules, Chap. 11, "Trial Court Delay Reduction Rules," Sec. 1100.4.

coupled with statistical data on case processing and disposition times, provides a measure of performance.

California law mandates specific time standards for court processing of cases, and previous research indicates that time standards are effective in reducing time to case disposition.\textsuperscript{24} Hence, the policy question is not whether to have time standards, but exactly how the court should implement the overall two-year time standard. What realistic interim standards should be adopted by the Los Angeles Superior Court, which has an average time to trial that greatly exceeds the desired two-year limit? What deadlines should the court set for various events within the life of a case (such as answers, at-issue memos, and termination of discovery)?

Interim time standards should be realistic in light of the existing condition of the court's calendar. The two-year national standard is reasonable over the long term but impossible for the Los Angeles court to meet immediately. If a court currently has a five-year time to trial, it can work toward the national and state-level standards of two years, recognize progress, and gradually lower interim standards toward the ultimately desired goal. Unrealistic goals can be counterproductive, because incentives diminish when everyone knows that a goal is unattainable. In Sec. VIII, we discuss experimenting with different time standards tailored to different types of civil cases.

**IMPROVING THE MANAGEMENT OF CONTINUANCES**

**OPTION 7: Strengthen enforcement of the court’s policy of no continuance without good cause.**

The Los Angeles Superior Court espouses (but does not always enforce) a strict "no continuance without good cause" policy. The court has historically imposed formal continuance restrictions repeatedly (nine times since 1931)\textsuperscript{25} but has not enforced the policy in practice over a long time period.

For example, the mandatory settlement conference is scheduled three weeks before the initially scheduled trial date, but we found that the average case did not actually go to trial for nearly a year after the initial MSC.\textsuperscript{26} In our survey of the Register of Actions for civil com-


\textsuperscript{25}Selvin and Ebener, *Managing the Unmanageable*, pp. 80–81.

\textsuperscript{26}The median was more than nine months. See Apps. C and D of *Technical Appendices*. 
plaints,27 we found that the average case had two trial dates set. In 1987, more than 5000 civil jury trials were continued beyond the end of the month in which the trial was set to start.

The advantages of granting continuances liberally are that lawyers have more control of their own time schedules and the overburdened court can put off having to deal with a case. The disadvantages are that continuances themselves represent longer times to disposition, extra work for court personnel, additional scheduling problems for the court, and extra judicial work if additional motions are filed or additional settlement conferences take place. Firm trial dates force case preparation and provide an incentive for attorneys to settle sooner. They also enable courts to allocate judicial resources more efficiently.

The consensus of the court-delay research literature is that the disadvantages of granting continuances liberally outweigh the advantages. “Nearly every recent study of court delay has come to one common conclusion: Left to attorneys’ scheduling priorities and notions of when matters are ‘ripe,’ cases in a lawyer-controlled system almost inevitably move at a more leisurely pace than in a court that exercises independent management of case flow.”28

EVALUATING THE DISCOVERY POLICY

OPTION 8: Evaluate recently enacted limitations on the volume of and time spent on discovery, but make no further major revisions in discovery policy until that evaluation is completed.

Many judges and attorneys see the abuse of discovery as a major source of delay in the Los Angeles Superior Court, as well as in other metropolitan trial courts. Discovery abuses may generate problems such as delays in litigation, high discovery costs, evasive or incomplete responses to discovery probes, overdiscovery, harassment of opponents, and use of discovery to exert economic pressure on opponents.

Before 1957, California had strict limitations on discovery.29 It had relatively liberal discovery practices from 1957 until 1987, when the California Civil Discovery Act of 1986 imposed new restrictions.

The California Civil Discovery Act of 1986 restricts interrogatories in most cases to 35 specially prepared interrogatories, plus any number

27See Sec. III.
28Church, “The Old and the New,” p. 405.
of official form interrogatories prepared by the Judicial Council; limits requests for admission to 35 (except those related to the genuineness of documents); and limits depositions of any witness to one, with all other parties required to make that deposition theirs also. It requires lawyers to work with each other to resolve discovery disputes before asking the court for help. The act defines abuse of the discovery process and increases the likelihood that stronger sanctions will be imposed for "misuse of the discovery process" (such as causing unwarranted annoyance, embarrassment, or expense for the other side; failing to submit to proper discovery; making an evasive response to discovery; and failing to confer with the other side to attempt to resolve discovery disputes). Potential sanctions include imposing monetary fines, ruling that a contested issue is decided, excluding evidence, and dismissing the case.\textsuperscript{30}\textsuperscript{30}In general, the time limit for completing discovery proceedings is 30 days "before the date initially set for the trial of the action," and discovery motions are to be completed 15 days before the date initially set for the trial.\textsuperscript{31}\textsuperscript{31}

In addition to the Civil Discovery Act of 1986, California also passed the Trial Court Delay Reduction Act of 1986; this act allows experimental controls on the time spent on discovery.\textsuperscript{32}\textsuperscript{32} In Los Angeles, 25 civil judges in the central district are participating in the experimental fast-track program mandated by the Trial Court Delay Reduction Act. One component of the court rules adopted for the pilot project is time standards, both for total time to disposition and for various events that may occur during the case, such as discovery.\textsuperscript{33}\textsuperscript{33} Standards set for various events that may occur during case processing include the following: Complaints must be served within 60 days of case filing; the at-issue memorandum must be filed no later than 140 days after the complaint filing; and all discovery must be completed no later than 180 days after the at-issue memorandum filing (except if good cause exists for a longer time period). Thus, all discovery should be completed within a maximum of approximately one year for most cases. The court may extend the time standards upon showing good cause, but the parties may not do so by stipulation.

The California Civil Discovery Act of 1986 imposed limitations on the volume of discovery, with exceptions for good cause. The impacts of the new act on time to case disposition, on the cost of litigation, and on case processing and outcomes are not yet clear. One potential

\textsuperscript{31}\textsuperscript{31}California Code of Civil Procedure, Sec. 2024.
\textsuperscript{33}\textsuperscript{33}Los Angeles Superior Court Rules, Chap. 11.
difficulty is that the specific limits on discovery may be too strict—or too lenient. The act treats all cases the same: It establishes no differential limits for simple, standard, and complex cases, for example. Thus, the limits may have little effect on the simpler cases but force many complex cases to have judicial hearings regarding limitations exceptions.

The California Civil Discovery Act of 1986 also gave judges increased authority to impose sanctions for misuse of the discovery process. How often judges are using that authority—and with what effect—is not yet clear. One difficulty is that if sanctions are discretionary, lawyers may create more work for the court by disputing a sanction's imposition. Another is that judges may not impose sanctions if they feel it might make settling the dispute more difficult or dealing with the lawyer on future cases more difficult. On the other hand, imposing a well-justified sanction might make the current and future cases proceed more smoothly.

Time limits for completing discovery are included in the fast-track experiment in the Los Angeles Superior Court's central district. Again, whether those limits are too strict or too lenient, and what effects they are having on litigation delay, costs, and outcomes, is still unclear. As with volume limits, one difficulty with discovery time limits that treat all cases the same is that all cases are not the same. Differential time standards for different types of cases might be more effective in reducing delay while also reducing the need for the more complex cases to seek good-cause exceptions to the limits.

The previous research on delay and discovery indicates that time to disposition of civil cases is reducible by imposing restrictions on the volume of discovery allowed and the calendar time for completion of discovery.\textsuperscript{34} That research also suggests that the litigation process quality is not adversely affected and that lawyers will accept the limitations on discovery if those limitations are reasonable and if provisions exist for exceeding the limitations for cases requiring more discovery. Further, the policy trend is toward placing limitations on discovery. Evaluation is necessary to see if the current limitations in Los Angeles are reasonable. With the new California legislation effective in 1987 limiting the volume of discovery and increasing sanctions, and with the fast-track experiment under way in the Los Angeles Superior Court limiting the calendar time for discovery, careful evaluation of the effects of these new discovery limitations is essential.

Researchers should carefully evaluate the new discovery limitations to learn their impact on the volume and nature of discovery, time for

\textsuperscript{34}In Sec. V, we reviewed previous research on discovery in the context of delay.
completion of discovery, time to disposition of civil cases, judge work
time per case, private costs of litigation, and quality of the litigation
process and outcome. Because the impact will probably differ by the
type of litigation, the evaluation should consider cases with various
characteristics. The results of such an evaluation would then indicate
whether the recently enacted sanctions and limitations on discovery
volume should be retained, whether the discovery time limitations
should expand to cover all cases filed in the Los Angeles Superior
Court, or whether the discovery limitations and sanctions should be
refined, modified substantially, or abolished.

IMPROVING ARBITRATION MANAGEMENT

OPTION 9: Retain the arbitration program, with one signifi-
cant change: Monitor and enforce early time limits on initiat-
ing and completing the arbitration process.

Soon after the at-issue memorandum is filed for a case, an arbitra-
tion status conference averaging one or two minutes takes place before
a judicial officer to determine whether the case is worth less than
$50,000 and should go to arbitration.36 In addition to cases that go to
arbitration because of this conference, both sides can stipulate to arbi-
tration, or the plaintiff can elect arbitration (but to do so, the plaintiff
must agree that the arbitration award will not exceed the $50,000 limit
for including a case in the program).36 Within 30 days of the award,
either side may request a trial de novo if they find the decision unsatis-
factory. The case then returns to the civil active list in the same posi-
tion as if no arbitration had occurred.

Only some 17 percent of all the civil complaints cases filed in the
Los Angeles Superior Court are referred to arbitration by the court or
the litigants. Of those referred to arbitration in 1984–1987, approxi-
mately half were disposed before the arbitration award, approximately
a fourth accepted the arbitration award, and just over a fourth came
back into the court system requesting a trial de novo after arbitration.37

The court evaluates cases for referral to arbitration at an arbitration
status conference, which usually takes place some 3 months after the

35 The program’s jurisdictional limit was initially $15,000 but was increased by the
state to $25,000 in 1985 and to $50,000 in 1988.

36 Of cases referred to arbitration in 1987, 49 percent were sent by court order, 4 per-
cent by stipulation of both sides, and 47 percent by election of the plaintiff (interview
with Arnold Pena regarding Los Angeles Superior Court arbitration program statistics
for fiscal year 1987).

37 Los Angeles Superior Court, “Monthly Conspectus,” July 1983–June 1987, and
interviews with arbitration administrators.
at-issue memorandum filing. This arbitration status conference occurs an average of 16 months after case filing, according to the RAND Register of Actions Survey data. Los Angeles Superior Court arbitration administrators indicate that in 1987, the time from assignment to arbitration to filing the arbitration award was typically 9 to 10 months.38 As implemented in Los Angeles, arbitration does not appear to reduce time from filing to disposition significantly. Cases disposed by arbitration average some 25–26 months from filing to disposition—nearly the same as the average of 27 months from filing to disposition for all civil complaints cases.39

Although approximately half the cases request trial de novo after the arbitration award,40 this high appeal rate appears to be fueled by attorneys’ desire to keep their options open and continue negotiating, because very few cases actually reach trial. Of all cases with arbitration awards, only 2.8 percent went on to a contested trial.41 For all civil complaints cases filed (including those not arbitrated), only 1 percent of the motor vehicle PI/PD cases and 2 percent of the other PI/PD cases reached contested trial. For all civil complaints combined, contested trials made up only 4 percent of filings in 1987. Yet 83 percent of civil complaints cases are too high in value or are otherwise ineligible for arbitration and thus are expected to have a higher trial rate than the lower-value arbitrated cases. Hence, whether arbitration results in any decrease in the trial rate is unclear. In Los Angeles, arbitration is nearly always a substitute for settlement rather than a substitute for trial.

The two major options we considered are whether to retain the current program of screening for referral to arbitration soon after the at-issue memorandum filing (with improvement by setting a time limit for completing the arbitration process) or to abolish the program altogether.

Previous ICJ and other evaluations of various arbitration programs do not support the claims that court-annexed arbitration reduces the judicial time spent per case or that arbitration reduces the time from

38 Interview with Arnold Pena regarding Los Angeles Superior Court arbitration program statistics for fiscal year 1987.
39 The RAND Register of Actions Survey.
40 The disincentive to trial de novo is that the side requesting it must pay the court’s arbitration costs and the other side’s costs from the time of arbitration through trial if the award is not bettered at trial. Because the disincentive does not include attorneys’ fees for the trial, the financial disincentive generally is not major. The average court administrative cost per case processed for arbitration was $31; the average arbitrator’s fee paid was $170 in 1987 in Los Angeles. See Bryant, Judicial Arbitration in California.
41 Bryant, Judicial Arbitration in California, and interview with Arnold Pena regarding Los Angeles Superior Court arbitration program statistics.
filing to case disposition. But an arbitration program does appear to meet a significant public demand for impartial adjudication. For many litigants with disputes over modest amounts of money, arbitration offers the only affordable opportunity to obtain impartial hearings on their cases. In the absence of an arbitration program, these litigants with modest-value cases must settle their cases because they cannot afford or justify incurring the much higher expense of trial. Interviews by the ICJ in other jurisdictions indicate that litigants place a high value on the opportunity to have their cases heard by impartial adjudicators. These research findings of litigant satisfaction with court-annexed arbitration lend support to the arbitration program's continuation in Los Angeles.

Arbitration does not appear to add significantly to or subtract significantly from the overall average judge time spent per case disposition. The only direct judicial involvement is minimal—screening cases at the arbitration status conference. This screening averages approximately one minute per case and represents less than half of 1 percent of the judicial time spent on the average civil complaint filed (see Sec. III for details on judge time per case). If the court wanted to save that small amount of judge time, it could consider having the arbitration status conferences conducted by trained parajudicial personnel.

If arbitration is to have an effective role in achieving earlier dispositions of cases, the assignment to arbitration must occur earlier and the amount of calendar time spent on the arbitration process must be limited. Most recent attention devoted to improving the operation of court-annexed arbitration programs has focused on earlier diversion of cases into arbitration in order to reduce the time to case disposition. The rationale for setting a time limit on the arbitration process and for monitoring case progress is that some cases in Los Angeles have recently taken two to three years from referral to arbitration award. Effective February 1, 1989, the court adopted the revision we suggest:

[All cases referred to Arbitration, whether by election, stipulation, or Court Order, will be continued on the Court's calendar 120 days from such referrals. Unless an Award of Arbitrator, Request for Trial de Novo, or Request for Dismissal has been filed prior to this continuance date, all counsel will be under Court Order to appear to show cause why arbitration proceedings have not been concluded in compliance with California Rule of Court 1607 (d).]  

42 See Sec. V for a review of previous research on arbitration.  
43 Lind et al., The Perception of Justice.  
44 Mahoney et al., Changing Times in Trial Courts, pp. 191–213.  
If this new policy is effectively implemented by the court, it will cut some six months off the average time to complete the arbitration process. Even more calendar time would be saved by enforcing time deadlines for filing the at-issue memorandum (such as those in the experimental program currently under way in Los Angeles). A time limit on when the at-issue memorandum is to be filed shortens the time from filing to arbitration because the at-issue memorandum triggers the screening for arbitration. Cases are not screened for arbitration before the at-issue memorandum because approximately half the cases are disposed privately before that point without any significant court effort.

IMPROVING THE MANAGEMENT OF MANDATORY SETTLEMENT CONFERENCES

OPTION 10: Hold a settlement conference conducted by a neutral lawyer soon after each civil case is at issue. Then hold no more than one judicial settlement conference per case. That judicial settlement conference should be held within one month of the actual trial date.

To encourage and facilitate settlement negotiations and avoid trial whenever possible, the Los Angeles Superior Court requires counsel for civil cases to meet with a judge in a mandatory settlement conference some three weeks before the scheduled trial date. Although only some 14 percent of all civil complaints cases reach the MSC, that small percentage requires the majority of all civil court expenditures. In fact, far out of proportion to the 4 percent of the civil complaints caseload they represent, trials cost an average of several thousand dollars each and consume more than half of all the time judges spend on civil litigation.

The major types of policy options we consider in this section for the 14 percent of the cases that reach the MSC stage are: maintaining the current policy of an MSC three weeks before the scheduled trial date

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47 Petitions and short-cause complaints (those with estimated trial lengths of one day or less) do not have to have an MSC.

48 See Sec. III of this report for a discussion of the judicial effort consumed and money expended on various stages of the litigation process.
for all complaints, conducting earlier or multiple MSCs, and having neutral lawyers rather than judges conduct MSCs. In addition to these discussions of settlement conferences in general, we also discuss, in Sec. VIII, using different procedures for different types of civil cases—eliminating MSCs for some types of civil complaints and enhancing MSC efforts for other types of civil complaints.

The key issue is whether the judges spend more time on MSCs than they would spend on trials for the small fraction of cases that would not settle privately if the MSC program did not exist. For mandatory settlement conferences to save judicial time in processing the average case, at least one average-length jury trial must be avoided for every 36 MSCs held for cases that request jury trial. Similarly, at least one average-length nonjury trial must be avoided for every 25 MSCs held for cases that request nonjury trial. This means that cases that would not have settled by themselves in the absence of an MSC must be settled by the MSC. Currently, nearly 40 percent of all MSCs held are settled, but most probably would have settled anyway if no MSC had been available.

The timing of the MSC in the life of the case between filing and trial is important to the amount of judge time consumed, because the later the MSC, the greater the fraction of cases that will have been disposed previously. Only a very small percentage of the cases will be tried; hence, holding judicial MSCs for many cases early in the cases’ lives will logically result in the consumption of more judge time—which means less time available for other judicial work and longer waits for trial. Previous research indicates that holding settlement conferences for many cases is not productive. Most cases will settle on their own whether MSCs are held or not. On the other hand, if an MSC is held just before the real trial date, possibly judges could settle at least one case that would have gone to jury trial for every 36 MSCs held. To minimize the judicial time spent on MSCs for cases that would have settled by themselves or that are waiting until just before the actual trial to settle, we suggest holding no more than one judicial MSC per case, within one month of the actual trial date.

One new finding from our research is the long time period between the MSC and trial. According to court rule, the MSC is supposed to take place three weeks before trial; it does not. We found that the median time from the first MSC to the scheduled trial date was three weeks, as it was supposed to be. In practice, however, the median

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49 The average MSC consumes 1 hour of judge time. The average civil complaint consumes 36 judge hours per jury trial and 25 hours per nonjury trial. See Apps. C and D of Technical Appendixes.

50 See Sec. VIII.
time from MSC to trial was more than 9 months and the average was nearly a year. This discrepancy is explained by continuance of the trial date, which are granted in most cases.

Observations of MSCs and interviews with judges suggested that some lawyers may be using these MSCs that occur well in advance of trial as a means of learning about the other side’s case—as a “crutch” to help with work that could have been done by the lawyers themselves. Some 40 percent of all end-stage cases had never had any previous settlement discussions before the MSC.

Failing to settle at the first MSC does not mean trial is inevitable: Only approximately a fourth of the cases that get past the first MSC without settling are disposed after beginning trial. These cases may be settled later either without further judicial involvement or (as often happens in practice) with a continuance of the trial date and a subsequent judicial settlement conference; or, the master calendar judge in a branch court may convene a new settlement conference on the scheduled trial day. Thus, if a case does not settle with the first mandatory settlement conference judge, in practice another settlement conference with another judge will likely occur. Experienced lawyers probably know that the trial will not likely occur the scheduled three weeks following the first MSC and that the court will give them another session with a judge to attempt settlement before trial actually begins, so lawyers inclined to wait until just before trial to settle have no strong incentive to settle at the first MSC. Thus, the court may be wasting its time to have multiple settlement conferences when, in practice, trial dates clearly are neither firm nor imminent.

But the lawyers we surveyed most often recommended earlier settlement conferences.51 Whether such earlier conferences are justified depends on whether one takes the court’s or the individual case lawyers’ viewpoint. We indicated above that earlier judicial settlement conferences with more cases does not appear cost-effective from the court’s viewpoint. On the other hand, from the individual case lawyers’ viewpoint, earlier or multiple judicial MSCs represent more “free” assistance from the court. A case may settle earlier in its life if the MSC occurs earlier; such early settlement is a benefit to that individual case. However, spending the court’s limited judicial resources on more and earlier MSCs would add to the court’s overall workload, ultimately resulting in less judge time available for trial and, hence, longer time to trial for all cases.

51The most frequent recommendation, made by more than a fourth of the 640 responding lawyers in our End-Stage Case Survey, was that the court should order earlier mandatory settlement conferences (although respondents differed as to how early that conference should be scheduled).
An alternative solution exists to using scarce judge time for the more and earlier settlement conferences many lawyers want: having a settlement conference conducted by a neutral lawyer soon after the case is at issue. This might help cases settle earlier in their lives but would not consume scarce judicial resources. A subsequent MSC could still be conducted by a judge just before trial, if desirable. Even if the fraction of cases requiring trial is unchanged, this policy may be desirable because it encourages earlier settlements.

The use of volunteer lawyers is feasible and effective in settling cases without spending judicial time (other than to administer the program). Successful ongoing local programs exist in Orange County; in the central district of the Los Angeles Superior Court, where a pilot program uses a team of two volunteer lawyers to hear settlement conferences; and in the west district of the Los Angeles Superior Court, where settlement programs use volunteer lawyers and retired judges. The goal of each program is to reduce the civil backlog using volunteer personnel, and they have demonstrated success in doing so. Some judicial time is necessary for administering the volunteer programs.

STRENGTHENING JUDICIAL MANAGEMENT OF CIVIL TRIALS

OPTION 11: Experiment with strong judicial management of civil trials to reduce the average trial length.

In practice, contested civil trials account for only a small fraction of all civil case dispositions. The chance that a civil complaint filed in a

53. The program settled 37 percent of the 354 cases handled in the first six months of 1988. Cases entered the program at the request of the case lawyers or by referral from a judge. A pool of several hundred volunteer lawyers is recruited by five local bar associations. See "Mandatory Mediation Project Extended: Settlement Program in L.A. Superior Court Called 'Extremely Successful,'" Los Angeles Daily Journal, August 8, 1988.
54. In the crash settlement program in the west district of the Los Angeles Superior Court, some 450 mandatory settlement conferences, each held before a panel of two lawyers, resulted in a 35 percent settlement rate. The lawyers come from a panel of some 250 volunteers who have all practiced for at least five years and mediate cases in their areas of legal expertise. In the voluntary settlement conference panel program, the case lawyers may select volunteer attorneys from a list to handle their conferences. And in the fast-track program, cases with estimated trial lengths of three days or less are asked to go voluntarily to the volunteer lawyers for settlement discussion; approximately half the cases that do go are settled. See "Program Sees 35 Percent Settlement Rate," Los Angeles Daily Journal, November 8, 1988, and "Court Wins Productivity Award," Los Angeles Daily Journal, November 22, 1988.
Los Angeles County courthouse received its full-blown "day in court" was some 4 percent for all civil complaints disposed in 1987.

Far out of proportion to their small numbers, however, trials consume more than half of all the time judges spend on civil litigation and require the majority of all civil court expenditures. If one aims to reduce delay by increasing court productivity in terms of civil dispositions per judge, trials need particularly close inspection because they do consume more than half of all civil judge time. In a general sense, if one wants to lessen the amount of judge time spent on trials, the two major options are disposing of more cases before trial and shortening the average length of civil trials.

Earlier in this section, we discussed various options for disposing of more cases before trial (such as arbitration and settlement conferences). The percentage of all types of civil complaints cases that have contested trials has declined markedly since 1970. Contested trials for all civil complaints cases combined amounted to only 4 percent of all dispositions in 1987. Only some 1 percent of all motor vehicle PI/PD cases and some 2 percent of other PI/PD cases have contested trials. With such a small percentage of the cases reaching trial, little room exists for further reduction as a result of programs designed to increase pretrial dispositions.

In the remainder of this section, we focus on the policy option of shortening the average length of civil trials by strengthening judicial management of those trials. The 2707 contested trials of PI/PD, eminent domain, and other civil complaints cases in 1987 made up approximately one-fourth of all contested trials and petition hearings. They are the primary focus of this section, however, because they consumed some 90 percent of the judge time expended on contested civil trials and hearings.

Jury trials for civil complaints cases averaged 36 judge hours spread over nine days, about twice the judge hours spent on the average criminal jury trial. Civil jury selection required 5 judge hours—the same as for criminal trials. Civil nonjury trials were less than civil jury trials in length but still averaged some 25 judge hours spread over six days (excluding short-cause trials, with an estimated trial time of 5 hours or

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55See Sec. III for a discussion of the judicial effort consumed in various stages of the litigation process.

56For details, see App. D of Technical Appendixes.

57Though petitions and appeals from lower courts are significant disputes and an important part of the total civil caseload, we showed in Sec. III that they are usually handled quickly, without much expenditure of judicial time, and hence do not present the delay-producing effect on the court that trials of civil complaints do.
less). Short-cause nonjury trials consumed an average of only 3.5 judge hours.  

A recent National Center for State Courts study of the length of trials in several courts found that some courts are able to try similar cases in half to a third the time of other courts. One purpose of the study was to identify policies that might shorten trial time without sacrificing fairness.

Median civil trial lengths in the nine courts studied by the NCSC ranged from approximately 10 to 30 hours. The three California courts in the NCSC study operated under comparable law and state-mandated procedures but had vastly different median trial lengths: 14 hours in Monterey, 17 hours in Marin County, and 31 hours in Oakland. Courts with longer trials generally took longer on all types of cases. Los Angeles Superior Court jury trials had a median of 30 hours (average of 36 hours)—near the high of the medians for the courts in the NCSC study. The average and median hours for nonjury trials in Los Angeles were 25 hours and 10 hours, respectively. Courts with more product liability cases and attorney voir dire had longer median trial lengths. But “even accounting for these differences, the study found wide variations in the duration of comparable trials. . . . One conclusion is inescapable: the degree of judicial management of the trial process is the single most important factor distinguishing courts in which comparable cases are tried more quickly than elsewhere.”

The NCSC study recommends judicial management of all trial phases, including “protecting trial continuity” and “defining areas of dispute in advance of trials, conducting examinations of prospective jurors, setting reasonable time lengths for each trial segment, and prohibiting trial evidence that is repetitive, unnecessary, or needlessly lengthy.” The study also found that “greater judicial control does not appear in fact or in perception to impair the fairness of trials. . . . The great majority of judges and attorneys perceive neither lack of fairness nor injustice in those courts where trials are conducted more rapidly than elsewhere.”

If experimentation shows that trial lengths can be shortened without sacrificing fairness in Los Angeles, as the NCSC study findings

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58 For details, see App. D of Technical Appendixes.
59 Sipes, “The Lengths Courts Go,” p. 4. The study collected data on 1500 trials in nine courts in New Jersey, Colorado, and California. Trial statistics were supplemented by interviews and questionnaires sent to judges and lawyers.
60 Analysis by RAND of unpublished Judicial Council 1984 survey data for the Los Angeles Superior Court.
61 Sipes, “The Lengths Courts Go.”
62 Sipes, “The Lengths Courts Go.”
strongly suggest, the judicial time saved could be devoted to resolving additional cases and reducing the backlog and delay. If 1500 civil jury trials were held per year and the average jury trial length was cut in half—from 36 judge hours to 18 judge hours, for example—a savings of 23 FTE judicial officers would result.63 Similarly, a great deal of judicial time can be saved if the parties are voluntarily willing to accept a nonjury trial rather than a jury trial, because nonjury trials average 11 fewer judge hours. Perhaps the parties might be given incentives by the court, such as an earlier trial date, to accept a nonjury trial.

63See App. E in Technical Appendixes for information on estimating FTE judicial officers for various types of case activities.
VIII. USING DIFFERENTIAL CASE MANAGEMENT POLICY

INTRODUCTION

Civil cases range from the most simple auto accident or landlord/tenant case up to the most complex toxic tort or commercial litigation. Many state courts recognize that cases of differing characteristics and complexities need different judicial services. To a limited extent, courts in Los Angeles and elsewhere have designed differential case management systems to deal with different types of cases, thereby attempting to make the most effective use of the limited available court resources.

Although the Los Angeles Superior Court does not currently employ broadly based differential case management, it does currently process certain types of cases differently—for example, cases with estimated trial lengths of one day or less,\(^1\) personal injury cases in the fast-track experiment,\(^2\) unusually complex cases,\(^3\) class action cases, asbestos personal injury cases,\(^4\) and preference cases (such as those with an aged or dying party).\(^5\) In addition, it usually diverts lower-value cases for arbitration.

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\(^1\)The short-cause cases are exempt from mandatory settlement and trial-setting conferences and are entitled to priority over long causes in trial assignment. Very few of these cases involve torts; most are commercial, unlawful detainer (small unlawful detainers would be handled in municipal court), or business cases that required a contract interpretation, which could be done by a judge in a day or less.

\(^2\)In the new fast-track experimental program in the central district of the Los Angeles Superior Court (see Sec. II), judges are encouraged to expedite personal injury cases through the system and set a firm, early trial date because data show that personal injury cases will usually settle before trial (“Court Says It Can’t Meet Backlog Goal”).

\(^3\)The state rules specifically suggest that “complex litigation should be assigned to one judge for all purposes.” Section 19 (“Complex Litigation”) of the California Rules of Court, App., Div. 1, “Standards of Judicial Administration Recommended by the Judicial Council,” defines complex litigation as “those cases that require specialized management to avoid placing unnecessary burdens on the court or litigants.” Such cases may involve, “for example, multiple related cases, extensive pretrial activity, extended trial times, difficult or novel issues, and postjudgment judicial supervision, or may concern special categories such as class actions.”

\(^4\)The court has assigned all asbestos tort litigation to one judge for all pretrial activities. If trial is necessary, the cases go to any one of the several civil trial judges working under the master calendar system. The reasons for assigning all pretrial processing to one judge include the many commonalities among the asbestos cases in terms of defendants, plaintiffs lawyers, and liability and causation issues. Approximately 4000–5000 of these asbestos cases are open in Los Angeles Superior Court—a very significant portion of the backlog.

\(^5\)“Preference cases” receive priority in scheduling for trial. They include civil cases with a party who has reached the age of 70 or is dying, tort cases seeking damages that
USING DIFFERENT PROCEDURES FOR DIFFERENT TYPES OF CASES

OPTION 12: Experiment with focusing extra pretrial judicial effort on the minority of cases most likely to require trials (which consume the majority of all judicial resources) and less judicial effort on pretrial disposition of cases very unlikely to go to trial. For example, the court might decide to eliminate settlement conferences for certain types of cases very unlikely to go to trial and to hold more intensive settlement conferences for certain types of cases most likely to go to trial or to have lengthy trials.

The concept is to cut delay by requiring and enabling cases that can progress faster to do so and by conserving scarce judicial resources for cases unlikely to be resolved without judicial assistance. When changes occur in the court process, applying the changes across the board—that is, to the entire civil caseload—is quite common. But our research indicates substantial variation exists in the court services needed by different kinds of cases. What is appropriate for one sort of case may not be appropriate, or may be counterproductive, for another. Some courts are beginning to experiment with approaches to distinguishing different kinds of cases and placing them on different court "tracks"—for example, "fast" schedules with minimal judicial services for simpler cases and "slower" schedules with more intensive judicial services for more complex cases. Logically, a more differentiated or specialized approach to civil case management appears to have great merit.

Although differential case management logically has much to recommend it, and although many courts (including Los Angeles) place some types of cases on special tracks, very little empirical research has evaluated the pros and cons of the concept as a delay-reduction technique. Consequently, we suggest experimental evaluation to see if the benefits that should logically exist can be confirmed in practice.

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were alleged to have been caused by the defendant during the commission of a felony offense for which the defendant has been criminally convicted, cases seeking declaratory relief asking the court to determine the rights and duties of the parties, and unlawful detainer actions.

Our review of the research literature did not turn up any "right way" to design tracks for differential case management; this is another reason why we suggest experimentation and careful evaluation. Some design elements to be considered by the court are the number of tracks to use (perhaps three—fast, standard, and complex); the criteria for assigning cases to tracks (perhaps the likelihood the case will settle without judicial assistance, or the amount of judicial assistance the case may need, or the amount of time the case may need to be ready for trial\(^7\)); who decides whether a case meets the criteria for a particular track, and when that decision is made; the time standards to be set for each different type of case; the discovery limitations to be applied (if any); and the judicial services to be provided to each type of case. In this section, we will discuss, for example, providing no judicial settlement conferences for some types of cases and enhancing judicial settlement efforts for other types of cases.

Previous research strongly suggests that a policy of having a mandatory settlement conference for every case is not optimal—the court should explore a selective settlement conference policy that does not treat every case the same.\(^5\) Given these research findings, the court should experiment with eliminating judicial MSCs for certain types of cases statistics show are very unlikely to go to trial, to see if the small increase in the number of trials of such cases in the absence of MSCs would require less judge time than the MSCs themselves would have required.

The end-stage cases that might be selected for such a "no MSC" experiment would be those least likely to go to trial,\(^6\) which include cases involving monetary special damages of less than $5000, less than a $25,000 difference between the demands and offers, motor vehicle or "slip-and-fall" injuries that were not severe, and/or no prior motions hearings. These cases are relatively low value, not complex, have not involved prior motions, and/or involve parties who are relatively close in their demands and offers. It may be harder for the litigants to justify

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\(^7\)Predictive indicators might include the area of law, the amount of money at stake, the issues involved, the number of parties, whether professional or product liability or mass latent injuries are involved, the volume of discovery planned, the volume of motions, and the estimated trial length.

\(^5\)Flanders et al., *Case Management and Court Management*, p. 37; and Church et al., *Justice Delayed*, p. 76.

\(^6\)See App. C of *Technical Appendizes* for data on the characteristics of cases unlikely to go to trial.
readily the cost, risk, and uncertainty of trial for these cases.\textsuperscript{10} Hence, they are most likely to settle, even if an MSC does not take place.

If the experiment showed that judge time is not saved by eliminating MSCs for cases very unlikely to go to trial, eliminating MSCs for other types of cases more likely to go to trial would have no point. On the other hand, if judge time is saved, the next step would be to experiment with eliminating MSCs for all cases except those highly likely to go to trial.

At the same time court officials consider experimenting with eliminating MSCs for cases very unlikely to go to trial, they should consider experimenting with more intensive settlement conferences for certain types of cases statistics show are most likely to go to trial or to have lengthy trials. The court should evaluate the experiment to see if any increase in judge time spent on MSCs for these cases would result in fewer trials and, hence, an overall decrease in the amount of judge time required.

These MSCs could be intensified by following the second most frequently made recommendation of lawyers we surveyed: using more active settlement conference judges. By "more active judges," we mean judges who become actively involved in the settlement process rather than serving as passive listeners while lawyers discuss the cases. Active judges would attempt to facilitate settlement by giving opinions about liability, division of responsibility among parties, dollar value, interpretation of the law and contract language, and the likely outcome of trial. They might also suggest alternative ways of settling the case short of trial (such as binding arbitration, with a floor and a ceiling on the award) or might talk directly with litigants to resolve an impasse if that seems desirable.

The use of more active settlement judges could be accompanied by an increase in the average amount of time spent per MSC. Or, the court might just use more active settlement judges but maintain the current average of one judge hour per MSC.

The types of cases that might be targeted for enhanced MSCs would be those most likely to go to trial and, hence, hardest to settle.\textsuperscript{11} Such


\textsuperscript{11}See App. C of Technical Appendixes for data on the characteristics of cases most likely to go to trial.
cases include those involving more than $50,000 in special damages; parties more than $150,000 apart; severe physical or mental disability; three or more plaintiffs; only an insurance company defendant, or a defendant who did not hire a lawyer; contract language or division of liability among defendants; at least six pretrial motion hearings; contract and other civil complaints; complex issues; and a defense lawyer who has less than 50 open cases. We may characterize these harder-to-settle cases as having higher stakes, complicating factors, a history of legal skirmishing, lawyers with a relatively low workload, and/or potential outcomes not subject to compromise (such as those involving nonmonetary demands or interpretation of laws or contracts).

In practice, this means cases that reach trial are more likely to be the higher-stakes cases. The costs of trial are considerably larger than the costs of pretrial disposition, and litigants are more willing to bear the costs of waiting for and conducting trial if the potential stakes (the potential outcome relative to the last offer and demand) are higher. In practice, cases that reach trial are also those involving greater uncertainty, which leads to greater differences of opinion about the case’s expected outcome.

This suggests that court assistance in reducing both uncertainty (by offering advice on matters of law or contract interpretation or the likely verdict on liability or damages, for example) and the difference between the demands and offers should reduce the likelihood of trial. It also suggests that the court might focus its pretrial disposition efforts on cases more likely to go to trial, rather than treating all cases the same.

Lawyers for nearly half the cases that eventually went to trial told us that nothing the court could have done would have prevented trial. This implies that if the court can identify in advance cases for which trial is unavoidable, it should not waste any time attempting to settle them. However, our survey data strongly suggest that the court cannot identify those cases with a high degree of certainty before the MSC starts. Thus, this really implies that if the court attempts to settle a case and the parties seem to be at an impasse, the court should not devote a great deal of additional settlement conference time because a core set of cases requires trial for resolution. The settlement conferences are not the only judicial activity that could be tailored to the type of case—similar differential case management policies could be implemented in the areas of arbitration, discovery, or any other type of activity requiring the consumption of judge time.
USING DIFFERENT TIME STANDARDS FOR DIFFERENT TYPES OF CASES

OPTION 13: Experiment with different time standards tailored to the type of civil case. These should include both the time to disposition and to completion for various events in a case's life.

Deadlines for various events within the life of a case are currently undergoing experimental testing in Los Angeles; this is a desirable method of fine-tuning the specific time standards for various types of events. The court should consider whether the deadlines for various events within the life of a civil case should be refined and tailored to different types of cases. Although the court may set the time to answer a complaint the same for all cases, one might reasonably argue that the discovery cutoff deadline should be shorter for a simple case than for a complex case.

SCHEDULING SHORTER TRIALS EARLIER THAN LONGER TRIALS

OPTION 14: Give priority in scheduling trials to cases with shorter estimated trial lengths.

Cases might be categorized into "one-day," "two-to-five day," "six-to-ten day," and "long" trial categories, for example. In addition to reducing delay by reducing the number of cases waiting for trial, this technique might reduce the average trial length if lawyers and litigants opt for an earlier shorter trial rather than a later longer trial.

Research on waiting lines shows that the order in which customers are served can have a strong influence on the average amount of time all customers combined must wait. One could serve customers on a first come, first served basis. Or, one could look for a way to serve customers in some priority order so that the average waiting time is minimized. Mathematical analysis of waiting lines at service facilities shows that if customers are assigned priorities so that the customers requiring the shortest service are served first, the overall average wait for all customers combined will be minimized.\(^\text{12}\) If we translate waiting-line management principles to this court delay study, we can consider civil cases (customers of the court) as waiting in line for

service (trial, for example). Different civil cases have different estimated trial lengths (length of service required). The average time to civil case disposition (the average wait) will be minimized if the cases are tried in the order of “shortest trials first.” A maximum time to trial could be established to prevent longer cases from having to wait excessively. Just by changing the order in which cases are tried—without doing any more judicial work—the average delay for civil cases is reducible. Because the same trials would be held, judicial work would not be increased, and each trial would be the same length.\textsuperscript{13}

Although the overall wait for all cases combined would be reduced if the shortest trials took place first, the cases with longer estimated trial lengths would have to wait longer and those with shorter estimated trial lengths would wait less. The important point, however, is that civil case delay could be reduced without adding judges by scheduling shorter trials first.

The mathematics required to prove this finding is complicated, but consider the following simple example: Suppose only two cases are in line waiting for trial. The first has an estimated trial length of 20 days; the second has an estimated trial length of 2 days. Disposing of the two cases will take 22 judge days no matter which is tried first. If the long one is tried first, the average time to disposition is 21 days;\textsuperscript{14} if the short one is tried first, the average time to disposition is reduced to 12 days.\textsuperscript{15}

This technique works. Various types of service facilities use this method of assigning priority to customers needing the least service. Examples of such facilities are grocery stores, which offer express lines for customers paying cash with less than ten items; photocopying stores, which have express lines for people needing less than 15 copies; or banks, which provide different lines for different types of transactions.

The policy option of scheduling shorter trials ahead of longer trials is not new—the Los Angeles Superior Court is already giving priority in scheduling to the short-cause cases with estimated trial lengths of one day or less. We suggest that the court consider extending the concept, thereby reducing delay even more than the short-cause trial program currently does.

\textsuperscript{13}Assuming that the change in priority would not appreciably change the cases’ decisions to go to trial or the length of each trial.

\textsuperscript{14}A total of 20 days for the first one tried and 22 (20 plus 2) for the second. The average is 21.

\textsuperscript{15}A total of 2 days for the first one tried and 22 (2 plus 20) for the second. The average is 12.
IX. IMPROVING COURT MANAGEMENT POLICY

Court management is critical to the success of a delay-reduction program. One can document certain management characteristics courts with shorter delay often possess that courts with longer delay often do not possess—characteristics that logically should be associated with reduced delay. These characteristics include the strength of court management, the quality of management information available, and judicial accountability.¹

STRENGTHENING COURT MANAGEMENT

OPTION 15: Strengthen court management by holding elections of the presiding judge and executive committee every two years instead of yearly and by extending the presiding judge's maximum term from two years to four or eight years. Principal criteria for selecting the presiding judge should include court management skills and commitment to reducing delay.

The presiding judge of the Los Angeles Superior Court is elected by the judges and customarily serves for only two years. The presiding judge appoints judges to key leadership posts and assigns judges to the court's various geographic divisions.

Previous research on the power of the presiding judge in the Los Angeles Superior Court indicates that formal powers are exercised tamely and within a consensus framework.² Recent research on other urban courts has found that practitioners in the slower courts frequently cited the absence of strong court leadership as a prime reason for the delay problem. Very often, the leadership problems related not so much to the chief judge's personality as to the criteria for selection and the chief judge's "traditional" nonassertive role. Where the chief judgeship is an essentially honorific rotating office with little real

¹A 1985 National Center for State Courts study of delay in 18 urban trial courts focused heavily on court management approaches and found some common themes in courts that were successful in reducing delay: the chief judge's leadership, the use of management information systems, and mechanisms for accountability. See Mahoney, Changing Times in Trial Courts, pp. 191–213.
²Ryan et al., American Trial Judges, p. 201.
management authority and responsibility, no strong central core for
developing an aggressive long-term attack on delay exists.3

The frequent rotation of presiding judges has meant that little con-
tinuity has existed on the court for dealing with the long-term problem of
delay. Two-year terms for presiding judges are insufficient to provide
court management continuity or effective long-term policy planning and
implementation. Very few private organizations would even contemplate
changing top management every two years on a regular basis.

IMPLEMENTING AN IMPROVED CASE MANAGEMENT
INFORMATION SYSTEM

OPTION 16: Implement an improved case management infor-
mation system as soon as possible. To assist in case management,
the information system should record each scheduled and actual
transaction for each case individually in such a way that the case
can be scheduled to meet established time standards, monitored
by computer as it flows through the court system, and flagged
automatically for court attention if it fails to meet established
time standards for various events and for disposition.

An essential element of any delay-reduction program is information
on how the court system is working and how individual cases are pro-
gressing. If the court does not have a case monitoring information sys-
tem, it cannot tell when individual cases are not progressing as they
should. If the court does not have a court monitoring information sys-
tem, it cannot assess its policies’ effectiveness or tell where in the court
system bottlenecks are occurring that need attention.

The Los Angeles Superior Court has been talking about and developing
a new case management information system for several years. In this
subsection, we will not delineate specific data elements the court should
collect or give specific forms of reports it should use. The court is
currently developing these details as part of its forthcoming automated
case tracking system (ACTS) for civil cases.4 Rather, we will specify cer-
tain types of functions that the new management information system
under development should be able to perform if it is to provide maximum
assistance to a comprehensive delay-reduction program.5

4"User Survey Report: Automated Case Tracking System (ACTS) Volume II—Civil
Court Records," Los Angeles Superior Court, 1984; and "ACTS-CIVIL: Logical Process-
5The National Center for State Courts has published several studies on court manage-
mment information systems: Automated Information Systems: Planning and Implementa-
tion Guidelines, 1983; Court Case Management Information Systems Manual, 1983; Court
The complete information system used by the court needs to permit and facilitate case, personnel, facilities, and budget and accounting management. From the viewpoint of civil case delay reduction, we will focus on case management and court personnel management information needs, because the Los Angeles Superior Court's current information is most deficient in those areas.

Without a painstaking manual search through the Register of Actions or file folders for individual cases, the court doesn't know what is happening to individual cases or even if they have been dormant for several years. As of 1984, the superior court used ten different computer information systems running on three different computers. The ACTS User Needs Survey found that "these systems leave gaps which currently must be filled manually and they result in redundant data entry and data storage since case information must be entered separately into each system." The User Needs Survey found the civil case record-keeping system to be extremely labor intensive and identified several major problems.

The Los Angeles Superior Court recognizes the problems and is working to solve them. The new ACTS information system being designed by the court for implementation in 1992 or 1993 should remedy much of the lack of case and court management information.

To be most useful for delay reduction, the case management information system should record each scheduled and actual transaction for each case individually in such a way that the case can be scheduled to meet established time standards, monitored by computer as it flows through the system.


6Except for cases using a special information system in the new experimental fast-track program.


The Judicial Council uses computer-based information systems such as STATSCAN and SUSTAIN (see Jerry L. Short and Tammy P. Glathe, "STATSCAN: California's Automated Data Collection and Tracking System," State Court Journal, Spring 1987; and CHOICE Information Systems, Inc., SUSTAIN Court Case Management System, Newport News, Va., undated). Information collected using the STATSCAN system is transmitted electronically to the state by the county courts and can also be used by the county courts directly. The SUSTAIN system is much more detailed and allows individual case monitoring for compliance with processing time standards, docketing, indexing, preparing notices to attorneys and parties, preparing calendars and handling other case and personnel management functions. The Los Angeles Superior Court is using STATSCAN and has started to use SUSTAIN for civil cases in the fast-track experimental program. These two systems are in use temporarily while the court awaits the new ACTS system for civil cases, which should provide better information than STATSCAN and SUSTAIN (interview with Larry Jackson, the Los Angeles Superior Court, March 1989).
through the court system, and flagged automatically for court attention if it fails to meet established time standards for various events and for disposition.

By aggregating data on the flow of individual cases, the court would be able to see the locations of court system bottlenecks, assign existing personnel when and where needed to deal most effectively with delay, and plan better for future personnel and facility needs. Having case-level computerized data would facilitate computer docketing, calendaring, noticing, monitoring, and generating of reports and would free up some support personnel currently performing some of those functions manually. We discuss court management information systems below.

IMPLEMENTING AN IMPROVED COURT MANAGEMENT INFORMATION SYSTEM

OPTION 17: Implement an improved court management information system as soon as possible. The information system should contain data on the work load, quantitative productivity, and performance of individual judicial officers.

Our interviews indicate that some judges are more productive than others, as is true of workers in any profession. The incentive system within the court should recognize and reward judges and other personnel for their efforts in processing and disposing of cases in a timely fashion. The system should also recognize judges who are least productive and encourage them to increase their productivity. To recognize productivity, or lack of it, the court management needs information.

Each judge holds an elected position and hence is relatively independent. The presiding judge cannot effectively dictate to individual judges. Compliance with court policies must be achieved by building consensus, persuading, educating, appealing to judges' professional responsibility, tailoring assignments to individual judges' desires and skills, dispensing or withholding "perks," applying judicial peer pressure, and making

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10Such as location of assignment, nature of assigned work, specific courtroom, support personnel provided, and special assignments.
accountability information available so judge performance can be evaluated by the individual judge and by court management.

Judges may complain that any statistics collected on individual judge productivity may be misinterpreted, may not accurately portray the judge’s work product, or may be misleading because each judge’s caseload is unique. However, if only court judges and managers were to see the data, the likelihood of misinterpretation would decrease. Moreover, knowing something about the work load and productivity of individual judges is better than knowing nothing (currently the situation, or close to it, in the Los Angeles Superior Court). At present, U.S. district courts keep data on each judge for use within the court system.\textsuperscript{11}

The following measures of performance could be collected by the court for each judge\textsuperscript{12} (or each small team of judges if a team calendaring system is in use): number and weighted number of cases filed by type; number and weighted number of pending, continued, and disposed cases; number of motions, settlement conferences, trials, and other activities concluded; average and median age of civil cases pending, disposed pretrial, and tried (by type of case); number and percentage of civil cases that exceed court time standards; average judge time per motion, conference, trial, and disposition; average ratio of actual trial length to lawyers’ pretrial estimates; number of peremptory challenges of the judge by lawyers; average total time on case-related and on non-case-related activity; and number and outcome of appeals. To minimize the effect of statistical variation in these measures over short time periods, they should be considered by the court over longer time periods (such as a year). In addition, certain very large cases might be excluded to avoid distorting the data for an individual judge.\textsuperscript{13}

By having a computer combine data on each scheduled and actual transaction for each case that will exist in the new ACTS case management information system, the court can schedule personnel time better, balance work loads among personnel, and generate some measures of productivity for each judicial officer and other court personnel so that its leaders can better manage personnel.

\textsuperscript{11}Some basic information collected about each federal judge includes the number of times the judge’s rulings are appealed, the number of appeals that result in reversals or remands, the number of open civil cases, the average amount of time to disposition, the number of cases pending over three years, the number of trials conducted, and the average length of trial.

\textsuperscript{12}Many of these measures are mentioned in National Center for State Courts, \textit{Court Case Management Information Systems Manual}, p. 64.

\textsuperscript{13}Most, if not all, of this information could be produced from the court’s forthcoming ACTS information system.
In addition to the policy option of an improved management information system, two policy options we discussed in earlier sections are highly relevant to the issue of judicial incentives and accountability: the strength of the court's management and the type of calendaring system. Relatively weak court management that rotates every two years will be less effective in managing independent judicial officers than will a strengthened presiding judge and executive committee.

Earlier we considered a small team or an individual judge calendaring system to replace the current master calendar system. One reason for this was to give individual judges more direct responsibility for their own caseload. This would increase accountability; more important, it would also give individual judges a greater feeling of responsibility and control over their own caseloads. No longer would a judge finish one case, only to have another new one he or she had never seen before assigned from an endless master calendar. Instead, the judge would have his or her own caseload to manage, thus having more professional independence and responsibility and more incentive to be productive.
X. CONCLUSION

Delay in the disposition of civil cases in the Los Angeles Superior Court is a severe problem. Litigants who want a jury trial must now typically wait five years from the time they file their cases for the trials to begin. Time to disposition is much longer in Los Angeles than in the typical urban court and much longer than the two-year time standard. Court judges and administrators have long recognized the delay problem and have been working hard to find ways to speed the disposition of civil cases. But despite their efforts, the delay problem has persisted and worsened in recent years.

Our analysis explored the major possible explanations for the current long times to disposition in the Los Angeles Superior Court. We have shown that the causes of civil delay are multiple and complex but that, broadly speaking, delay results from three factors: The demand for court services exceeds the supply of judicial officers, the court could manage individual cases and court personnel more effectively, and litigants and their lawyers are, in some instances, delaying the disposition of cases.

We focused first on the most important of these causes of delay—the large imbalance between the supply of judges and the demand for court services. We believe that without taking big steps toward rectifying that imbalance, all other delay-reduction efforts will prove inadequate to solving the problem. To that end, therefore, the Los Angeles Superior Court must receive a substantial increase in its judicial work force. Such an addition of judges must be the first priority in combating delay, but we recognize that the cost of adding judges may result in fewer new judges than are needed. Therefore, the court must consider attacking the delay problem from all sides—by adding as many judges as possible and by improving the productivity of existing judges using several different policy options. We believe that the court can make some further improvements in its delay picture by adopting policy options for increasing productivity—by improving the judicial management of civil cases, experimenting with different procedures and time standards for processing different types of civil cases, improving court management, and experimenting with increasing the court workday’s length. The policy options we suggest have worked in other courts and should work in Los Angeles. However, the delay problem developed over many years, and one should not expect it to disappear quickly. The new policies must have time to work.
If something major is not done soon about the civil case delay crisis in Los Angeles, court and civil litigants will face even greater delays and potential gridlock in the civil justice system. If the problem is not solved soon, the problem may become so bad that more radical solutions may be needed, such as restricting filings or eliminating jury trials for some types of civil cases.

This report's research was designed to answer a specific question: How can civil case delay be reduced in the Los Angeles Superior Court? But many trial courts—in California and in other states—are grappling with burgeoning civil caseloads and lengthening times to disposition. Thus, to the extent that similarities exist in the way cases are processed, in caseload composition, in causes of delay, and in the courts' organization and operation, our methodology and findings may have wider applicability to other courts. We combined many different data sources, including published court data and data we collected through surveys of lawyers, judges, the court's Register of Actions, cases at the mandatory settlement conference stage, and cases at the jury trial stage. Individually, these data sources were of limited value in understanding the causes of the delay problem and its potential solutions. But when we combined these data and disaggregated them by type of case and type of judicial activity, they told us much about delay causes and solutions.

Although we have proposed various specific policy options to reduce civil delay in Los Angeles, much remains to be done. We deliberately focused our analysis on the imbalance between the demand for and supply of court services and on current court management and case management practices. Though improved judicial management of civil cases will influence the behaviors of litigants and lawyers, much remains unknown about how to influence those behaviors effectively. This area of investigation remains important but methodologically difficult. It is not amenable to the analysis of existing aggregate or macro-level data; rather, exploring this subject necessitates collecting and analyzing case-level data on the behavior of parties, their lawyers, and the court throughout the life of a dispute. Researchers who have looked at civil delay believe that litigant and lawyer behavior affects and is affected by the court's actions. We found that local judges and attorneys with whom we spoke often held strong views about the effect of the "local legal culture" on time to trial in Los Angeles and about how to change that culture to reduce delay. Consensus exists that establishing or changing norms concerning the pace of litigation requires change in both the court's and litigants' and lawyers' behavior. Yet without a clear understanding of the interconnected relationship
between these sets of actors, as well as of the behavior of individual actors, significant permanent change in the local legal culture and in the pace of civil litigation will be difficult to achieve.
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A special bibliography (SB 1064) provides a list of these RAND publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write the Institute at this address: The Institute for Civil Justice, The RAND Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, California 90406-2138, (213) 339-0411, x7803.