

JUST, SPEEDY, AND INEXPENSIVE? AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT

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I. INTRODUCTION

The Civil Justice Reform Act (CJRA) of 1990 is rooted in more than a decade of concern that cases in federal courts take too long and cost litigants too much. As a consequence, proponents of reform argue, some litigants are denied access to justice and many litigants incur inappropriate burdens when they turn to the courts for assistance in resolving disputes. In the late 1980s, several groups, including the Federal Courts Study Committee and the Council on Competitiveness, began formulating reform proposals. One of these—the Task Force on Civil Justice Reform, which was initiated by Senator Joseph Biden and convened by The Brookings Institution—produced a set of recommendations that ultimately led to legislation. The task force comprised leading litigators from the plaintiffs' and defense bar, civil and women's rights lawyers, attorneys representing consumer and environmental organizations, representatives of the insurance industry, general counsels of major corporations, former judges, and law professors.

The new legislation, the CJRA, required each federal district

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court to conduct a self-study with the aid of an advisory group and to develop a plan for civil case management to reduce costs and delay. To provide an empirical basis for assessing new procedures adopted under the act, the legislation also provided for an independent evaluation. Ten district courts, denoted "pilot" district courts, were required to adopt plans that incorporated certain case management principles through December 1995. The evaluation focused on the consequences of that pilot program.

The Judicial Conference and the Administrative Office of the U.S. Courts asked RAND's Institute for Civil Justice to evaluate the implementation and the effects of the CJRA in these districts. This document describes the implementation of the CJRA and summarizes the effects of its case management policies on time to disposition, costs, and participants' satisfaction and views of fairness.

To preview the main findings of the evaluation:

1. The CJRA pilot program, as the package was implemented, had little effect on time to disposition, litigation costs, and attorneys' satisfaction and views of the fairness of case management.
2. But our analysis of case management as practiced across districts and judges shows that what judges do to manage cases matters:
 - Early judicial case management, setting the trial schedule early, shortened time to discovery cutoff, and having litigants at or available for settlement conferences are associated with a significantly reduced time to disposition. Early judicial case management also is associated with significantly increased costs to litigants, as measured by attorney work hours.
 - Shortened time to discovery cutoff is associated with significantly decreased attorney work hours.
 - None of these policies significantly affects attorneys' satisfaction or views of fairness, either positively or negatively.
3. If early case management and early setting of the trial schedule are combined with shortened discovery cutoff, the increase in costs associated with the former can be offset by

the decrease in costs associated with the latter. We estimate that under these circumstances, litigants in general civil cases that do not close within the first nine months would pay no cost penalty for a reduced time to disposition of approximately four to five months (about 30 percent of their median time to disposition).

4. The CJRA also required public reporting of the status of each judge's calendar every six months, including the number of cases pending over three years. Since adoption of the CJRA, the total number of all civil cases pending has increased, but the number of cases pending more than three years has dropped by about 25 percent from its pre-CJRA level.

II. OVERVIEW OF THE CJRA PILOT PROGRAM

The CJRA created a pilot program that required ten federal district courts to incorporate certain case management principles into their plans and to consider incorporating certain other case management techniques. Both the principles and the techniques were largely based on those recommended by the task force initiated by Senator Biden. The evaluation included ten other districts to permit comparisons; these districts were not required to adopt any of the case management principles or techniques.

The ten pilot districts selected by the Committee on Court Administration and Case Management of the Judicial Conference of the United States were: California (S), Delaware, Georgia (N), New York (S), Oklahoma (W), Pennsylvania (E), Tennessee (W), Texas (S), Utah, and Wisconsin (E).

The Judicial Conference, with advice from RAND, also selected the following ten comparison districts: Arizona, California (C), Florida (N), Illinois (N), Indiana (N), Kentucky (E), Kentucky (W), Maryland, New York (E), and Pennsylvania (M).

Using several methods, we confirmed that the pilot and comparison districts are comparable and adequately represent the range of districts in the United States. Together, the 20 study districts have about one-third of all federal judges and one-third of all federal case filings.

The pilot districts were required to implement their plans by January 1992; the other 84 districts, including the compari-

son districts, could implement their plans any time before December 1993.

The Six Case Management Principles

The act directs each pilot district to incorporate the following principles into its plan:

1. Differential case management;
2. Early judicial management;
3. Monitoring and control of complex cases;
4. Encouragement of cost-effective discovery through voluntary exchanges and cooperative discovery devices;
5. Good-faith efforts to resolve discovery disputes before filing motions; and
6. Referral of appropriate cases to alternative dispute resolution programs.

Pilot districts *must* incorporate these principles, while other districts *may* do so.

The Six Case Management Techniques

The act directs each district to *consider* incorporating the following techniques into its plan, but no district is *required* to incorporate them:

1. Joint discovery/case management plan;
2. Party representation at each pretrial conference by an attorney with authority to bind that party regarding all matters previously identified by the court for discussion at the conference;
3. Required signature of attorney and party on all requests for discovery extensions or trial postponements;
4. Early neutral evaluation;
5. Party representatives with authority to bind to be present or available by telephone at settlement conferences; and
6. Other features that the court considers appropriate.

III. FEATURES OF THE RAND EVALUATION

The evaluation is designed to provide a quantitative and qualitative basis for assessing how the case management principles and techniques identified in the CJRA affect litigants' costs (measured in both attorney work hours and money), time to disposition, participants' satisfaction with the process, views of fairness of the process, and judge work time required.

Comparisons are made between the ten pilot and ten comparison districts using data from cases terminated in 1991 before CJRA and separately using data from cases filed in 1992-93 after implementation of the pilot program plans. Because of differences between our pre-CJRA and post-CJRA data that are unrelated to CJRA and that are difficult to properly account for, we focus on separate pre- and post-CJRA analyses. The results of our qualitative analysis, combined with our separate pre- and post-CJRA quantitative analyses, provide ample evidence concerning the effects of the act.

The evaluation also uses quantitative analyses to compare cases managed in different ways to determine how such management practices affect litigants' costs, time to disposition, participants' satisfaction with the process, and views of fairness. The quantitative analyses exploit natural variation in judges' management practices, rather than an experimental random assignment of management practices to cases.

Data Sources

The evaluation is based on extensive and detailed case-level data from January 1991 through December 1995. Data sources include:

- Court records;
- Records, reports, and surveys of CJRA advisory groups;
- The districts' cost and delay reduction plans;
- Detailed case processing and docket information on a sample of cases;
- Surveys of judicial officers on their activities, time expenditures, and views of CJRA;
- Mail surveys of attorneys and litigants about costs, time,

satisfaction, and views of the fairness of the process; and

- Interviews in person with judges, court staff, and lawyers in each of the 20 districts.

Similar data were collected for a special supplementary analysis of ADR programs in the six study districts with a sufficiently high volume of ADR cases to permit evaluation.

We used CJRA advisory group reports, documents, and meeting minutes to assess the advisory group process and findings; we used the districts' plans and proposed local rule changes to assess what the district said it would do under CJRA; we used the dockets for a large sample of cases to help us understand what was actually done on cases and when (such as schedule setting, assignment to management tracks, or referral to ADR); we used court records to assess the basic characteristics of the cases and court actions, such as referral to ADR, that were not always on the court docket; we used the judicial surveys on our sample of cases to get judges' views on whether they had changed how they manage cases as a result of CJRA; we used extensive mail surveys of thousands of lawyers and litigants on our sample of cases to get their views on how the case was managed and information on litigation costs, satisfaction, and views of fairness; and we used extensive semi-structured interviews with judges, court staff, advisory group members, and lawyers to better understand both the implementation of CJRA and case management in the districts before and after CJRA.

In total, more than 10,000 cases were selected for intensive study, and more than 60,000 people were to be surveyed. We received completed survey responses from judges on 3,280 cases (about two-thirds of those closed in our post-CJRA sample), from about 9,000 lawyers (about one-half of the lawyers surveyed), and from about 5,000 litigants (about one-eighth of the litigants we attempted to survey). Because of the low litigant response rate, we were limited in our ability to analyze litigants' hours spent, satisfaction, and views of fairness.

Analytic Approach

We use both descriptive tabulations and multivariate statistical techniques to analyze *time to disposition*, *costs*, and

participants' satisfaction and views of fairness.

We analyze time to disposition, rather than delay, since the latter cannot be defined without reference to some currently unavailable standard of how long civil cases should take to resolve.

We present information on two types of cost: those borne by the litigants, measured in both monetary and work hour terms, and those borne by the federal court system, measured in terms of judicial work hours. Our full report provides data on monetary costs to litigants, litigant hours spent, and lawyer work hours spent. However, we consider lawyer work hours to be the best available measure of how case management affects litigation costs because it has uniform meaning regardless of attorney fee structure¹ or geographic variations in attorney fee rates and can be used consistently for both in-house lawyers and outside counsel. Consequently, in the statistical analyses we use lawyer work hours as our measure of costs.

Our assessment of satisfaction and views of fairness is drawn from the results of our surveys.²

Given the observational nature of our data, one should not treat our statistical results as exact estimates of causal effect. Rather, our statistical analyses summarize the differences observed in our sample of cases. We have made every attempt to ensure that our estimates clearly represent effects in our observed data, but since the pilot program did not randomly assign case management procedures to cases using an experimental design, we cannot say definitively that our observed effects correspond to causal effects among the studied cases and districts. Thus, interpretation of our statistical results should take place only in the context of an understanding of how the judicial system functions in practice.

We base our assessment of case management policies and procedures on data from general civil litigation cases³ with issue

1. Under some fee structures, such as contingent fees, changes in lawyer work hours that may result from changes in court management are not necessarily reflected in the fees charged to clients.

2. Satisfaction and views of fairness were measured by responses to the following questions: How satisfied were you with the court management and procedures for this case for your party or parties? How fair do you think the court management and procedures were for this case for your party or parties?

3. In practice, federal district courts split the civil caseload into two catego-

joined.⁴ We also analyze the subset of these cases that took longer than nine months to disposition.

One issue that has been raised regarding the CJRA concerns the appropriateness and effectiveness of national uniform standardized rules and procedures. Some people see CJRA as a "top down" reform started by Congress. Others see CJRA with its local advisory groups and local rule revisions as an attempt to tailor management to the local legal needs and culture. Our research design did not address the debate over national versus local rules and procedures. Instead, we analyze and report what happened as a result of CJRA and the application of management principles and techniques identified in the act; we leave it to others to draw conclusions on the issue of uniformity of rules and procedures.

IV. OVERVIEW OF THE CJRA'S IMPLEMENTATION

The Advisory Group Process

The CJRA empowered some 2,000 people across the country to examine, diagnose, and prescribe remedies for the federal civil justice system. These individuals were organized into advisory groups in each of the 94 districts.

The groups' mandate was to assess the condition of the civil and criminal dockets, identify the principal causes of delay and excess cost, and make recommendations, which the court was free to accept or reject, for dealing with these problems. The advisory groups were also to monitor the implementation of the plan and provide input to an annual reassessment for each dis-

ries—those types of cases that usually receive minimal or no management, and those general civil litigation cases to which the district's standard case management policies and procedures apply (and which are of primary concern for evaluation of CJRA case management principles and techniques). Minimal management is usually applied to prisoner cases (other than death penalty cases), administrative reviews of Social Security cases, bankruptcy appeals, foreclosure, forfeiture and penalty, and debt recovery cases.

4. Issue is considered joined after the defendants have answered the complaint in accordance with FED. R. CIV. P. Rule 12(a) or as mandated otherwise by the court (Administrative Office of the United States Courts, *Guide to Judiciary Policies and Procedures, Volume XI, Statistics Manual*, Chapter 5, p. 15, updated as of 1995).

trict.

The act calls for a "balanced" composition of the advisory group, to include not only attorneys but also other persons who can speak for major categories of litigants. That balance was met for the vast majority of the advisory groups as far as lawyers are concerned. "Other persons" were minimally represented. Limited by their lack of familiarity with the federal district court system, lay people usually played only a very modest role in meetings of the advisory groups.

In general, the advisory groups approached their mission with dedication and conscientiousness. They analyzed the data that courts already had regarding time to disposition, but they had little information on litigation costs with which to work. Many groups supplemented court data with interviews of judges and court clerks and with surveys of attorneys and, occasionally, litigants. The advisory groups' final reports reflected considerable independence from the courts. Most courts incorporated most of their advisory group's recommendations into their plans.

Our interviews and the available documents suggest that the quality of the required annual reassessments varies markedly from district to district. Although the act does not require a written assessment, seven of the 20 districts in this study have done written assessments at least twice. Six of the 20 districts had no written documentation of the results of any annual assessment when we inquired in January 1996.

Our interviews indicate that generating the reports and plans required by the act have made district courts more cognizant of case management problems and opportunities. Bench-bar understanding reportedly has also been improved. That benefit alone probably justifies the advisory groups' work.

Several of the CJRA advisory group assessments contended that certain factors beyond the courts' direct control influence civil litigation cost and delay. Three factors predominated: First, the assessments cited the pressure generated by the criminal docket. Legislation creating new federal crimes, adoption of the Speedy Trial Act, and the advent of mandatory sentencing guidelines all increase the burden on the federal court and provide less time for the orderly movement of civil cases. Second, the assessments noted that judicial vacancies are being left unfilled for substantial periods of time. Third, the need for better

assessment of the effect of proposed legislation on the courts' workload was highlighted.

Nature of the CJRA Plans

All pilot districts complied with the statutory language in the act, which provides loosely defined principles but leaves operational interpretation to the discretion of individual districts and judicial officers.

Many pilot and comparison districts interpreted some or all of their current and past practices to be consistent with the language of the act and continued those practices unchanged. However, if the spirit of the act is interpreted to mean experimentation and change focusing on the six CJRA principles, then the pilot districts met that spirit to varying degrees.

Comparison districts, having no mandated policies, generally made fewer changes than pilot districts.

Even in pilot districts whose plans suggested major changes, implementation often fell short. Thus, there was less change in case management after CJRA than one might have expected from reading the plans.

However, implementing the pilot plans may have heightened the consciousness of judges and lawyers and brought about some important implicit shifts in attitude and approach to case management on the part of the bench and bar. For example, our interviews suggested, and the case-level data we collected confirmed, that the fraction of cases managed early has increased and that time to discovery cutoff has shortened.

V. IMPLEMENTATION AND EFFECTS OF THE CJRA CASE MANAGEMENT POLICIES

The six principles and six techniques specified in the act can be usefully assigned to four categories: differential case management, early judicial management, discovery management, and alternative dispute resolution. We use these categories in our discussion of how the CJRA's case management principles were implemented in the 20 study districts and how these policies affected time to disposition, costs, satisfaction, and views of fairness.

The evaluation presented in this chapter is based on quanti-

tative analyses that compare cases managed in different ways to determine the effects of different management practices. These analyses exploit observational data resulting from the naturally occurring variation in judges' management practices, rather than data from an experimental random assignment of management practices to cases. These observational data have certain inherent constraints. In particular, judges and districts choose to use certain case management policies and practices, and we must assume that these judges and districts could differ from other judges and districts choosing not to use them. Because of these potential differences, our observed effects of a particular case management practice should be treated as an upper bound to what might occur if other judges and districts were asked to implement that practice.

Differential Case Management

The essence of the differential case management (DCM) concept is that different types of cases need different types and levels of judicial management. One way to implement DCM is to create a number of separate *tracks*, each of which implies a prescribed structured approach to case scheduling and management, and to assign cases early to these tracks. The traditional approach is the *judicial discretion* model, in which judges make management decisions for general civil cases case by case.

Implementation

Before CJRA, all courts had special management procedures for "minimal management" cases such as prisoner petitions other than death penalty cases, Social Security appeals, government loan recovery, and bankruptcy appeals. After CJRA, all courts retained their procedures for these cases with little modification.

Minimal management cases are typically disposed of relatively quickly and cheaply with little or no judicial management necessary. Since districts made few changes in their procedures for minimal management types of cases, and since almost none of these cases are managed using the policies and procedures that apply to general civil litigation and that are the focus of the

CJRA, they could not inform our evaluation of the procedures of concern in the CJRA. For all of these reasons, we exclude the category of minimal management cases from our statistical analyses.

Before CJRA, the predominant approach to case management in all 20 study districts was the judicial discretion model. Six of the ten pilot districts planned to replace this model with a track model, but that model proved difficult to implement. Most districts that included tracking in their plan actually assigned the traditional group of minimal management case types to an expedited track. Five of the six pilot districts whose plans contained a track model assigned 2 percent or less of their cases to the complex track. The consequence was that almost all general civil cases to which CJRA procedural principles might be relevant were placed in the standard track, if any track assignment was made. This meant that there was little actual "differential" tracking of general civil cases in most districts that adopted a track model in their CJRA plan.

Only the Pennsylvania (E) pilot district implemented its tracks for all general civil cases and had over 2 percent of the cases assigned to the complex track. That district also implemented other changes, the results of which we cannot reliably separate from the effects of the track system. Consequently, we have no basis for evaluating how the track method of DCM affected time, cost, satisfaction, and views of fairness.

Interviews with judges and lawyers suggest some reasons for the lack of experimentation with and successful implementation of a tracking system of DCM for general civil litigation. They include (1) the difficulty in determining the correct track assignment for most civil litigation cases using data available at or soon after case filing; and (2) judges' desire to tailor case management to the needs of the case and to their style of management rather than having the track assignment provide the management structure for a category of cases.

With respect to the difficulty in determining the correct track assignment for a case, our statistical analysis indicates that the objective data available at the time of filing (such as nature of suit category, origin, jurisdiction, and number of parties) are not particularly good predictors of either time to disposition or cost of litigation. This suggests that, if a track model is

to be implemented, decisions about track assignments should be supplemented with subjective information from the lawyers or judge.

Special management of complex cases, the third CJRA principle, is a subset of differential case management. This principle lacked an implementation sufficiently consistent and well documented to permit evaluation. These cases are generally managed individually by the judge.

Early Judicial Management

Early judicial case management includes the CJRA principle of early and ongoing judicial control of pretrial processes as well as the optional CJRA technique of having counsel jointly present a discovery/case management plan at the initial pretrial conference. Related CJRA techniques include: parties being represented at pretrial conferences by an attorney with authority to bind them; requiring the signature of the attorney and the party on all requests for discovery extensions or postponements of trial; and requiring party representatives with authority to bind to be present or available by telephone at settlement conferences.

Implementation

All advisory group reports favored the principle of early judicial management of general civil cases, and all of the courts' plans accepted the principle of early and ongoing judicial control of the pretrial process. However, case management styles varied considerably between districts and between judges in a given district.

Implementation of the four suggested techniques in this area varied substantially. Before CJRA, only one district in our study required that counsel jointly present a discovery/case management plan at the initial pretrial conference, although at least one other district required the attorneys to confer before the first pretrial conference to attempt to agree on a scheduling order. Four of the ten pilot districts adopted this technique in their plans, and nine of the other pilot and comparison districts later adopted it after our sample cases were selected when the December 1993 federal rules changes were made.

Both before and after CJRA, all 20 districts required or allowed judges to require that each party be represented at each pretrial conference by an attorney with authority to bind that party. Since there was no variation in policies between districts, we could not evaluate this technique.

In contrast, both before and after CJRA, none of the 20 districts required the signature of the attorney and the party on all requests for discovery extensions or postponements of trial.

Finally, before CJRA, eight of the 20 districts required, upon notice by the court, that party representatives with authority to bind be present or available by telephone at settlement conferences. Five additional districts adopted this technique as part of their CJRA plan.

Effects

In our statistical analyses, we defined early judicial case management as any schedule, conference, status report, joint plan, or referral to ADR within 180 days of case filing. This definition gives time for nearly all cases to have service and answer or other appearance of the defendants (which legally can take up to six months), so issue is joined, and it is appropriate to begin management if the judge wants to do so.

Early judicial case management has significant effects on both time and cost. We estimate a 1.5 to 2 month reduction in median time to disposition for cases that last at least nine months, and an approximately 20-hour increase in lawyer work hours. Our data show that the costs to litigants are also higher in dollar terms and in litigant hours spent when cases are managed early. These results debunk the myth that reducing time to disposition will necessarily reduce litigation costs.

Lawyer work hours may increase as a result of early management because lawyers need to respond to a court's management—for example, talking to the litigant and to the other lawyers in advance of a conference with the judge, traveling, and spending time waiting at the courthouse, meeting with the judge, and updating the file after the conference. In addition, once judicial case management has begun, a discovery cutoff date has usually been established, and attorneys may feel an obligation to begin discovery. Doing so could shorten time to

disposition, but it may also increase lawyer work hours on cases that were about to settle when the judge began early management.

Early management has no significant effect on lawyer satisfaction or views on fairness. Litigant data showed mixed results for satisfaction with early management, higher in the pre-CJRA sample and lower in the post-CJRA sample.

We also explored alternative definitions of "early" using time periods other than six months, with results similar to those reported here. This finding suggests that the *fact* of management adds to the lawyer work hours, not the "earliness" of the management. However, starting earlier than six months means that more cases would be managed because more cases are still open, so more cases would incur the predicted increase in lawyer work hours. Early management involves a tradeoff between shortened time to disposition and increased lawyer work hours.

In terms of predicting reduced time to disposition, setting a schedule for trial early was the most important component of early management. Including early setting of trial date as part of the early management package yields an additional reduction of 1.5 to 2 months in estimated time to disposition but no further significant change in lawyer work hours.

No other aspect of early judicial management had a consistently significant effect on time to disposition, costs, or attorneys' satisfaction or views of fairness.

Figures 1 and 2 graphically illustrate the effects of early judicial management and early schedule for trial on time to disposition for the cases in the 1992-93 sample. In Figure 1, the "not early" line is higher than the "early" line for the first six months because the former category includes cases that close almost immediately, before the judge has a chance to manage them.

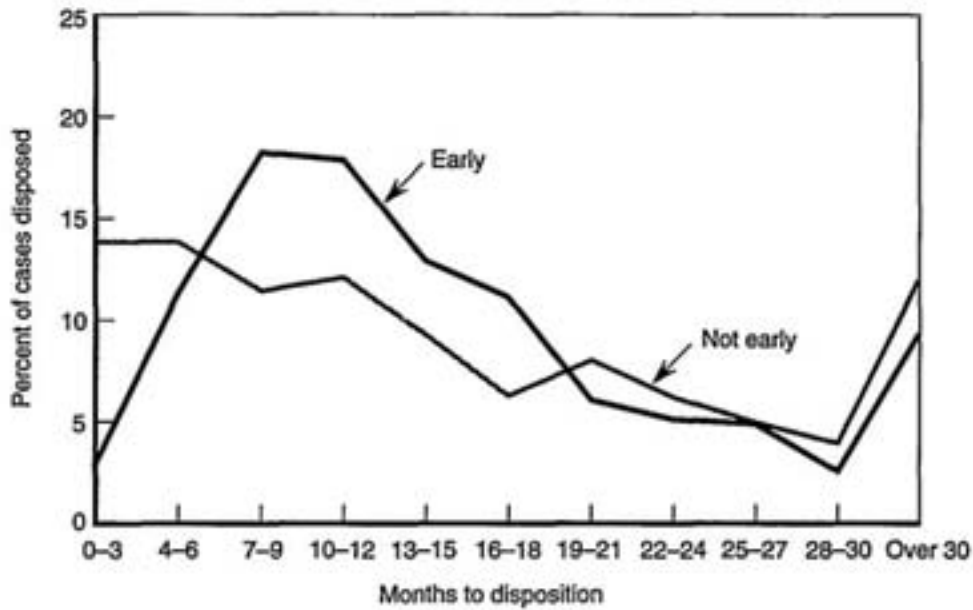


Figure 1—Effects of Early Judicial Management on Time to Disposition: 1992-93 General Civil Cases with Issue Joined

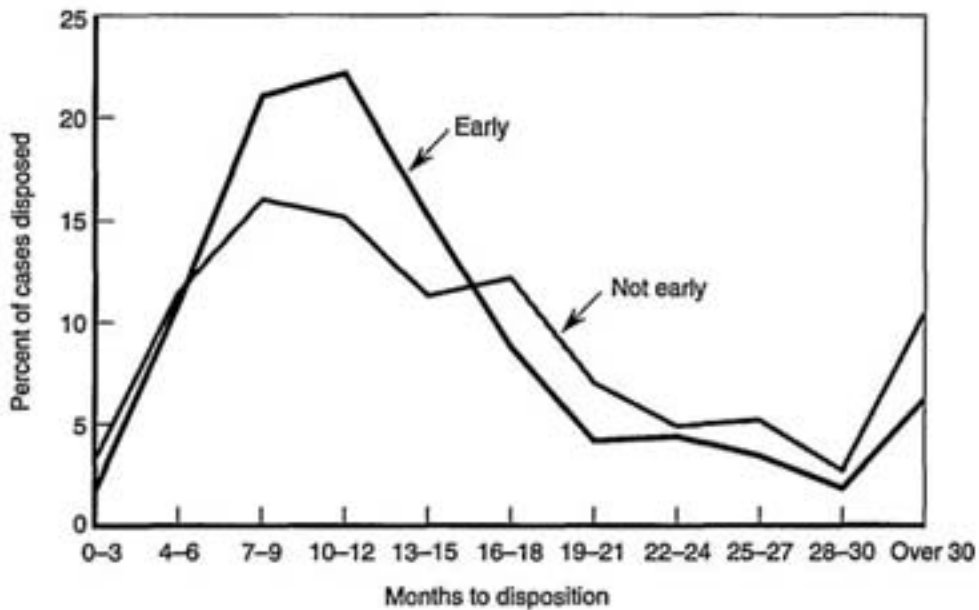


Figure 2—Effects of Early Schedule for Trial on Time to Disposition: 1992-93 General Civil Cases with Issue Joined

The technique of having litigants at or available for settlement conferences is associated with statistically significantly reduced time to disposition. However, it has no significant relationship to attorney work hours or satisfaction and no consistent statistically significant relationship to attorneys' views of fairness.

Discovery Management

Discovery management policies include the CJRA principles of early and ongoing judicial control of pretrial processes, exchanging information early without formal discovery, and requiring good-faith efforts to resolve discovery disputes before filing motions.

Implementation

Before CJRA, most districts left court control of the volume and timing of discovery to the judge in each case; CJRA had little effect on this arrangement. However, the median district times to discovery cutoff were lowered in some of the study districts. For example, in 1991 the fastest and slowest districts' median days from schedule to discovery cutoff were 100 and 274 days, respectively. In 1992-93, these medians had fallen to 83 and 217 days, respectively.

CJRA brought about substantial change in early disclosure. Only one district required it before CJRA; since CJRA, all pilot and comparison districts adopted one of five approaches providing either voluntary or mandatory exchange of information by lawyers, sometimes only for specified types of cases.

All districts retained or strengthened their existing requirements that lawyers certify good-faith efforts to resolve discovery disputes.

Effects

Shorter time from setting a discovery schedule to discovery cutoff is associated with both significantly reduced time to disposition and significantly reduced lawyer work hours. If a district's

median discovery cutoff is reduced from 180 days to 120 days, the estimated median time to disposition falls by about 1.5 months for cases that last at least nine months. In addition, lawyer work hours fall by about 17 hours—about 25 percent of their median work hours. These benefits are achieved without any significant change in attorney satisfaction or views of fairness. The data on costs to litigants in dollar terms and in litigant hours spent appear consistent with the data on lawyer work hours. Litigant data also show little difference in satisfaction between shorter and longer time to discovery cutoff.

Neither mandatory nor voluntary early disclosure significantly affects time or costs. Furthermore, we found that cases from districts with a policy of mandatory disclosure of information bearing on *both* sides of the case did not differ significantly in terms of time to disposition from other cases.

But the type of disclosure influences lawyer satisfaction. Lawyers are significantly less satisfied when a district has a policy of mandatory disclosure. However, they tend to be significantly more satisfied when they actually participate in early disclosure on *their* case.

According to our analysis of dockets on more than 5,000 cases, and according to judges we have interviewed in pilot and comparison districts that implemented their plans in December 1991, motions regarding early mandatory disclosure of information are extremely rare. Despite the dire warnings of critics of early mandatory disclosure, we did not find any explosion of ancillary litigation and motion practice related to disclosure in any of the pilot or comparison districts using mandatory disclosure.

Alternative Dispute Resolution

The CJRA's ADR policies include diverting cases, when appropriate, to the ADR programs and offering an early neutral evaluation program.

Implementation

The plans from all 20 districts permit the use of ADR techniques. In implementation, however, two different types of pro-

grams have emerged, both of which meet the loosely defined requirements of the CJRA. About half the districts have structured and administratively supported programs that involve from 2 to 19 percent of all cases filed, and one district uses early neutral evaluation conducted by a magistrate judge on 50 percent of its cases. The other districts have unstructured programs that do not generate much activity.

Effects

The three study districts that used mandatory arbitration before CJRA have continued to do so, and two of the three study districts authorized to use voluntary arbitration have started doing so. However, there has been a marked shift in half of the pilot districts toward other structured and administratively supported ADR programs—especially mandatory or voluntary mediation and early neutral evaluation.

Some districts with structured programs have only 2 to 4 percent of their cases referred to ADR, so structure appears to be a necessary but not sufficient feature for a volume ADR program. However, districts that permit ADR of some kind without a structured and administratively supported program have referred few cases to ADR.

Our statistical analyses of cases referred to mandatory arbitration detected no major effect of arbitration on time to disposition, lawyer work hours, or lawyer satisfaction. The findings for views of fairness were inconclusive. However, the small sample of arbitration referrals allows us to detect only major effects, not more modest ones.

Neither lawyers nor judges have used any type of ADR extensively when its use is voluntary.

Using our main CJRA evaluation sample data, we cannot statistically analyze the effects of the other types of ADR used to pilot and comparison districts. The volume of cases referred to ADR was too small to generate a large enough sample when all cases were sampled at random. And each of the various mediation and neutral evaluation programs was sufficiently different to make pooling the data problematic.

*Supplemental Evaluation of Mediation and
Early Neutral Evaluation*

To supplement the ADR component of the main CJRA evaluation, we conducted a study of mediation and early neutral evaluation in six districts: California (S), New York (E), New York (S), Pennsylvania (E), Oklahoma (W), and Texas (S). These districts were chosen because they use these ADR techniques for a large enough number of cases to permit meaningful statistical evaluation. As Table 1 shows, the programs vary considerably on a number of dimensions, including whether the program is mandatory or voluntary, the point in the litigation at which referral occurs, the purpose of the program, the length of sessions, the type of provider, and the cost to parties.

In most of the districts, the percentage of all case filings in a year referred to mediation or neutral evaluation program was about 5 percent; in CA(S), 50 percent of all cases were referred to its mandatory neutral evaluation program.

Our evaluation provided no strong statistical evidence that the mediation or neutral evaluation programs as implemented in these districts significantly affected time to disposition, litigation costs, or attorney views of fairness or satisfaction with case management. The low completion rate for our litigant surveys does not allow us to make meaningful statistical inferences from the litigant data.

Our only statistically significant finding is that the mediation programs appear to increase the likelihood of a monetary settlement. A plausible explanation for this pattern is that the mediation process is designed to facilitate settlement and does indeed increase the number of cases that settle rather than being dropped or decided by a judge on the basis of motions. When parties reach an agreement and settle the case, that disposition is likely to involve a monetary outcome.

The total court costs of providing the ADR programs in the districts we studied range from \$130 to \$490 per case (1995 dollars). PA(E) and TX(S) are at the lower end of this continuum; both districts have relatively high volume and relatively few personnel assigned to the program. At the high end are NY(E) and OK(W); in these districts, there are few personnel assigned

but also relatively few referrals. CA(S) and NY(S) have costs per case of about \$400. These districts have both a relatively high volume of referrals as well as a number of staff assigned to the program.

District Program	Type of Referral	When Referred	Program Emphasis	Cases Included	Typical Session	ADR Provider	Median Fee
Mediation							
NY(S)	Mandatory	After management track is assigned	Settlement	Random, experimental design	5 hours over 2 days	Lawyers	None
PA(E)	Mandatory	90 days from filing	Case issues, settlement	Random, experimental design	Single 90 minute session	Lawyers	None
OK(W)	Voluntary; or mandatory at judicial discretion	Initial pretrial conference	Settlement	All cases required to have pretrial conference	Single 4 hour session	Lawyers	\$660, split by parties
TX(S)	Voluntary, tougher cases encouraged; or mandatory at judicial discretion	Initial pretrial conference or later	Settlement	All cases required to have pretrial conference	Single 8 hour session	Lawyers	\$1,800, split by parties
Neutral Evaluation							
CA(S)	Mandatory	Before initial pretrial conference	Evaluation, settlement	All cases required to have pretrial conference	2.5 hours over 2 days	Magistrate judges handling pretrial case management	None
NY(E)	Mandatory at judicial discretion; or voluntary	Initial pretrial conference or later	Settlement	Any eligible case with value >\$100,000	Single 3.5 hour session	Lawyers	None

Table 1
Characteristics of ADR Programs Studied

Program start-up costs to district courts range from \$10,000 to \$69,000 (1995 dollars). The difference is driven primarily by whether the advisory group or the court did most of the start-up work and whether the district provided training.

Participants in these ADR programs—both lawyers and litigants—are generally supportive of them and view the programs as worthwhile in general as well as valuable to their individual cases. However, this general satisfaction with the process does

not mean that participants thought it was perfect. The problem cited most often by lawyers and ADR providers was that the parties were not ready to settle when the ADR session was held. The timing of the ADR session could be a major factor in this lack of "readiness." It may be best to conduct the sessions in an atmosphere where at least the basic facts and positions are known to both sides and to the ADR provider as well. Substantial numbers of lawyers in some districts felt that the sessions were held too early to be useful.

We conclude that the mediation and neutral evaluation programs as implemented in these districts are not a panacea for perceived problems of cost and delay, but neither do they appear to be detrimental. We have no justification for strong policy recommendations because we found no major effects from them, either positive or negative. The finding that ADR has no significant effect on time or cost is generally consistent with the results of prior empirical research on court-related ADR.

Magistrate Judges

The last CJRA technique, "other features," was intended to give districts some latitude in their plans. One case management approach included here is the use of magistrate judges in the civil pretrial process.

Districts vary in the roles assigned to magistrate judges on civil cases. Virtually all districts' magistrate judges conduct felony preliminary proceedings and try misdemeanor and petty offense cases. In some districts, magistrate judges are also given felony pretrial duties, including motions, pretrial conferences, and evidentiary hearings. Prisoner cases are routinely referred to magistrate judges in many districts for pretrial management and the preparation of reports and recommendations.

With respect to other civil cases, magistrate judges conduct almost all civil pretrial proceedings in some courts, preparing the case for trial before the assigned district judge. In other courts, they are assigned duties in non-prisoner civil cases on a selective basis in accordance with the preferences of the assigning district judge. In addition, magistrate judges conduct jury and nonjury trials and dispose of civil cases with the consent of the litigants. In two of our study districts—CA(S) and

NY(E)—magistrate judges actively manage all aspects of the pretrial process, and usually make early attempts to settle cases. This style of case management differs markedly from the traditional approach used in most other districts before CJRA.

We found that *increased* magistrate judge activity on civil cases had no significant effect on time to disposition or on lawyer work hours, and no consistently significant effect on attorneys' views of fairness associated with changing the level of magistrate judge activity. This *does not* mean that what magistrate judges *do* to manage cases has no significant effect. We believe that districts with higher levels of magistrate judge activity on civil cases are usually using them to conduct pretrial processing that would otherwise be conducted by a district judge. Hence, we believe our statistical findings mean that using magistrate judges *instead of district judges* to conduct pretrial civil case processing does not significantly affect time to disposition, lawyer work hours, or attorney views of fairness.

In the post-CJRA data, we find that increased magistrate judge activity on civil cases is a strong and statistically significant predictor of greater attorney satisfaction. Our interviews with lawyers suggest they are more satisfied with magistrate judges because they find them more accessible than district judges.

These findings suggest that some magistrate judges may be substituted for district judges on non-dispositive pretrial activities without drawbacks and with an increase in lawyer satisfaction.

VI. EFFECTS OF THE CJRA PILOT PROGRAM AS A PACKAGE

What was the effect of requiring pilot districts to adopt the package of broadly defined case management principles?

We conclude that the CJRA pilot program, as the package was implemented, had little effect on time to disposition, costs, or attorneys' satisfaction or views of fairness.

We based this assessment on statistical analysis of cases in pilot and comparison districts, on the results of judicial time studies, and on our survey of judges about how they managed cases before and after CJRA.

*Statistical Analysis of Cases in Pilot and
Comparison Districts*

In 1991, before the pilot program was implemented, we detected no significant difference between pilot and comparison district cases in time to disposition, lawyer work hours, satisfaction, or views of fairness.

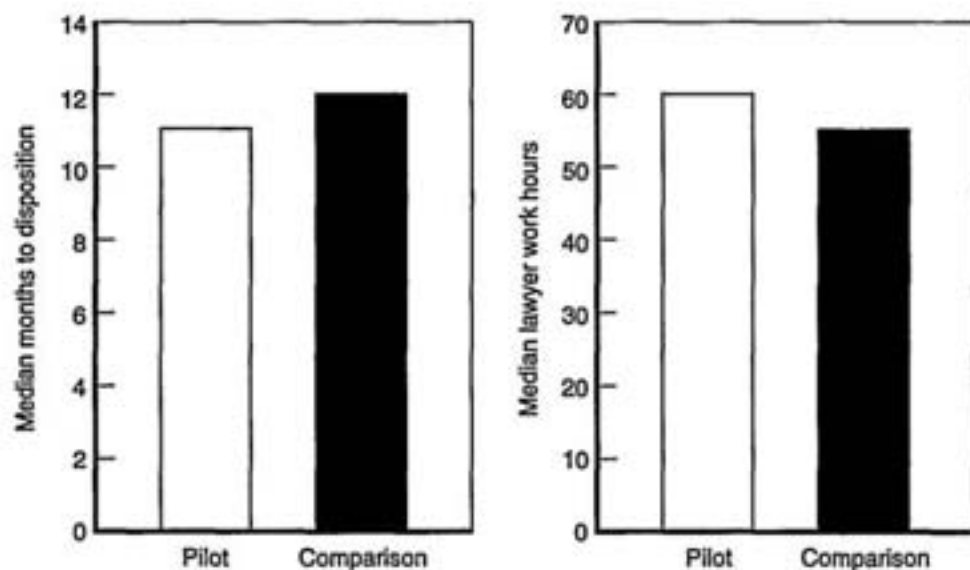
In 1992-93, after the pilot program was implemented but before eight of the comparison districts had implemented their CJRA plans, we still found no significant difference between pilot and comparison district cases in time to disposition, lawyer work hours, satisfaction, or views of fairness.

Figures 3 and 4 illustrate these findings.

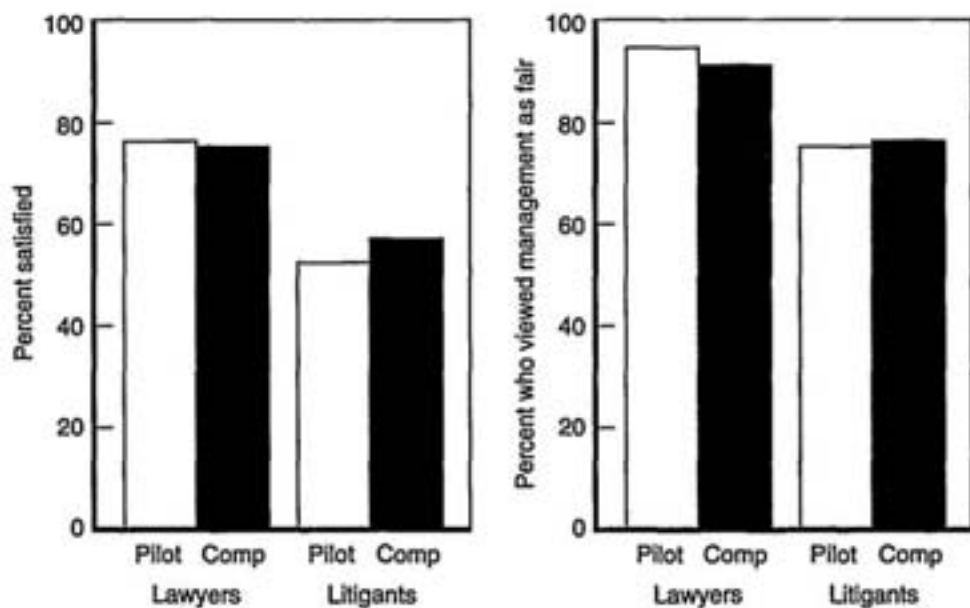
Figure 3 shows median months to disposition and median lawyer work hours. In neither case was there a statistically significant difference between the pilot and comparison districts. Figure 4 shows a similar pattern of results for participants' satisfaction and views of fairness.

We believe there are at least four reasons why we did not see a significant difference between pilot and comparison districts after the pilot program was implemented.

- Some pilot districts' plans, as implemented, did not result in any major change in case management.
- Some pilot districts' plans that resulted in major change in management at the case level did not apply that change to a large percentage of cases within the district.
- Some changes that were more widely implemented (such as early mandatory disclosure of information) did not significantly affect time, cost, satisfaction, or views of fairness.
- Some case management practices identified as significant predictors of effects are implemented not at the district level, but at the case level, and there is much variation in case management among judges in both the pilot and comparison districts.



*Figure 3—Pilot Program Had No Significant Effects:
Time and Cost*



*Figure 4—Pilot Program Had No Significant Effects:
Satisfaction and Views of Fairness*

Results of Judicial Time Study

One concern raised about implementing new case management policies is that benefits such as faster time to disposition may come at the cost of increased time spent by judicial officers. To determine if the judicial case management principles and techniques of the Civil Justice Reform Act increased the amount of judicial time spent on civil cases, we conducted a "judicial time study" of time spent on the cases in our samples of 1992-93 civil filings and compared the results with data from the judicial time study conducted by the Federal Judicial Center in the late 1980s.

We found almost no difference in the time spent by judicial officers per civil case in 1992-93 when compared to 1989. The difference in the median time reported per civil case was only one minute; the difference in the mean was six minutes.

Survey of Judges About Case Management Approach

In the 1992-93 sample of cases, we surveyed the judge after case closure and received over 3,000 responses. One question concerned the difference in case management before and after CJRA: "Was there a difference in how you and any other judicial officer managed this case, compared to how you would have managed it if it had been disposed of *prior* to January 1, 1992?"

The vast majority of the judges (85 percent in pilot districts, 92 percent in comparison districts) answered "no difference."

Of the 15 percent of the pilot judges who did report a difference, about half said the new case management policies and procedures were better than those before CJRA and about half said they were about the same. None said the new policies were worse than before CJRA.

Effect of Public Reporting?

Although the pilot program has no significant effects on time, cost, satisfaction, or views of fairness, there is some evi-

dence that another part of the CJRA may have affected the number of cases pending more than three years in both pilot and comparison districts. The CJRA requires that "The Director of the Administrative Office of the United States Courts shall prepare a semiannual report, available to the public, that discloses for each judicial officer . . . the number and names of cases that have not been terminated within three years after filing." Since public reports on each judge were required, the total number of all civil cases pending has increased, but the number of cases pending more than three years has dropped by about 25 percent from its pre-CJRA level. Nationwide, about 6 percent of all terminations (excluding asbestos cases) are more than three years old. In the pilot and comparison districts, the percentage of terminated cases more than three years old has drifted downward since the passage of the CJRA from 6.8 percent in 1990 to 5.2 percent in 1995 (see Figure 5).

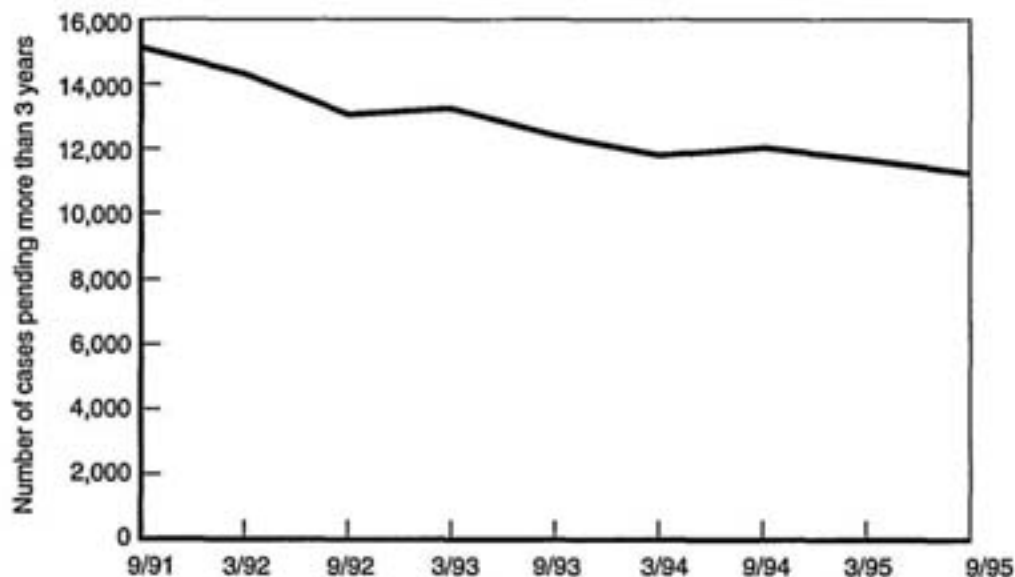


Figure 5—Public Reports on Each Judge May Have Decreased Number of Cases Pending More Than Three Years

VII. IMPLICATIONS FOR A PROMISING CASE MANAGEMENT PACKAGE

The CJRA *pilot program*, as the package was implemented, had little effect on time to disposition, costs, satisfaction, or views of fairness. But this finding does not imply that *case management* has no significant effect. Because case management varies across judges and districts, we were able to assess the effects of specific procedures and techniques on time to disposition, costs, and attorneys' satisfaction and views of fairness. This assessment clearly shows that what judges do to manage cases matters.

Table 2 summarizes the estimated effects of those principles and techniques for which the data permitted evaluation. Those CJRA case management principles that we could not evaluate, because of the way in which the CJRA was implemented, may or may not affect cost and time.

Case management procedures have a substantial predicted effect on time to disposition. Case management variables accounted for fully half of the explained variance in our analysis of time to disposition.

Four case management procedures showed consistent statistically significant effects on time to disposition: (1) early judicial management; (2) setting the trial schedule early; (3) reducing time to discovery cutoff; and (4) having litigants at or available on the telephone for settlement conferences. For general civil cases with issue joined that do not close within the first nine months, we estimate that these procedures have the *combined effect* of reducing median time to disposition by about four to five months in our post-CJRA sample—about 30 percent of their median time to disposition.

Principle or Technique	Time to Disposition	Cost (Lawyer Work Hours)	Lawyer Satisfaction	Lawyer Perception of Fairness
Early judicial management of any type	S -	S +	0	0
Effect of including trial schedule set early as part of early management	S -	0	0	0
Effect of including pretrial conference as part of early management	0	0	0	0
Effect of including joint discovery/ case management plan or status report as part of early management	0	0	0	0
Effect of including referral to mandatory arbitration as part of early management	0	0	0	0
Discovery: limiting interrogatories	0	0	0	0
Discovery: limiting depositions	NE	NE	NE	NE
Discovery: shortening time to cutoff	S -	S -	0	0
Mandatory early disclosure	0	0	S - district S + case	0
Voluntary early disclosure	0	0	0	0
Good-faith efforts before filing discovery motion	0	0	0	0
Litigants available at settlement conferences	S -	0	0	0
Increase use of magistrate judges to conduct civil pretrial case processing	0	0	S +	0
Track model of DCM	NE	NE	NE	NE
Complex case management	NE	NE	NE	NE
Party and lawyer sign continuance requests	NE	NE	NE	NE
Person with authority to bind at conferences	NE	NE	NE	NE

S + = significant increase; 0 = no significant effect; S - = significant decrease; NE = not evaluated (see the text for reasons).

Table 2
Summary of Statistical Evaluation of CJRA Principles and Techniques

In contrast, judicial case management policy appears to have a limited role to play in reducing litigation costs. Of all the policy and procedure variables we investigated as possible predictors of reduced lawyer work hours, only judicial management of discovery seemed to produce the desired effect. Cases from districts with shorter median discovery cutoff times tend to require fewer lawyer hours; in contrast, cases with early management tended to require more.

Several attorney and case characteristics—especially case stakes and case complexity—explain more of the variance in lawyer work hours than do the case management variables. It appears that lawyer work hours are driven predominantly by factors other than case management. When time to disposition is cut, lawyers seem to do much the same work, but do it in less time.

Our analysis of the effects of specific procedures and techniques suggests a package of case management policies with the potential to reduce time to disposition while not changing costs, satisfaction, and views of fairness. The package includes discovery control, the only case management practice that seemed to be effective in reducing costs:

If early case management and early setting of a trial schedule are combined with shortened time to discovery cutoff, the increase in lawyer work hours predicted by early management can be offset by the decrease in lawyer work hours predicted by judicial control of discovery. We estimate that under these circumstances, litigants on general civil cases that do not close within the first nine months would pay no significant cost penalty for reduced time to disposition on the order of four to five months. None of these policies has any significant effect on lawyers' satisfaction or perceptions of fairness.

Our analysis suggests that the following approach to early management of general civil litigation cases should be considered by courts and judges not currently using this approach and reemphasized by courts and judges that are using it. The powers to use this approach already exist under the Federal Rules of Civil Procedure.

- For cases that do not yet have issue joined, have a clerk monitor them to be sure deadlines for service and answer

are met, and begin judicial action to dispose of the case if those deadlines are missed.

- For cases that have issue joined, wait a short time after the joinder date, perhaps a month, to see if the case terminates and then begin judicial case management.
- Include setting of a firm trial date as part of the early management package, and adhere to that date as much as possible.
- Include setting of a reasonably short discovery cutoff time tailored to the case as part of the early management package.

For nearly all general civil cases, this policy should cause judicial case management to begin within six months or less after case filing.

VIII. IMPLEMENTING CHANGE

Given our understanding of how the civil justice system operates, we believe that this package of case management policies has a high probability of reducing time to disposition if implemented, without negatively affecting litigation costs or attorney views of satisfaction and fairness. However, our estimated effect should be treated as an upper bound to the effects that could be anticipated if the policies were implemented more widely.

Our estimate is an upper bound rather than a precise estimate because our quantitative analyses used observational data on the naturally occurring variation in judges' management practices, rather than data resulting from an experimental random assignment of management practices to cases. We believe we have accurately estimated the effect of a given management practice among districts and judges who currently use it. However, any effects we observe must be interpreted in light of the constraints imposed by observational data.

In particular, judges and districts *choose* to use certain case management policies and practices, and we must assume that these judges and districts may differ from other judges and districts who choose *not* to use the same policies and practices. For example, judges who currently use early management may use it

with greater intensity or effectiveness than other judges who may be asked to start using it in the future. Judges who use early management now might be using it in combination with other practices for which we do not have data (such as settlement discussion during the initial case management conference) and which other judges may not choose to use. Also, judges who do not use a particular case management practice now may continue not using it even if they are asked to start using it in the future.

Thus, successful use of a case management procedure by some judges in some districts does not necessarily mean it will be equally effective if all judges are asked to use the procedure in all districts. However, the limitations of observational data notwithstanding, practices that we have identified as effective among judges who currently use them are good candidates for practices that could be beneficial if more widely implemented.

The judiciary's ability to ensure widespread implementation of these promising practices is the key to achieving the positive effects we observe. Effective implementation of new policies can be enhanced by examining why the CJRA pilot program had little effect and by learning from prior court and organization research on implementation of change.

Implementation factors that may have contributed to the pilot program's having little effect include: the vague wording of the act itself; the fact that some judges, lawyers, and others viewed the procedural innovations imposed by Congress as curtailing judicial independence accorded judges under Article III of the Constitution, and as unduly emphasizing speed and efficiency at the possible expense of justice; and the lack of effective mechanisms for ensuring that the policies contained in district plans were carried out on an ongoing basis.

Prior research on implementation indicates that change is not something "done to" members of an organization; rather, it is something they participate in, experience, and shape. Studies of change in the courts and in other organizations provide some guidelines for improving implementation. They include: clearly articulating what the change is to accomplish and generating a perceived need for it; a governance structure and process that coordinates individuals' activities and assigns accountability for results; and meaningful performance measures to help both

implementers and overseers gauge progress.

Studies of change also document that members of organizations are more likely to change their behavior when leadership and commitment to change are embedded in the system, appropriate education is provided about what change entails, relative performance is communicated across parts of the organization, all supporting elements in the organization also make desired changes, and sufficient resources are available.

Future efforts to change the federal civil justice system could be substantially enhanced by incorporating such guidelines.

